

CONSTITUTIONAL AND LEGAL ASPECT OF THE LEGAL EXPERIMENT OF MIGRATION REGULATION IN THE RUSSIAN FEDERATION AND GERMANY

Marina V. Markhgeym¹, Alevtina E. Novikova², Evgeniy E. Tonkov³, Vladimir I. Yevtushenko⁴, Goar G. Zagaynova^{5*}

^{1,2,3,4}Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia, ⁵Northern Caucasian branch of the «Russian state University of justice», 187/1 Levanevskogo Street, Krasnodar, 350002, Russia.
Email: *goarikk@yandex.ru

Article History: Received on 21st August 2019, Revised on 29th September 2019, Published on 03rd November 2019

Abstract

Purpose: The article is devoted to the study of the features of the migration policy implemented in the Russian Federation as a kind of legal experiment.

Methodology: The methodological basis of the study was a set of the following methods of scientific knowledge – General scientific methods (analysis and synthesis), private scientific methods (formal legal and comparative legal).

Result: The author analyzes normative acts, including by-laws of both the Russian Federation and its constituent territories. The analysis of the existing regulatory normative approaches to the regulation of migration in Germany is also given. At the same time, the author offers his vision of the possible implementation of German law in the Russian Federation.

Applications: This research can be used for universities, teachers, and students.

Novelty/Originality: In this research, the model of Constitutional and Legal Aspect of the Legal Experiment of Migration Regulation in the Russian Federation and Germany is presented in a comprehensive and complete manner.

Keywords: *Migrants, Legal Experiment, Constitutional Law, The Basis of The Constitutional System, Constitutional And Legal Experiment.*

INTRODUCTION

Any experiment involves unambiguous clarity of the purposes for which it is carried out. The experiment always involves the following structural elements – stages, deadline, and the person responsible for both the experiment and its results. Therefore, according to V. I. Nikitinsky and I. S. Samoshchenko meaning, the following requirements are imposed on the legal experiment – the creation of experimental legislation – a form of legislation that has some features. It should be limited in time, should contain a clear definition and purpose, should indicate the objectives of the planned legislative action and the criteria used to assess the compliance of temporarily used tools, what data should be collected, the responsibility for the collection of these data and the evaluation of the results ([Nikitinskij and Samoshchenko, 1988, p. 7](#)).

Recently, the science of constitutional law has advanced significantly in the development of the theory of legal experiment ([Zagaynova, et al. 2018](#); [Safarov, 1964](#)). However, the scientific developments of this problem do not always keep pace with the dynamics of social relations.

METHODS

The methodological basis of the study was a set of the following methods of scientific knowledge – General scientific methods (analysis and synthesis), private scientific methods (formal legal and comparative legal).

RESULTS AND ITS DISCUSSION

With the help of a legal experiment in different countries are trying to solve the most acute problems, for example, the presence of migrants in the country.

Eight of its subjects faced this problem within the borders of the Russian Federation. The total number of such persons according to unofficial data is more than fifty thousand people.

The value of the results of the state-legal experiment increases with the representative membership. Therefore, according to Safarov R. A. ([Nakhleh, 2015, p. 14](#); [Reitz, 2005](#)), the choice of control objects in different living conditions, will give an opportunity to make a comparative analysis of the results of the experiment, that is, to develop a model or a number of models suitable for all objects. In modern conditions, as our study shows, the result is also influenced by the rule-making of the subjects of the Russian Federation, as well as the industry affiliation of the employer of the subject under study.

The Constitution of the Russian Federation does not contain the term "migration" or "foreign citizen located on the territory of the Russian Federation". Part 1 of article 17 of the Constitution recognizes and guarantees human rights and freedoms in accordance with generally recognized principles and norms of international law ([Qianfan, 2007](#); [Ekele, 2009](#)).

In this case, from the point of view of this normative act, "person" means not only a citizen of the Russian Federation, but also any person who does not have citizenship, located on the territory of the Russian Federation.

The legal status of foreigners in Russia became regulated after the adoption in 2002 of Federal law No. 115-FZ "ON THE LEGAL POSITION OF FOREIGN CITIZENS IN THE RUSSIAN FEDERATION" ([Federal'nyj zakon, 2002](#)). This law specifies the following types of legal stay of foreign citizens in the Russian Federation: temporary residence (tourism, other cases on the basis of a visa – training, work); permanent (residence permit). Thus, the law determined the possibility of foreign citizens' stay in the territory of the Russian Federation, as well as the ways of being, grounds, and terms of stay.

At the same time, since 2006, mandatory migration registration has been carried out for foreign citizens on the basis of Federal law No. 109-FZ "On migration registration of foreign citizens and stateless persons in the Russian Federation" ([Federal'nyj zakon, 2006](#)). In the context of the constitutional norms and norms of international law, this accounting is carried out for: protection of the foundations of the constitutional system, morality, health, rights and legitimate interests of not only Russian citizens, but also foreign citizens, as well as ensuring national security of the Russian Federation and public security by countering illegal migration; creating conditions for the realization of foreign citizens' rights and freedoms, and for the performance of their obligations; development and implementation of the state migration policy; gathering of objective information on the movements of foreign citizens (the purpose is to predict the consequences of displacement, state statistical observation of migration); planning of development of territories; management in crisis situations.

