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LEGAL FRAMEWORK FOR REGULATING THE RIGHT TO LABOR MIGRANTS

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Abstract: The article describes the modern international legal framework for the universal and regional regulation of the status of migrant workers, shows scientific approaches to regulating certain types of labor migration and analyzes the forms of interstate cooperation in this area. The author studied the special components of the existing international legal mechanisms for managing labor migration in the context of the activities of interstate integration associations, analyzed challenges and suggested some outlines.

Keywords: Human rights, International Labor Organization, International law, Labor, Migrants.

1 Introduction

Labor migration is one of the phenomena of globalization of the modern world. The global economy and social development of countries are increasingly dependent on the efficiency of labor migration, which contributes to their enrichment through the use of additional labor resources that stimulate socio-economic processes.

Currently, the problem of labor migration is one of the key issues for the entire international community. Almost all states of the world today are involved in the exchange of labor as importers or exporters, which indicates the global nature of labor migration. According to the UN, currently in the world about 120 million people work outside the country of their citizenship [44].

Globalization and regionalization trends have an impact on international law and, in particular, on international legal regulation of labor. At the level of international universal organizations – the International Labor Organization and the United Nations – a great deal of work is being done to adapt international labor standards to the conditions of globalization.

Integration associations use legal mechanisms aimed at stimulating economic cooperation between states, in particular, at securing the right to free movement of citizens of states within the borders of a regional association, aimed primarily at labor mobility [13]. Freedom of movement of workers is one of the four basic freedoms in the European Union, mechanisms of free movement in different variations exist in the CIS, ECOWAS, in the Andean Community, in MERCOSUR (South American Common Market), ASEAN (Association of Southeast Asian Nations) and some others.

When determining the features of international legal regulation, migration is subdivided into forced and voluntary movements. The international legal framework for the regulation of labor migration has its own specifics [1-6]. On the one hand, universal standards of labor and social rights are enshrined in the 1966 International Covenant on Economic, Social, and Cultural Rights and must be applied by states parties to all persons (the Covenant uses the term "everyone"), without any discrimination [14]. These standards are equivalent in relation to foreigners and their own citizens. Each state party decides on the form of implementation of the rights and freedoms established by the Covenant in its own national legal system.

On the other hand, the host State sets the procedure for the entry, stay, and exit of migrant workers at its own discretion. According to experts from the International Organization for Migration (IOM), interstate labor movements of individuals are regulated primarily by national migration legislation, and "some countries play an active role in regulating external labor migration and creating favorable conditions for their citizens abroad" [32].

Part 1 of Art. 2 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 defines them as persons "who will, are engaged in, or have been engaged in paid work in a state of which they are not citizens" [7]. As it is known, the universal international legal standard is the right of every person to work. Under it, part 1 of Art. 6 of the International Covenant on Economic, Social and Cultural Rights of 1966 describes the right to receive the opportunity to earn a living in work that he freely chooses and to which he freely agrees [9].

Researchers point out the importance of the so-called "Socially organized" form of labor migration, which assumes the possibility, taking into account the policies pursued by the states, to significantly influence the volume and direction of movement of the population from one country to another [38]. It seems that the balance of the international obligations of the receiving countries and their own possibilities for the accommodation of migrant workers should contribute to the creation of decent conditions of employment and stay [8].

2 Materials and Methods

The methodological basis of the research was formed by a set of methods of scientific knowledge. To solve the set tasks, historical-legal, comparative-legal, formal-legal, dialectical methods were chosen.

The methodological basis of the research also includes the principles of cognition of social and legal phenomena in the field of migration (including ideas, concepts and theories) in their historical development, interrelation, as well as theoretical and applied interdependence; general scientific approaches – systemic, complex.

The theoretical basis of the research was the work on the science of labor law, as well as on the sciences of constitutional, civil, administrative, family, international, private international law, which deal with issues related to the topic.

The source base of the study reflects various aspects of the regulation of labor migration regulated by international law, including documents of a universal and regional nature, acts of European law, official documentary materials of international organizations in the field of migration.

3 Results and Discussion

For the first time, migration for the purpose of employment became an object of international legal regulation almost 100 years ago. Since then, under the auspices of the United Nations, a number of acts have been adopted aimed at protecting the rights and legitimate interests of those who carry out professional activities outside the country of origin.

The UN (at the global level) and the Council of Europe (at the macro-regional level) played an important role in discussing the post-war reconstruction and the development of the international legal regime, which later became the basis for various declarations and treaties, including in the field of migration.

The Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, approved the fundamental documents in the field of forced and labor migration, which determined the basic rights of labor migrants, refugees, and their families [57, 62].

