

Legal Regulation of Labor Migration in the Republic of Kazakhstan

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Abstract

Background/Objectives: The aim of the current research is to study comprehensively international legal and interstate regulation issues of international labor migration of the Republic of Kazakhstan. **Methods/Statistical Analysis:** The methodological basis of research includes: the principles of cognition of social and legal phenomena in the field of migration (including ideas, concepts, and theories) in their historical development, interconnections, and theoretical and applied interdependence; general scientific approaches – systemic, comprehensive, personal-socio-activity approach, historical-legal, comparative-legal and socio-economic; empirical methods – survey, study and generalization of gathered experience, reviews and reports on migration activities. **Findings:** In today's globalizing world economy, the integration of Kazakhstan into world economic space, part of which is the international labor market, becomes of a great importance. The integration of Kazakhstan into this market involves active participation of the state into the foreign labor migration processes, as well as labor power export and import. The article examines the state and legal frameworks of labor migration in the Republic of Kazakhstan, and involvement of the Republic of Kazakhstan in the international legal regulation of labor migration. The conducted analysis allowed the author to reveal the interrelation between the economic globalization and labor migration as well as their trade-off; study a state-legal regulation mechanism of labor migration; identify the interstate mechanism of implementation of international rules applicable to labor migration into national legislation; study implementation mechanism of the labor freedom principle with respect to migrant workers; and reveal the peculiarities of legal regulation of relations with migrants. **Application/Improvements:** The results obtained can be used in the development of international treaties and statutory instruments with regard to labor migration. They may be useful for public authorities, as well as when conducting international judicial co-operation in noted area.

Keywords: Employee, Employer, Labor Migration, Migrant Worker

1. Introduction

In today's world, labor migration processes will contribute to the development of market relations, integration of the countries into international labor market, to ensure migrants' rights by complying with the international conventions in the field of labor. At the same time, the processes of external migration may be accompanied by negative consequences such as increase of the highly qualified specialists outflow abroad, activation of criminal

structures, involved in the supply of illegal labor and illegal labor migration.

Kazakhstan, as a supporter of global standards in the field of labor law, declares the rights and interests of migrant workers. Thus, according to the article 21 of the Constitution of the Republic of Kazakhstan (hereinafter - RK), any person legally present on the territory of Kazakhstan has the right of free movement on its territory; each has the right to travel outside the country and freely return. Freedom of movement is one of the natural

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and inalienable human rights. At that, everyone has the right to freedom of labor, free choice of occupation and profession (the article 24 of the Constitution of the RK) that is also one of the most important and inalienable constitutional rights of human and citizen.

Effectively developing Kazakhstan's economy, its openness, the increasing volume of foreign investment, significantly expands labor migration. Under these conditions one of the most important tasks of the state is, on the one hand, attracting skilled foreign labor force, and on the other hand – protecting the national labor market, reducing illegal labor migration, which tends to expand, as well as streamlining the export of manpower abroad. However, in the context of economy globalization, quality of the labor legislation of the RK requires further improvement, taking into account both the interests of the national labor market, and international legal instruments on the protection of the migrant workers rights.

Currently Kazakhstan implements legal policy aimed at stream lining the legislative procedure of migration processes. Increased international labor migration creates a system of state and non-state bodies, providing a civilized movement of labor with reference to specific features of the national labor market while providing legal protection of the migrants' interests. It is this aspect that is in the focus of the current study related to the legal issues of labor migrants' employment in the RK as well as ensuring the legal departure of the RK citizens to work in foreign countries.

In the current research we used the works of Kazakhstani, Russian and other foreign scientists on the general theory of law, labor, civil and administrative law, the literature in economics' political science¹ and sociology as well as periodicals and law enforcement data practices¹⁻⁹.

Scientific and theoretical basis of present research included the works of jurists¹⁰⁻¹⁵.

2. Materials and Methods

The dialectical, logical-legal, socio-legal and systemic-structural methods laid methodological basis of the study. Considerable attention was given to the use of special juridical methods of research, such as comparative law research, and historical and legal method. Doctrinal concept of philosophy, general theory of law, constitutional law, administrative, civil, international, labor, and social laws are also used in the current study.

Based on the comprehensiveness principle, the author considers both political and socio-economic aspects of contemporary legal support formation and development of labor migration. Analysis of the problems on international legal regulation of the research object is carried out in conjunction with the study of problems of organization and functioning of sub-national institutions.