Comprehensive implementation of these tasks, in our opinion, does not restrict the freedom of movement of foreign citizens and their choice of residence and stay in Russia, as well as provides protection of their rights.

In addition, the orders of the Resolution of the Government of the Russian Federation of November 22, 2017 No. 2581-r "On the establishment of a quota for the issuance of temporary residence permits in Russia for 2018 to foreign citizens and stateless persons" ([Rasporyazhenie Pravitel'stva, 2017](#)) and dated November 15, 2018 № 2496-R ([Levy, 2010](#)) "On the establishment of a quota for the issuance of temporary residence permits in Russia for 2019 to foreign citizens and stateless persons" established a quota for the issuance of temporary residence permits for foreign citizens in each subject of the Russian Federation, so in 2018 – 90 360 quotas, and in 2019 – 83 480 quotas. The reduction in the number of quotas is most likely caused by various reasons – the fight against poverty, terrorism, incitement to ethnic hatred and other reasons.

The law-making activity of subjects of the Russian Federation allows realizing legal experiments by adoption of the regulations reflecting specifics of each subject. So, for example, the decree of the Governor of Perm Krai of January 31, 2019 № 13 "On the establishment for 2019 of a ban on the involvement of foreign citizens engaged in labor activity in the territory of Perm Krai on the basis of patents for economic activities" ([Ukaz gubernatora Permskogo kraya, 2019](#)) prohibited to attract foreign citizens to carry out the following work: logging; retail trade-in stores; passenger transportation (taxi, intercity and suburban transportation); oil extraction, associated gas and oil products production.

German law has a different approach to classifying migrants and the reasons for their stay in the country. In particular, the legislation singled out ethnic Germans and refugees and regulated their legal status by various regulations. With regard to ethnic Germans, the state's policy is to ensure equality of their rights with the rights of indigenous citizens. According to article 116 of the Basic Law of the Federal Republic of Germany, "Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted as a refugee, or expellee of German ethnic origin or as the spouse or descendant of such person" ([Osnovnoj Zakon Federativnoj Respubliki Germanii](#)).

Until 1993, German migration legislation had been very loyal to asylum-seeking persons of German origin. These persons were equated with the repressed persons who were to be assisted as victims of communism. There was no need to provide evidence of any reprisals against them. The state has integrated these persons into society by creating the most favorable conditions for life; solving housing problems; providing social support and protection.

Integration was carried out in Germany on the basis of the state program, which provides for the following activities: the issuance of benefits and loans for the arrangement; the provision of tax benefits for the purchase and lease of enterprises; credit extension, preferential loans for the organization of Handicrafts; the creation of farms and agro-industrial enterprises and the development of previously undeveloped land in order to create new jobs; the organization of German language training, professional training and retraining of immigrants ([Zakon FRG, 1990](#)).

Programs for the reception of migrants were financed not only from the Federal budget and the budgets of the lands but also from the funds of the Church.

Adopted in 2004 the law "Residence Act" reduced the pre-existing five modes of stay in the country: permanent residence permit; indefinite leave to remain; the right to indefinite leave to remain; the permit to achieve a specific purpose; residence restriction – up to two: residence permit with a limited validity; permanent residence permit. The right to stay became not on the basis of stay (its formal status), but for its purposes, for example, humanitarian, economic activity, education, family reasons ([Aufenthaltsverordnung, 2004](#)).

DISCUSSION

The reasons for the delay in the experiment – the fight against illegal migrants – are very costly for States. On raids, deportation in the Russian Federation and Germany spend millions of rubles and euros, respectively. Opponents of this experiment believe that in this case, it is more important to build a migration policy and concern for the safety of citizens.

The above allows us to draw the following conclusions: in fact, this experiment is not completed; individual subjects of the Russian Federation are given the right to adopt regulations establishing a ban on certain types of work for foreign citizens on their territory; reducing the number of quotas for temporary residence of foreign citizens on the territory of the Russian Federation and its subjects indicates not only an attempt to balance the number of foreign citizens, but also to regulate the labor market – to prevent competition between Russian citizens and foreigners; the normative acts do not establish quotas for the stay of foreign citizens from any specific countries in the territory of the Russian Federation; for foreign citizens as well as for Russian there is no requirement of compulsory labor.

In Germany, the state managed to turn forced immigration from a financial burden into a way to increase jobs and replenish the Treasury. This was due to the differential treatment of different categories of migrants, as well as to the promotion of the repatriation of the refugees.

ACKNOWLEDGMENT

The author confirms that the data do not contain any conflict of interest.