The International Labor Organization (ILO) is the most important "actor" in the UN system, influencing the regulation of migration. On the initiative of the ILO, a number of conventions were adopted that oblige the participating States to observe the principle of non-discrimination between citizens and non-citizens in the field of labor relations [16-21]. The ILO Constitution defines a clear system of control over the observance of the provisions enshrined in its conventions by the States parties. This system provides for the regular submission of reports by the governments of the participating States, as well as special control procedures based on a review.

The 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families establishes a list of types of labor migration [22, 23]. Article 2 of the Convention includes in the concept of "migrant worker" cross-border and seasonal foreign workers, seafarers and persons employed in fixed coastal installations; migrants moving in the course of work from one state to another for short periods; project and self-employed workers, as well as foreigners who work on other grounds ("self-employed") in the host country [10]. In our opinion, Art. 2 of the 1990 Convention was formulated in such detail as to facilitate a definite classification of types of migrant workers both in the relevant bilateral treaties and in the national legislation of the participating States.

A number of Western European countries (Greece, Portugal, Italy, the Netherlands, Finland, Austria) have included the status of a seasonal foreign worker in their migration legislation. Currently, some EU member states (France, Estonia, Czech Republic and Finland) use simplified procedures for the recruitment of seasonal migrant workers. Experts note that often a simplified acceptance procedure entails the abolition of mandatory testing of a vacancy in the labor market and/or the mandatory receipt of a residence permit and/or work permit [51].

Under the simplified regime, only an entry visa is required to stay in the country and carry out labor activities" [59]. Here one can cite as an example the consolidated version of the French Migration Code (Code of Entry, Residence and Asylum) 2010 and its Labor Code 2008; The Estonian Aliens Act 2009 and its Employment Act 2008; The Czech Republic Act on the Residence of Foreign Citizens on its Territory and its Employment Act 2004; Finland's Aliens Act 2004 as amended in 2009, and its Employment and Employment Contracts Act 2001 as amended in 2010.

Part 1 of Art. 11 of the ILO Convention No. 1436 defines a migrant worker as "a person who migrates from one country to another for the purpose of obtaining any work other than at his own expense"; the term "includes any person who lawfully entered the country as a migrant worker". The universal guaranteeing norm is Art. 7 of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which obliges participating States to respect and ensure the rights of all migrant workers and members of their families in their territory or under their jurisdiction, without discrimination of any kind. Article 11 of the 1990 Convention prohibits the keeping of these persons in slavery or servitude (paragraph 1) and their involvement in forced or compulsory labor (paragraph 2). Article 24 establishes the right of a migrant worker and members of his family to recognition of legal personality. Clause 1 of Art. 39 establishes their right to freedom of movement and choice of residence within the territory of the receiving state [9].

Article 5 of the European Convention on the Legal Status of Migrant Workers 1977 (ETS No. 093) includes the obligation of the States parties, even before the arrival of the migrant worker, to provide him with a labor contract or a specific job offer. Article 32 establishes that the provisions of the Convention go hand in hand with the national legislation of the contracting parties or any bilateral or multilateral treaties that provide for more favorable treatment with regard to the protection of migrant workers [59].

Today, the admission of labor migrants by economically developed states is associated with legal regulation that goes beyond the content of the 1990 Convention. An example of this is their division into unskilled labor and highly qualified specialists, for whom a special adaptation system has been created [25-31]. Thus, the usual condition for attracting foreign labor in Belgium is the testing of a vacancy in the national labor market, which is entrusted to the inviting legal entity. Highly qualified specialists, teachers of higher education and management personnel are exempted from this procedure. In addition, for such categories of workers, the residence permit in the country can be extended up to 8 years [24]. In 2008, the Government of South Korea launched the Job-Seeking Visa program, according to which foreigners with work experience in one of 300 well-known world companies can enter its territory for the purpose of self-employment without receiving an official invitation and having an employment contract [12]. The South African immigration authorities grant work permits in connection with outstanding ability to persons with the appropriate professional skills and those making a worthy contribution to the development of the country's economy, and their families [49].

Despite the differences in the national legal regulation of the status of migrant workers, the common thing is that the receiving state makes a certain selection of foreign workers [33-37]. They are conditionally divided into those who are offered a temporary stay for a period of employment, and those who can apply for a long-term stay and deserve separate integration benefits and programs (linguistic, cultural, family).

Regional international legal regulation of attracting foreign labor to the EU has its own priorities, enshrined in the EU Strategy Plan on Legal Migration, which include, inter alia, the use of workers of all skill ranges depending on the needs of national labor markets. The 2007 Lisbon Treaty, which entered into force in December 2009, contains the obligation of the member states to ensure the integration of third-country nationals legally residing in the EU (Art. 79 (4) Treaty on the Functioning of the EU). In addition, the European Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of carrying out highly qualified labor activities of May 25, 2009, the so-called "Blue card directive" exists [51]. The content of this Directive also provides for the creation of special conditions for family reunification of such migrants, in particular, for their spouses and children.

