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Tel : +352661261668

e-mail: bulletin@email.lu

http://cers.eu.pn/bulletin.html

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Table of contents

Aidarbayev S.Zh., Baimagambetova Z.M., Umirzakova A.	3
Standards of the WTO in the Field of Subsidizing of Agriculture and their Influence on the Agrofood Sector of Kazakhstan	
Aliyev A.I., Eyvazova S.A.	6
Genetic Engineering and Right to Personal Integrity	
Aliyev A.I., Mammadli S.H.	9
Protection of Minors in Civil Process: International Standards	
Allahverdiyev G.V.	15
The Interrelationship of Increasing Morality of Law with Freedom	
Aparov A.M., Onyshchenko O.M.	20
On the Determination of Reformation and Improvement Vectors of the Normatively-Legal Providing of Sphere of Menage and Commercial Relations in Ukraine	
Apienov S., Dzhamaldinova M.	27
Special Aspects of Criminal Offense under the Criminal Legislation of the Republic of Kazakhstan (in Comparison with Foreign Legislative Practice)	
Baimagambetova Z.M., Berkuta A.	31
Legal Regulation of the International Labor Migration within the International Labour Organization	
Bernaz P.V.	34
Forensic Support of Investigation Activity	
Biletska K.K.	41
Experience of Use of Alternative Preventative Measures in Criminal Proceeding in Europe	
Bodrova I.I.	47
The Administrative-Territorial System as Object of Constitutional and Legal Policy in Ukraine	
Bratel O.G.	54
Defining the Tasks of Civil Proceedings	
Chashkova S.Yu.	60
Agreement-based Grounds for the Termination of Maintenance Obligations	
Chernyak Ya.V.	65
Infringement by Citizens of Rules of Storage, Carrying of Firearms	
Chuvakov O.A.	70
On a Classification of Crimes Against the Fundamentals of National Security of Ukraine	
Chuvakova H.M.	75
Anomalies in the Law	
Dosymbekova M.S., Toktybekov T.A.	79
On the Questions of Modernization of the Preparation and Conduct of Administrative Reform	
Drobot A.V.	84
Ways to Overcome Unemployment and Development of Labor Potential in Ukraine through the Lens of World Experience	
Dzhuhan V.O.	88
The Property For Water (Water Bodies) In Ukraine And Poland	

Legal Regulation of the International Labor Migration within the International Labour Organization

Z.M. Baimagambetova

Al-Farabi Kazakh National University, Republic of Kazakhstan
e-mail: zula_bai@mail.ru

A. Berkuta

Al-Farabi Kazakh National University, Republic of Kazakhstan
e-mail: a_berkuta@mail.ru

Abstract: International labor migration has emerged as significant global issue that affect most countries in the world. With the expansion of labor migration, the ILO has an obligation and a unique role to play in developing principles and guidelines for governments, social partners and other participants in labor migration policy. The article deals with the regulation on the universal level of international labor migration through the analysis of conventions and recommendations adopted in the framework of the ILO. This paper investigates the importance of adopting international standards in the regulation of labor migration. The author analyzes the content of the main international agreements affecting the rights of migrant workers and their impact on the development of migration processes.

Keywords: international labor migration, the ILO, protection of human rights, migrant workers.

During an era of intensive development of processes of globalization and an integration we can see the increasing role of such phenomenon as migration.

According to Department on economic and social problems of the UN's Secretariat in 2014 the universal number of the international migrants reached 232 million in comparison with 154 million in 1990 that represents increase by 78 million people [1, p. 20]. In this context workers and their families cross borders in search of employment and security. Large-scale movements of manpower in various forms allow to note that internationalization of the economic activity demands legal regulation.

Yet, the migration process implies complex challenges in terms of governance, migrant workers' protection and international cooperation. Expanding the spatial sphere of international labor migration led to the fact that the legal regulation of labor and the rights of migrants requires more detailed regulation at the universal level.

