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Legal Regulation of International Contradictions in the Modern International Migration Processes

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Abstract

The article is devoted to the issues of legal regulation of international contradictions in the modern international migration processes. Special attention is given to the international legal acts for human rights and citizens' protection in the sphere of international migration. The authors consider international and national legal mechanisms for the protection of migrants' rights. New approaches to solving the problems of migrants' rights protection under the conditions of population's increasing mobility and globalization are offered. Special attention is paid to legal regulations of the United Nations. The authors consider the controversies associated with the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by the states in which the number of emigrants far exceeds the influx of arriving migrants and by the developed countries that have not signed or ratified the Convention.

Keywords: United Nations Human Rights Council, Representation of international organizations, the European Union, the EAEU, International conflicts, Migrants' rights.

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Introduction

Within the European Union and the countries of the post-Soviet space, the issue of migration is in the focus of public attention since the migration processes affect greatly the government.

At the end of the 20th century the number of foreign citizens arriving in the European Union countries was approximately 20 million; the share of Europe in the total amount of international migration was 20%. The given category was made up of political and other migrants; however, the biggest part was labor migrants. The main reasons of attracting "working guests" from underdeveloped states to more developed countries have always included and will still include the desire for a higher income, more comfortable working and living conditions.

At the beginning of the 21st century the balance of the migration processes on the European and Eurasian continent has gained new outlines. Namely, the short-sighted recent policy of some states, which is to support conflict and impose economic sanctions against the Syrian people, eventually caused the influx of a large number of refugees to Europe. Due to the emerged migration crisis, European states have experienced great difficulties.

In early February 2017, Russian President Vladimir Putin, speaking of the situation with the influx of refugees to the European Union, said that it was a political settlement in Syria and other Middle Eastern countries that would help alleviate the acute migration crisis in Europe [1].

The problems of migration are no less significant for the post-Soviet countries. The breakdown of economic ties, the prevailing political instability in the process of the USSR collapse contributed to the emergence of regional conflicts and increased differentiation of the levels of socio-economic development. For various reasons, the most difficult economic, political, social, and demographic situations occurred in Uzbekistan, Tajikistan, Kyrgyzstan, and Turkmenistan after the collapse of the Soviet Union.

The growth of remittances from migrants in Russia to Tajikistan confirms the fact of a large migration flow to the Russian Federation. According to the Committee on Economy, Budget, Finance and Taxes of the lower house of parliament of the Republic of Tajikistan, labor migrants transferred about 1.7 billion USD from Russia to Tajikistan in ten months in 2017 [2].

The age of globalization generates an increase in the rate of population mobility, reinforces the importance of the migration factor for the world economy. However, a great number of social problems that require finding ways to solve them, through the coordination of efforts of almost all states, are inevitable.

While assessing the circumstances affecting the migration processes, the crisis phenomena of the world economy are one of the significant factors, as a result of which migrants are the first to lose jobs [3].

At the present stage of development of the system of international relations, it is no longer advisable to regard working foreign citizens as a factor of production (as it was during the feudal period). The most important difference between the "human" labor force and other factors of production (capital, technology, goods) is determined through intangible benefits inherent in each carrier of labor power that is a person. These benefits include family ties, goals associated with labor growth, personal interests (sports improvement, hobbies), etc. Each migrant worker must not only work but also have the right to decent housing conditions, have access to medical care, etc.

International legal regulation of international migration

At the international level there are various documents in the field of regulating the legal aspects of migration, which are both obligatory (conventions and protocols to them) and recommendatory in nature (declarations, charters, covenants, resolutions).

The Universal Declaration of Human Rights (hereinafter – the Declaration) was adopted by the United Nations (hereinafter – the UN) in 1948 and consolidated the concept of human rights in its most general

form. Some provisions of the Declaration may be extended to international migrants: “Everyone has the right to leave any country, including his own, and to return to his country” (Paragraph 2, Article 13); “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (Paragraph 1, Article 14); “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” (Paragraphs 1, 2, Article 15).

Later, certain norms of the Universal Declaration of Human Rights were concretized by some other declarations, conventions and protocols to them. Thus, in accordance with the International Covenant on Civil and Political Rights of 1966, states should ensure the implementation of political rights not only to citizens of their country, but also to staying migrants. Moreover, article 13 of this Covenant states that foreigners legally staying in any of the states that ratified the Covenant may be expelled from the state only on the basis of a legal court decision.

It is worth noting that the International Covenant on Civil and Political Rights was ratified by most of the countries with reservations and interpretative declarations. For instance, Great Britain can independently decide on the application of Paragraph 4 of Article 12 of the Covenant: “No one shall be arbitrarily deprived of the right to enter his own country”, as well as on the question of the applicability of Paragraph 3 of Article 24 of the Covenant in the context of the current legislation on British citizenship.