REFERENCES

1. Aufenthaltsverordnung vom 25. November 2004 (BGBl. I S. 2945).
2. Ekeli, K. (2009). Constitutional experiments: representing future generations through submajority rules. *Journal of political philosophy*, 17(4). <https://doi.org/10.1111/j.1467-9760.2008.00328.x>
3. Federal'nyj zakon ot 18.07.2006 № 109-FZ «O migracionnom uchete inostrannyh grazhdan i lic bez grazhdanstva v Rossijskoj Federacii». SZ RF. 2006. № 30. St. 3285. (in Russian)
4. Federal'nyj zakon ot 25.07.2002 № 115-FZ «O pravovom polozhenii inostrannyh grazhdan v Rossijskoj Federacii». SZ RF. 2002. № 30. St. 3032. (in Russian)
5. Konstituciya Rossijskoj Federacii. Prinyata vsenarodnym golosovaniem 12 dekabrya 1993 g. (s uchyotom popravok ot 21.07.2014 № 11-FKZ). SZ RF. 2014. № 31. St. 4398. (in Russian). <https://doi.org/10.1365/s11621-014-0377-4>
6. Levy, R. (2010). Breaking the constitutional deadlock: Lessons from deliberative experiments in constitutional change. *Melb. UL Rev.*, 34: 805.
7. Nakhleh, E. A. (2015). 10 Political Participation and the Constitutional Experiments in the Arab Gulf: Bahrain and Qatar. *Social and Economic Development in the Arab Gulf (RLE Economy of Middle East)*.
8. Nikitinskij, V. I., & Samoshchenko I. S. (1988). *Pravovoj ehksperiment i sovershenstvovanie zakonodatel'stva*. M.: YUridicheskaya literature (In Russian).
9. Osnovnoj Zakon Federativnoj Respubliki Germanii. Available at: www.humanites.edu.ru (accessed 19 March 2019).
10. Qianfan, Z. (2007). Constitutional Variability and Local Experiments. *Chinese Journal of Law*, 1.
11. Rasporyazhenie Pravitel'stva RF ot 15 noyabrya 2018 g. № 2496-r «Ob ustanovlenii kvoty na vydachu inostrannym grazhdanam i licam bez grazhdanstva razreshenij na vremennoe prozhivanie v Rossijskoj Federacii na 2019 god». SZ RF. 2018. № 48. St. 7460. (in Russian)
12. Rasporyazhenie Pravitel'stva RF ot 22 noyabrya 2017 g. № 2581-r «Ob ustanovlenii kvoty na vydachu inostrannym grazhdanam i licam bez grazhdanstva razreshenij na vremennoe prozhivanie v Rossijskoj Federacii na 2018 god». SZ RF. 2017. № 48. St. 7279. (in Russian)
13. Reitz, K. R. (2005). The New Sentencing Conundrum: Policy and Constitutional Law at Cross-Purposes. *Colum. L. Rev.*, 105, 1082.
14. Safarov, R.A. (1964). *Social'nyj ehksperiment i problemy gosudarstva i prava*. *Sovetskoe gosudarstvo i pravo*, 10 (In Russian).
15. Ukaz gubernatora Permskogo kraya ot 31 yanvarya 2019 g. № 13 «Ob ustanovlenii na 2019 god zapreta na privlechenie inostrannyh grazhdan, osushchestvlyayushchih trudovuyu deyatel'nost' na territorii Permskogo kraya na osnovanii patentov po vidam ehkonomicheskoy deyatel'nosti». Available at: <http://www.consultant.ru/> (accessed 30 March 2019).
16. Zagaynova, G. G., Luk'yanchenko, V. V., Novikova, A. E., Tonkov, E. E., & Doronina, O. N. (2018). Inadmissibility of experiments on people: constitutional imperatives of the post-soviet countries. *Revista Amazonia Investiga*, 7(12), 177-180.
17. Zakon FRG ot 9 iyulya 1990 g. «Ob inostrancah» // БФЗ. Т. 1. С. 1354. Available at: <http://www.immigra.ru/law.html> (accessed 19 March 2019).
18. Sheetz, M. P., Felsenfeld, D. P., & Galbraith, C. G. (1998). Cell migration: regulation of force on extracellular-matrix-integrin complexes. *Trends in cell biology*, 8(2), 51-54. [https://doi.org/10.1016/S0962-8924\(98\)80005-6](https://doi.org/10.1016/S0962-8924(98)80005-6)
19. Doomernik, J., & Jandl, M. (Eds.). (2008). *Modes of migration regulation and control in Europe*. Amsterdam



- University Press. <https://doi.org/10.5117/9789053566893>
20. Irving, J. A., & Lala, P. K. (1995). Functional role of cell surface integrins on human trophoblast cell migration: regulation by TGF- β , IGF-II, and IGFBP-1. *Experimental cell research*, 217(2), 419-427. <https://doi.org/10.1006/excr.1995.1105>
 21. Penninx, R., Berger, M., & Kraal, K. (2006). The dynamics of international migration and settlement in Europe. A State of the Art, AUP, IMISCOE Joint Studies series, Amsterdam. <https://doi.org/10.5117/9789053568668>