The empirical base of the research includes the data published in periodicals as well as case materials. Substantive legal framework of the research are based on the Constitution of the Republic of Kazakhstan, sectorial sources of labor and allied branches of law, regulations on international labor law, and the foreign countries legislation.

3. Results

Based on the study conducted, the following main conclusions were formulated and specific proposals were made on further improvement of the legislation of the RK on labor migration issues.

Globalization is a global natural process that aims at establishing holistic systemic relationships covering all aspects of the human society functioning regardless of region or specific country, socio-economic and political structure of a state, the level of civilization and economic development. One of the realities of the contemporary world is increasing migration flows, which may be of voluntary, voluntary or forced nature. However, strengthening of migration processes is primarily due to globalization, which is based on economy openness, the implementation of new technologies, the deepening of international differentiation of labor, and spatial mobility of the population.

Migration of the population is a voluntary, involuntary or forced movement of people within the country or abroad with a permanent or temporary change of the place of residence for various reasons, goals, periodicity and duration of stay. Legal regulation of population movement in Kazakhstan under conditions of globalization is directly related to the openness of the Kazakh economy, the formation of a full-fledged labor market, the expansion of international economic and interstate relations. The Republic of Kazakhstan, being an integral part of global economic community, attaches great importance to the legal regulation of labor migration and differentiates it into legitimate (legal) and unlawful (illegal) migration. Given this, there should be established a legal mechanism

to regulate labor migration, able to eliminate its illegal grounds.

Globalization encourages the use of foreign labor, therefore in the context of intensifying cross-country movement of labor resources, the role of nation states for the protection of labor rights increases. In the RK there is a system of state bodies responsible for migration management in general as well as the management of its most important segment, namely labor migration. However, the multiplicity of state agencies involved in the management of labor migration necessitates the establishment of a special state body on labor migration management.

It is advisable to adopt the law "On foreign labor migration", regulating the recruitment of foreign labor and aimed at reducing illegal labor migration, the imposition of strict economic sanctions against employers which illegally employ foreign labor. Bringing the legislation of the RK that regulates the legal status of refugees in compliance with international acts on refugees today is highly demanded. According to the legislation of the RK, freedom of labor fully covers labor migrants if they legally arrive in the country and have work permit. However, it is advisable to preserve the restrictions on encumbering of certain positions and performing certain work by migrant workers.

The formation of legal mechanism for protection of migrating individuals has a centuries-long history and today the international cooperation in the sphere of migration process regulation, in general, and labor migration, in particular, has been already established. Currently, in the field of international legal regulation of labor relations a set of international-legal means for regulation of migrant labor have been established. The documents of the UN, its specialized agencies, the International Labor Organization (hereinafter ILO), the International Organization for Migration, regional organizations, as well as bilateral agreements can be used by states quite effectively when employing migrants. We believe it appropriate that the RK ratifies important ILO documents such as Convention No. 143 on abuses in the field of migration and concerning ensuring migrant workers with equal opportunities and treatment (Convention No.97 on migrant workers). Along with the accession to universal and regional international legal acts that regulate rights of labor migrants, it is advisable for the RK to enter into bilateral and multilateral agreements with CIS countries on the regulation of labor migration.

4. Discussion

During the XX century in Kazakhstan an active migration policy was pursued first by the Russian Empire and then by Soviet Union that had a huge impact on population change, as well as its ethnic and social composition. After the collapse of the USSR and following independence, over 9 million people, that is, every 13th inhabitant of the region moved within CIS countries. The collapse of the Soviet Union and the destruction of a single economic system led to the emergence of a new previously not fixed motive of migration, namely ethnic migration. Since gaining independence more than two and a half million people have left Kazakhstan. In addition, internal migration has intensified as well - from rural areas to city and from one region to other.

Today refugees are the urgent problem of a global nature. The proximity of the RK to the areas of political, economic, inter-ethnic instability, and military action increases the number of refugees, stimulates migration processes in Kazakhstan, however, the legal status of refugees, in our opinion, is not sufficiently resolved. Reasoning from this fact, it is appropriate to harmonize the national legislation of the RK in accordance with the norms of international law on refugees.

It should be noted that since the beginning of independence Kazakhstan attaches great importance to the legal regulation of labor migration. Analysis of current legislation allows differentiating labor migration on legitimate (legal) and illicit (illegal) migration. The Republic has established authorization procedure for foreign labor; therefore foreign citizens are entitled to lawfully engage in employment, provided compliance with legal conditions established by the RK legislation. However, the actual availability and the further expansion of illegal labor migration of Kazakhstan population is a serious problem. In this regard, it is advisable to develop a special legal mechanism to regulate labor migration.