Western legal scholars point to a close connection between the integration processes and the immigration policies of the host countries [46]. For example, in France, Germany, and the Netherlands, the state competence in the field of integration of foreigners has been transferred from the ministries in charge of social affairs to the departments of the interior or immigration. This, according to experts, increases the ability to control immigration to a greater extent that contributes to the integration of labor migrants [45, 46, 69].

Eastern European scholars singles out as one of the European migration trends of the introduction of national preferences in the labor market, when a foreigner can get a job in a Western European country only if citizens of this country, as well as other EU member states or member states to the European Economic Area, do not apply for it [11].

There is still no special regulation in relation to unskilled foreign workers in EU law. The legal status of such persons is determined by the national legislation of the host state and relevant bilateral international treaties. Nevertheless, IOM experts believe that a general legal framework for attracting unskilled foreign workers has already begun to emerge, uniting the national legislation of the EU countries, namely [12]:

- Availability of medical insurance paid by the employer or by the employee himself [39];
- The prohibition of artificially reducing migrants' wages in comparison with salaries of native citizens;

- Issuance of work and residence permits only after signing an employment contract with an employer from an EU country;
- Ensuring the departure of employees from the country of employment upon the expiration of the term of the employment contract.

It seems that these norms will continue to influence the formation of directive sources of EU secondary law. Thus, clearly in the context of the above legal framework, Directive 2014/36/EU of the European Parliament and of the Council of February 26, 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers was developed and adopted [40-42]. This Directive leaves to the discretion of the EU Member States the size of the labor quotas they may set (Art. 7). The main requirements for the entry of seasonal workers are as follows: 1) the presence of a valid employment contract and travel document; 2) proof of proper place of residence in the EU; 3) no threat to public order, safety or health; 4) lack of access to the national social support system; 5) absence of risk from the point of view of illegal immigration (Articles 5, 6).

The European Social Charter 1961, revised in 1996 (ETS N 163) is a regional international treaty of the Council of Europe affecting the status of migrant workers. Part 4 of Art. 18 of the Charter establishes the right of citizens of the participating states to live for the purpose of working in the territory of other parties. The Appendix to the Charter stipulates that the list of social rights of migrant workers applies only to legally staying foreigners: it applies to foreign citizens "only if they are citizens of other Parties, legally residing or permanently working in the territory of the relevant Party" (p. 1). Paragraph 18 of Part 1 of the Charter, which is a kind of set of basic principles in the field of labor and social protection, confirms the right of citizens of the Parties to labor migration, with the proviso of those restrictions that may be caused by "compelling economic or social reasons". Article 19 sets out in detail the content of the right of migrant workers and their families to protection and assistance, including the following [24]:

- Assistance of the parties to the activities of free support services;
- Provision of the necessary sanitary and medical services at the entrance [47-48];
- Guarantees of the provision of the national regime of the host state in wages, working conditions, membership in trade unions, participation in collective agreements, housing, taxation, legal proceedings [50];
- The right to non-refoulement, except in cases of threat to national security or public order and morality;
- Permission to freely transfer any part of earnings or savings;
- Promoting family reunification;
- Assistance in learning the national language of the host country;
- Assistance in teaching children the native language of their parents.

It seems important that Part 10 of Art. 19 of the Charter extends these forms of protection and assistance to self-employed migrant workers. This means support for all types of employment and entrepreneurship, which is also relevant for the position of some national legislators of the CIS countries regarding labor migration [52-56, 58]. It would be appropriate here to give an example of the validity of entry visas for foreign workers in Italy. In this state, there is a system of two types of labor visas: for self-employment, i.e., independent activities of an insubordinate nature, and for work for hire. The first type of visa is issued for a period of up to 90 days, for a long fixed period not exceeding one year, and with an open period for those foreign citizens who will carry out professional activities on an independent basis. The same category includes persons of creative (artistic) professions [49]. At the same time, for example, the current migration legislation of the Russian Federation does not contain the full scope of the rights and freedoms of migrant workers provided for by the Charter.

In our opinion, the European Social Charter acts as a regional international legal basis for the treatment of the participating states with legally staying labor migrants. The revised version of the Charter, adopted in 1996, contains an expanded list of socio-economic human rights and freedoms and establishes such standards as the right to protection from poverty and social exclusion (clause 30, part I), the right of older persons to social protection (cl. 23 part I), the right to collective bargaining of workers and employers (paragraph 6 of part I) and, finally, the right of foreigners to work along and on an equal basis with their own citizens (paragraph 18 of part I) and the right of workers migrants and their families for protection and assistance (paragraph 19, part I). To date, the Charter has been signed by 45 member states of the Council of Europe and ratified by 33 of them.