Bekyashev D. gives the following definition: "The international labor migration is the migration connected with crossing by foreign natural persons of frontier of any state for a certain term for receiving work in the country of entrance" [2, p. 206].

Thus, migration is characterized by two main features. Firstly, the participants of migration flows are foreign individuals. Secondly, individuals cross frontiers of the foreign state for receiving work in its territory.

If the regulation of internal labor migration is the responsibility solely of the states, the relations connected with the external labor migration are regulated by international law. Basic standards aimed at realization and protection of labor rights contain in many universal instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and others.

For more detailed regulation of the rights of migrants in 1990 the resolution of the United Nations General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, having fixed thereby terms by which different types of workers are defined: "migrant worker", "seasonal worker", "frontier worker", etc. The convention regulates a wide range of the questions connected with protection of the rights of migrants and members of their families. For control of observance of provisions of the Convention the new conventional body of the UN - Committee on migrant workers was founded.

Protection of the rights of migrant workers at the universal level was carried out even long before adoption of the Convention of the UN. In this context the important part is assigned to the international treaties accepted by its specialized institutions, in particular the International Labour Organization (further – the ILO).

The International Labour Organization was founded in 1919 according to the Versailles peace treaty for the purpose of regulation of the questions connected with the labor relations. In creation of the ILO the aspiration to social changes was embodied in working conditions and to improvement of provisions of workers.

In the field of migration of the ILO seeks to develop and implement a number of partners in activities aimed at the effective protection of migrant workers and improve the mechanism of regulation of migration flows, particularly to reduce the number of cases of discrimination, as well as the integration of

legal migrants in the society of host countries [3, p. 36]. For more than 80-year history of its existence within the organization was taken over 300 international conventions and recommendations affecting various aspects of employment (working conditions, safety, employment policies, etc.).

Except for separate international documents, conventions and recommendations of the ILO have the general character, which is applicable to all workers, all depending on their nationality. For protecting the rights of migrant workers was adopted by a number of special conventions and recommendations: Migration for Employment Convention (Revised), 1949 (No. 97); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migration for Employment Recommendation (Revised), 1949 (No. 86); Migrant Workers Recommendation, 1975 (No. 151) etc.

For the first time at the international level the definition of "migrant for employment" was given in the ILO Migration for Employment Convention. The main purpose of the adoption of the convention was the need to regulate the conditions to promote legal labor migration by providing migrants conditions equal to those possessed by citizens in the areas of social security, employment, etc.

For the purpose of this Convention the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment [4].

From this definition it is possible to allocate 3 characteristic signs of the migrant for employment: 1) a person migrates from one state in another; 2) a person intends to get paid work; 3) a person is in the territory of the host state on the bases provided by the national legislation as the migrant for employment.

This Convention does not apply to frontier workers, short-term entry of members of the liberal professions and artistes and seamen.

The Convention contains a number of the provisions directed on cooperation of employment services of the states and other establishments, the dealing issues of labor migration, to rendering free services by these institutions to migrant workers. In addition to the general rules, the document contains a fundamentally important provision obliging the states not to carry out expulsion of migrant workers and members of families to the countries of their origin on the basis of impossibility of further implementation of work as a result of an illness or the injuries sustained after arrival.

Besides, the states ratifying the convention in the limits set by the national legislation on import and export of foreign currency undertake to allow transfer of any part of earnings or savings to foreign currency.

Thus, by providing migrants with the right to maintain certain legal labor migration, aimed at promoting legal migration flows and the prohibition of any discrimination against migrant workers and their families.

In addition to the main text of the Convention, there are three applications that regulates matters of recruitment, employment, working conditions and personal property.

Other important international document of the ILO is Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. Adoption of the convention was caused by a problem of sharp growth of scales of unemployment and streams of illegal migration to the developing and developed countries. The document represents the first multilateral attempt of regulation of questions of the status of illegal migrants and organization of migrants' illegal movement.