Labor migration in a globalizing economy is not only limited to import of foreign labor¹⁶. In accordance with applicable law, citizens of the RK have the right to seek employment abroad independently on their own initiative or find employment through intermediary organizations. The organized export of workers is carried out by private employment agencies, whose activities are licensed. According to the authors, the qualification requirements for persons applying for a license to operate in the field of labor export from the RK to foreign countries, are somewhat simplified. In this connection there is an

illegal export of people to work abroad based on deception, moral or psychological coercion for the purpose of placing people in humiliating conditions such as slave labor, or exploitation in the household, enforced prostitution and other illegal activities that violate fundamental human right. Given the urgency of the concerned problem as well as the imperfection of the current legislation, the authors make a conclusion about the demand for a special law "On foreign labor migration".

In scientific literature it is widely believed that globalization processes weaken the sovereignty of the state, confine the independence of the country in the choice and implementation of economic policies, thereby weakening and devaluing the regulatory function of the state¹⁷⁻²⁵.

Of course, globalization has a huge impact on the state as such, though suggesting that there is a tendency to the formation of a single worldwide state, according to the authors, is premature. On the contrary, only a strong nation is capable of creating the necessary conditions to enter in an international framework without impinging on national interests. In the context of globalization the role of national state in exercising of its functions is not declining, though adapting to the constantly changing economic, socio-political, demographic, migration and other situations.

The functioning of any state is unthinkable without a sound migration policy. The RK attached great importance to the improvement of existing and development of new avenues of migration management in the country. This requires further improvement of the existing legislative framework regarding labor migration aimed at the preservation of quotas for foreign labor force, simplification of the procedures for attracting high qualified labor migrants, and also toughening of employers' responsibility for employment of illegal migrants. All this will allow using the possibilities of foreign labor migration for the formation of an integrated national labor market, the protection of labor and social rights of migrants.

The conducted analysis of powers of state authorities involved in migration process management in the RK allows us to conclude that the country attaches the utmost importance to the regulation of population migration and its important component – labor migration. However, it should be emphasized that there is an unjustified "dispersion" of competencies, and sometimes duplication of functional responsibilities between the different government bodies dealing with migration issues and, in particular, with labor migration. On that basis, it is advis-

able to establish a special state body on regulation of labor migration.

Besides, according to the researchers, the adoption of a special law on foreign labor migration is required to reduce latent employment and use of foreign labor force, to establish more consistent sanctions for employers who illegally employ foreign labor force, as well as to improve the state system of migration regulation.

International law has an impact on the process of improving national legislation, through the implementation of international legal norms in national legislation. In turn, globalization encourages countries towards development of joint actions against emerging challenges and, as a consequence, towards integration of their economies, the universalization and harmonization of national legislation with international legal acts.

A review of international legal acts in the sphere of migrant labor regulation, adopted by international organizations, allows us to conclude that there are international labor standards which are established to be followed by countries using migrant labor. Up to date, the RK has ratified a number of international legal instruments relating to regulation of labor relations, adopted by the United Nations, ILO and other international organizations. The inclusion of universally recognized norms of international law into the national legal system is provided by Constitution of the Republic of Kazakhstan. In accordance with the article 4 of the Basic Law, not just norms of the Constitution and relevant laws are the applicable law, but also the international treaty and other obligations of RK. At that, international treaties ratified by the Republic have priority over national laws and are applied directly, except of cases where it follows from the international treaty that its application requires the promulgation of the law.

The Republic of Kazakhstan for the historically short period of time has joined the most universal international legal acts regarding regulation of labor relations. Meanwhile, there are a number of ILO conventions on labor migration, not ratified by Kazakhstan, though as an ILO member Kazakhstan needs to be guided by these conventions when dealing with regulation of migrant labor. Given that the RK is a country where migrant labor is widely used, and therefore, according to the author, it is advisable to ratify them.

Due to the fact that in the modern era, for both Kazakhstan and many other countries of the world, the combat against human trafficking, which has acquired a global dimension and is in fact a contemporary form of

slavery, becomes extremely relevant. In this regard, according to the researchers, it is advisable for Kazakhstan to access to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of March 21 1950, approved by resolution No 317 (IV) of the UN General Assembly on December 2, 1949.