There are several areas of research in this field: however, in foreign legal science, the methods of legal anthropology and comparative methodologies are used to a greater extent than in Russia to study the problems of migrant integration. A stronger emphasis is placed on the institutional support of the integration of migrants [4].

Presently, there are international mechanisms for the protection of the rights of migrants such as the UN Human Rights Council, the Office of the High Commissioner for Human Rights (specialized profile structures), as well as the mechanisms provided for under international conventions such as the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discrimination against Women. Undoubtedly, these mechanisms direct the vector of legal protection in the right trajectory but the current migration situation in the world, which generates new problems, requires new ways to solve them.

Due to the fact that the activities of most international protection mechanisms are not aimed at providing immediate urgent assistance to migrants but act to determine the main directions in the field of human rights protection, it seems expedient to expand the powers of specialized profile structures. The illustration of the existing situation, in which the states do not fulfill their obligations regarding the issues of ensuring the rights of migrants, represents an insufficient protection maneuver at the international level. National mechanisms for the immediate and urgent protection of the rights of migrants in each country within the framework of judicial and administrative mechanisms should include the representation of international specialized structures. The legitimacy of this institution of representation should be formalized in the legislative acts of the states in the section relating to the implementation of the activities of the judicial power, the protection of the rights and freedoms of the man and the citizen. The direct procedure for organizing the implementation of the institute of representation also requires a regulated consolidation at the legislative level of each state.

Legal regulation of the migration processes in the EU countries

The migration processes affect greatly trade and economic relations in the whole world. Being one of the main problems of economic globalization, migration has a profound effect on the modern international relations. Nowadays highly skilled labor migrants occupy the primary labor market on

a par with local workers. Accordingly, migrant workers with low-skilled jobs occupy the secondary market. Such a division generates new methods of regulation and forms of discrimination in the field of labor migration. It is well known that the post-crisis phenomena of the world economy are one of the main factors that influence the migration processes, namely, they cause the loss of jobs by a large number of migrant workers [5].

The International Organization for Migration experts justify the necessity to develop a flexible, consistent and comprehensive approach to the migration policy by the examples of the oil crisis in the 1970s and the Asian financial crisis in 1998, thus, proving the fact that keeping the labor market open to migrants is important for stimulating a crisis economy and for a quick recovery of the post-crisis economy [6].

On the one hand, labor migration generates more dynamic and efficient prerequisites for economic systems. However, on the other hand, given the high level of emigration, less developed countries suffer enormous difficulties caused by the influx of returning migrants, accompanied by an increase in economic and social instability, not excluding trafficking in human beings and illegal migration.

With regard to the migration legislation of the member states of the European Union, an instrumentalization process should be considered, which means the rules governing the stay, the deportation of foreigners, used by analogy as a regulatory tool in other areas. Direction of the vector towards Europeanization is one of the indicators of the instrumentalization of migration law: the member states of the European Union, in accordance with independently developed legislative tools, which often occurred as a result of a compromise, attempt to give up their sovereignty regarding access and residence on their territory of non-citizens of the European Union [7].

The position of the European Union on the regulatory strategy was defined in the Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence [8] (hereinafter – the Directive), which unequivocally criminalized all types of assistance to foreign persons to enter or travel through the territory in violation of the immigration laws of a member state of the European Union as well as any assistance to foreigners aimed at financial gain (assistance in living in the territory of a member state of the European Union).

When considering the issue of the institute for protecting illegal migrants, it is necessary to bear in mind the actual difficulties that arise for this category of persons in gaining access to the protection of human rights through state bodies. Based on the UN Convention on the Rights of the Child [9] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [10], the society (community) and the family sphere are differentiated in the political and legal theory of illegal migration, which relies on two leading principles. The first one is the “subordination deal” between the state of origin and the state of residence, which implies remittances from the state of residence as a response, and the second one is a quasi-contractual form of obedience from the part of an illegal migrant who enters a new community [11].

At the modern stage it is evident that the European Union has chosen the policy of introducing punishments for violating the legislation of the member states that regulates the status of foreigners, despite the fact that the Directive preserved the right of the member states of the European Union to choose whether or not to impose sanctions, in the case when the relevant conduct pursues the goal of providing humanitarian aid.

Legal regulation of the migration processes in the EAEU countries

The development of the post-Soviet integration began to gain significant momentum with the emergence of a new international organization for regional economic integration possessing international legal capacity, the Eurasian Economic Union (hereafter – EAEU, Union), on January 1, 2015.

An interesting statement is made by an American historian and political scientist D. Mankoff who believes that the level of integration in the Eurasian Union "will be much higher than in the EurAsEC... Washington has to recognize the right of these republics to choose organizations and unions, in which they wish to participate, without pressure from outside" [12].