Part I is devoted to questions of abuses in the field of migration. An essence of the provisions containing in it is mute, it is reduced to that the states assume liabilities to observe concerning migrant workers all fundamental human rights during implementation of actions for suppression of illegal migration. In particular, in provisions it is told about need of taking measures both on national, and at the international level, the persons directed on establishment of responsibility employing illegally immigrating workers, and also migrants participating in illegal movement.

Part II regulates questions of equal opportunities and the address concerning work. Standards of the ILO Discrimination Convention (Employment and Occupation) directed on eradication of the preferences which are carried out on signs of race, creed or sex etc. formed its basis. So, each member-state of the Convention undertakes to carry out the national policy so that to guarantee to migrant workers equality of their opportunities in the field of work, social security, appeals to labor unions, observance of the individual and collective rights.

It should be noted that the Convention doesn't oblige the states to develop and carry out policy without limited access for migrant workers on the labor market at all. On the contrary, a number of restrictions of access for migrants to certain types of the works, in particular, connected with ensuring compliance with interests of the host state is provided in it.

The considered Conventions of the ILO cover rather wide range of questions, including emigration, immigration and transit. Despite the different purposes of their acceptance and the subject sphere of their regulation, action of conventions it is directed on protection of the rights of migrant workers.

As shortcomings of the considered conventions it is possible to allocate the following: their coverage don't extend on separate categories of workers (for example, seamen, workers of border areas); except for

separate articles and provisions. In these acts distinction between constant and temporary migrants isn't carried out.

As it was already mentioned, within the ILO are accepted not only conventions, but also recommendations. Feature of recommendations is that they aren't the international treaty and, respectively, don't demand ratification.

Recommendations of the International Labour Organization represent the offer turned to the state and a wish to bring the relevant standards in the national legislation. The essence of recommendations is that they detail and supplement provisions of the convention, doing their contents fuller.

In the sphere of legal regulation of the international labor migration it is possible to carry to number of the most significant recommendations of the ILO - Migration for Employment Recommendation and - Migrant Workers Recommendation. These recommendations are governed by issues of employment of migrant workers, the implementation of employment, the acquisition of a residence permit, etc.

In summary it should be noted that regulation of questions of labor migration is directly connected with ensuring compliance and protection of the rights of migrant workers. At the heart of protection of the rights of migrants, their potential susceptibility of discrimination, operation lies especially at their low social status. For this reason at the universal level the importance is attached to activity of the UN, the ILO, the IOM and other international organizations.

In spite of the fact that documents of the ILO not fully take up the questions which are closely connected with implementation of activity by migrant workers, the principles enshrined in them provide themselves that " foundation" on which basic components of comprehensive policy in the field of the international labor migration and protection of the rights of migrant workers are under construction.

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Правовое регулирование международной трудовой миграции в рамках Международной организации труда

Баймагабетова З., e-mail: zula_bai@mail.ru,

Казахский Национальный университет имени Аль-Фараби, Республика Казахстан

Беркута А., e-mail: a_berkuta@mail.ru

Казахский Национальный университет имени Аль-Фараби, Республика Казахстан

Аннотация: Вопросы международной трудовой миграции представляют собой глобальную проблему, которая затрагивает большинство стран мира. С расширением международных миграционных потоков на МОТ возложена уникальная роль по разработке руководящих принципов и рекомендаций для правительств, социальных партнеров и других участников трудовой миграционной политики. В статье рассматриваются проблемы регулирования международной трудовой миграции на универсальном уровне путем анализа конвенций и рекомендаций, принятых в рамках МОТ. В статье подчеркивается важность принятия международных стандартов в области регулирования трудовой миграции. Автор анализирует содержание основных международных договоров, затрагивающих права трудящихся-мигрантов, их влияние на развитие миграционных процессов.

Ключевые слова: международная трудовая миграция, МОТ, защита прав человека, трудящиеся-мигранты.

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