Thus, cooperation between states in the field of international labor migration is carried out on the basis of such generally recognized universal legal principles as the non-alienation of fundamental human rights and freedoms enshrined in international norms and the applicability of these rights and freedoms to every person, regardless of race, skin color, gender, citizenship, language, religion, ethnic or social origin [60, 61]. Over the past decades, the UN and the ILO have done a tremendous job: the states that have ratified their conventions provide a sufficiently high level of international protection of the rights of migrant workers and their families.

However, the established standards are only partially implemented in practice. While the core ILO conventions impose certain obligations on states, their effectiveness remains limited. The main disadvantage of the ILO regime is its incompleteness, insufficient reciprocity in relations between sending and receiving countries and the actual impossibility of the ILO to force states to implement the recommendations in practice [43].

The UN General Assembly is still debating the Declaration of the Rights of Non-Citizens and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Moreover, the perception of the receiving and sending countries in relation to the rights of migrants is especially different [63-65]. These two categories of countries have different interests in relation to the status of migrants in receiving countries and different approaches to the standards of fair treatment and non-discrimination. In particular, debates revolve around the issue of recognizing a set of rights for migrants depending on their legal or illegal status.

The International Organization for Migration, in contrast to the UNHCR, provides technical assistance in a wider range of issues – both developing and developed countries. The organization works with government, intergovernmental and nongovernmental partners to provide a wide range of services, from situation analysis, data collection and recommendation to governments and NGOs, to the management of specific projects on the ground.

Other organizations specializing in related issues of economic development and planning (United Nations Development Program, United Nations Population Fund, World Bank) and combating crime (United Nations Office on Drugs and Crime) also work in the area of international migration management. The former collect and analyze data on the possible positive effects of migration in order to maximize them, and also help developing countries improve technical and managerial skills in the field of migration management [66-68]. Emphasis is placed on the efficiency and use of translations, retention of skilled professionals, engagement with diasporas, strengthening local governance and investment in education. UNODC, as custodian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against

Transnational Organized Crime, promotes the ratification and implementation of these documents by governments, and provides legal assistance and technical advice in the areas of law enforcement, prosecution and justice.

But, despite the certain successes of international organizations in solving the problems of population migration, their activities are more of a declarative nature, and not filled with real content. Moreover, the majority of host states deal with migration problems, proceeding from their own vision of solving this issue, and often this vision can radically differ from the views and practice of international organizations. In addition, the various international organizations existing today have shown their ineffectiveness in resolving conflicts that take place in modern international relations.

4 Conclusion

By the beginning of the 21st century, the world community has accumulated a certain experience in the international legal regulation of labor migration, aimed at protecting the rights, realizing the legitimate interests of those who carry out professional activities outside their countries. However, the results of the legal analysis of this experience convince that the development of "international immigration law needs additional tools and new standards" [15], and not only in private law aspects, but also in the field of public legal regulation of international cooperation in the field of labor migration.

International legal regulation of labor can be carried out at the universal, regional (interregional) and bilateral levels. Each of these levels has its own characteristics, but following the basic idea of the integrity of the system of international law, all these levels of regulation should be interconnected and interact.

The globalization of world migration processes requires active participation of countries of different economic levels in universal and regional (subregional) international legal regulation. The distribution of migratory labor flows in the world is uneven: some countries only accept migrant workers, others are only states of origin, and others perform both functions. Therefore, their interest in international legal regulation of labor migration is different for them.

In our opinion, it is worth formulating in more detail the special principles of such regulation, which are acceptable to all states participating in the international labor exchange. These principles include the provision by states of origin and acceptance of the return of labor migration; awareness of migrant workers about their rights and obligations in the receiving state; prohibition of discrimination in the field of general human and professional rights; equality of treatment for migrant workers and the implementation of consular protection of the state of citizenship in the territory of the host country. The national migration and labor legislation of the receiving states, in turn, can be supplemented taking into account the possible forms of implementation of the listed international legal principles of cooperation in the field of voluntary migration.

According to the famous German scientist T. Straubaar, who has been dealing with migration problems for a long time, "global games require global rules". He believes that ideally it is necessary to strive to create a global international regime for the movement of people (or at least labor migrants) similar to those that have already been developed by the international community in the field of trade and finance, ecology, proliferation of weapons of mass destruction, etc. [59]. This regime would contribute to the unification of efforts to control migration, would facilitate the legal movement of people by establishing uniform rules for entry and exit, and would make migration more predictable and beneficial for all parties.

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Primary Paper Section: A

Secondary Paper Section: AG