The EAEU member states have 14.5% of the world share in oil production (the first place in the world); 19.3% of the world share of gas production (the second place in the world); 7.3% of the world share of the total length of railways (the third place in the world); 5% of the world share of electricity generation, 4.8% of the world share of iron smelting (the fourth place in the world), 4.8% of the world share of steel production (the fifth place in the world), 6.5% of the world share of coal mining (the sixth in the world) [13].

The existence of the Eurasian Economic Union is inevitable due to the fact that raw materials of the EAEU member states tend to become cheaper in global markets. In this regard, there is the issue of marketing of processed products that is possible in developed markets, without customs barriers.

Differences in socio-economic indicators that can be found on the post-Soviet territory contribute to transferring labor resources from poorer to richer regions and states. The absence of barriers in the movement of labor force will definitely be a positive vector in the quest to reduce differences in incomes and living standards of the population.

At the present stage the Eurasian Economic Union has the leading role in the implementation of new directions in the sphere of integration. In this regard, painstaking work on the formation of a new legal base was organized.

The Treaty on the Eurasian Economic Union of 29 May, 2014 (hereinafter – the Union Treaty, the EAEU Treaty) is of particular significance. For the first time in the post-Soviet space the Union Treaty established a regime that enabled citizens of the Union states to get a job, despite the restrictions related to the protection of the national labor market. Exemptions from the national regime were allowed only in order to ensure national security (in sectors of economy, public order, morality and public health). It is worth noting that the given approach has significantly strengthened the trend towards the formation of a real regional labor market.

When conducting a comparative analysis of the legal acts of the EAEU and the EurAsEC it is worth noting that the main approach to migration policy remained the same after a new integration structure appeared. Preserving preferential treatment attests to this fact. Unlike the general procedure for attracting migrants to work, the previously established restrictions aimed at protecting the national labor market are not applied to citizens of the EAEU member states. The restrictions aimed at ensuring national security and public order, protecting health and morals of the population may be the only exception.

According to the current legislation, labor migrants may not register on the territory of the receiving country within 30 days from the date of entry. The issuance of a migration card or the affixing of marks in the relevant document of the border control authorities is the basis for the entry of a citizen into the territory of a member state. In case of a longer period of stay, migrants must be registered with the migration register, if this procedure is established by the EAEU member state. Thus, the approach to the legal status of workers, fixed earlier in the EurAsEC Agreement of 2010, has its further development at the present stage of the integration development.

As a rule, in the international acts either the citizenship criterion (not limited to a permanent residence status) or the mixed citizenship and residency (permanent residence) criterion are applied as the basis of a person's affiliation of to the state of departure.

The EAEU Treaty of 2014 implements the criterion of citizenship, that is, covers only citizens of the countries of the Union by the action of its norms. The question of limiting this criterion to other features has not been fully resolved, since in the EAEU Treaty the concept of "the state of permanent residence" is understood as

“a member state which citizen is a member state worker”. Earlier, in the EurAsEC Agreement of 2010 the more comprehensive concept of “the state of permanent residence” was enshrined, that is, the state of one of the parties on the territory of which the migrant worker lives permanently and from the territory of which he enters the territory of the state of the other party to carry out paid labor activities. It seems a better option, since it makes it possible to unambiguously interpret basic concepts and clearly designates the adopted criteria.

The legal norms of both the EAEU Treaty and the EurAsEC Agreement, which is no longer valid, are applicable to citizens who stay legally in the receiving state. The legality criterion is used in all international acts, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly resolution 45/158 of December 18, 1990 (hereinafter – the Convention of 1990). The scope of the Convention of 1990 includes questions associated with the situation of illegal migrants. In this case, the specification is carried out by a number of parameters, primarily affecting the observance of the authorization order of stay in the territory of the receiving states.

The analysis of the documents ratified in the post-Soviet space also enables to consider treaties concluded by member states as participants in other international regional organizations. These are, above all, the agreements already mentioned by the countries of the Commonwealth of Independent States as well as the documents of the European Union, the Council of Europe and others.

Taking into account the focus of the EAEU on the unification of legislation of the Union countries, the problems of regulatory consolidation of the status of migrant workers should be addressed uniformly.

As it was already noted, the Union Treaty is becoming the main legal base for the interaction of the EAEU states. In this regard, the countries of the EAEU should set strict deadlines for ratification of the treaty, limit the possibility of ratification with reservations. Without such an approach the unity and consistency of the legal space of an integration association will be difficult to achieve. It is also necessary to formulate rules that could ensure the fulfillment of obligations to implement the provisions of the treaty in domestic law as well as to create a system of control over the fulfillment of assumed obligations, to establish measures of responsibility for their non-compliance and to develop a mechanism for implementing these measures.

The solution of the mentioned tasks seems realistic if there is political will of the member states of the Union as well as taking into account the proximity of legal systems, common legal approaches, culture and traditions of the EAEU member states.