Along with ratification of important international documents which are the universal instruments of global significance, Kazakhstan is interested in adopting regional and international treaties dealing with migration issues and protection of the migrant workers rights. For our country important are documents of the Council of Europe, European Union and OSCE concerning labor migration issues, because within the frameworks of regional community much attention is paid to development of cooperation with participating countries in the social sphere and, in particular, to the formation of a coherent migration policy, fairly believing that under the conditions of globalization, international coordination and cooperation in the migration sphere can contribute to a more efficient management of inter-state population movements.

The strategy of a new integrated structure with the involvement of Kazakhstan and the Eurasian Economic Union in the field of labor migration is focused on ensuring the free movement of citizens, as well as creating relevant conditions in new settlements or places of employment of migrant workers. A complicated problem faced by the Eurasian Economic Union (EEU) member countries is an illegal labor migration. Meanwhile, as practice shows, in most countries, experiencing the migration pressure, especially illegal, migration rates are ahead of the states capacity to regulate migration processes and responding to their consequences. Therefore, the development and adoption of the act on cooperation of the EEU member countries to protect national labor markets against the illegal labor migration from third countries, seems to be urgent.

Paragraph 4 of article 12 of the Constitution of the RK stipulates that foreigners and stateless persons in the Republic have the rights and freedoms as well as bear the responsibilities, established for citizens unless otherwise is provided by the Constitution, laws and international treaties. In accordance with the article 7 of the Labor Code of the RK, everyone has equal rights and freedoms in regard to job. Consequently, noted rights are equally available to foreign citizens and stateless persons engaged

in labor activities in the territory of the RK, unless otherwise is provided by laws and international treaties ratified by the RK. Another matter is that the implementation of the labor activity by foreign citizens might be restricted by some limitations. Thus, foreigners cannot be appointed for certain positions or be engaged in certain activity, if in accordance with the legislation of the RK, the appointment to these positions or engaging in such activity are connected with appurtenance to the citizenship of the RK. In addition, in order to protect the domestic labor market the RK Government annually establishes a quota for foreign labor force for exercising occupation in the territory of the RK.

The use of migrant labor in different employment areas is an integral part of the labor market, therefore, the freedom of labor must be extended to labor migrants in full, if they legally arrive in the country and have work permit. However, the need to maintain restrictions on employment by certain kinds of work or specific jobs by migrant employees is stipulated not only by the priority protection of interests of Kazakhstan citizens, but also by ensuring the national security of a sovereign state.

5. Conclusion

The conducted research allowed us to:

- Analyze the migration flow process strengthening in the context of globalization as an objective process based on the spatial activity of the population, openness of the economy and advancing the international division of labor;
- Prove the interrelation and interdependence of economy globalization and labor migration, stimulating cross-national labor migration and formation of global labor market;
- Make suggestions about the necessity of improving the state-legal mechanism of labor migration regulation;
- Prove the need for further improvement of international legal regulation of labor migrants in the context of the dramatic increase of migratory flows, the need for the implementation of international legal instruments on labor migration in the legislation of the RK, the expansion of the ratification of the UN and ILO conventions and other international instruments relating to labor migrants;

- Determine the reasons for the increase of illegal labor migration flow and its negative impact on national labor market, and develop proposals for legislative support of reducing illegal labor migration, improving the mechanism of legal regulation of labor migration with the countries involved in a visa-free regime with Kazakhstan;
- Formulate proposals on improvement of legislation regulating migrant labor based on the identification of the most common violations by employers when employing foreign labor force, as well as undue restrictions of the rights of migrant workers;
- Justify proposals on streamlining the export of manpower abroad, the need to strengthen the state' role in this area.
- The obtained results extend and deepen understanding of the nature and essence of the migrant workers rights. The material generalized in the work as well as the conclusions and recommendations provided on its basis can be used in:
- The legislative process to further improve legal regulation of labor migrants;
- The implementation of norms of the labor relations law by labor migrants, employers and their representatives in order to protect labor rights and legitimate interests of migrants;
- The scientific research, namely, in the development of scientific recommendations to improve legislation on labor migration, to protect the national labor market interests as well as interests of labor migrants;
- The teaching and learning activities: using materials for educational purposes when teaching the discipline "Labor Relations Law of the Republic of Kazakhstan", as well as in the development of textbooks, manuals, and methodical recommendations in the framework of training courses.

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