Legal means of resolving intercultural conflicts in the international migration processes

A serious issue for international politics is how national cultures of various states influence values and factors that determine the consequences of the assimilation of migration flows. This issue is important because it points to the necessity to change the management processes and practices, taking into account various factors defined by national culture that may affect the historically established structure of communities and peoples.

European states and the countries of the Near East, for instance, have various national cultures, which influences different factors and values related to the consequences of the migration processes.

Within the comparative analysis E. Hall was one of the first who divided culture into high- and low-context cultures. Such a division is significant from the standpoint of organizing communication in different cultures. E. Hall focused on such aspects of as space and time, since personal space is perceived differently in different cultures. For instance, representatives of Latin American cultures have personal space that is significantly smaller than that of their Northern neighbors, the carriers of Anglo-Saxon traditions. This leads to mutual discomfort in face-to-face communication, so it is difficult to choose a distance that satisfies both parties [14].

An Austrian newspaper, Kronen Zeitung, citing the Austrian Ministry of the Interior Affairs, reports that more than 20,000 migrants from the Near East and North Africa armed with cold arms threaten to break through to the EU across the Bosnian-Croatian border in the near future [15].

Due to the current complicated migration situation in the countries of the European Union, the position of R.D. Lewis seems rather interesting. He claims that there are no unsolvable inter-ethnic issues, despite the fact that there are cultural misunderstandings and differences among representatives of different countries. People representing different countries and cultures often have different meanings of the same concepts [16].

The migration crisis that erupted in the European Union has a dangerous tendency to expand inter-state disagreements. Britain's withdrawal from the European Union is directly linked to the problem of a large flow of illegal migrants from the countries of the Near East and North Africa. It is known that, following the United Kingdom, Marine Le Pen, the leader of the liberal party of the French National Front, supported the withdrawal from the Eurozone [17].

In 2006, the UN Commission on Human Rights that functioned for 60 years as the primary independent intergovernmental body of the UN was transformed into the UN Human Rights Council (hereinafter – the Council). It is worth noting that since the mid-1980s, the Council has repeatedly stressed in its recommendations that when applying international instruments of various kinds (conventions and protocols to them, declarations and covenants) for the protection of human rights, there should be no separation between citizens and foreigners.

On March 12, 2007, UN Secretary-General Ban Ki-moon delivered a speech at the opening of the 4th session of the Human Rights Council: "All victims of human rights violations should be able to rely on the Human Rights Council as a forum and a springboard for action" [18].

In the United Nations activities the system of Special Procedures of the Human Rights Council is the primary basis in the field of human rights. The given protection institute responds both to individual cases of human rights violations and to problems of a wider nature by sending messages to states or certain officials that require their attention to alleged violations of rights. Special procedures consist in either a working group of five members (one from each UN regional group: Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group) or individuals—special rapporteurs or independent experts. Special rapporteurs, independent experts and members of the working group are appointed by the Human Rights Council, they are not UN staff members and do not receive monetary remuneration. Such an independent status of the mandate holders is the guarantee of the effective execution of their powers through integrity, honesty and incorruptibility.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly resolution 45/158 of December 18, 1990 is a complex document that codified political, civil, social, economic, cultural human rights associated with migrant workers. It is significant that the number of emigrants far exceeds the influx of arriving migrants in the main group of countries that signed and ratified the Convention; only in some countries the number of immigrants exceeds 500 thousand people.

It is highly possible that countries exporting their labor abroad en masse will thus protect their citizens working abroad by means of the adopted Convention. However, the main factor hindering the Convention in fulfilling its humanitarian mission is the refusal of accession to the Convention of states that host a significant number of migrants. Of the member states of the Union of Independent States, Azerbaijan, Kyrgyzstan, and Tajikistan have joined the Convention. Such an approach means the lack of readiness of developed countries to assume responsibility for the socio-economic well-being of migrants.

Conclusion

The influence of national cultures of various countries is one of the most significant factors that determine the consequences of the migration flows assimilation for international policy in general. The given aspect necessitates the changes in the processes and practice of management. It is essential to take into account diverse factors defined by national culture which, without doubts, affect historically established social organization. The independent status of Special Rapporteurs, independent experts and members of the Working Group of Special Procedures of the Human Rights Council in the activities of the United Nations is an example of guaranteeing the effective execution of their powers through integrity, honesty and incorruptibility for many organizations all over the world. The activities of special procedures based both on the protection of individual human rights violation and on more global issues are determined by the order of organizing the work on a pro bono basis. Due to the fact that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was ratified by the states in which the number of emigrants far exceeds the influx of arriving migrants, the given countries have a concern for the protection of their citizens that carry out labor activity abroad through ratifying the Convention. The accession to the convention of states that host a significant number of migrants will become the main circumstance contributing to the fulfillment of its humanitarian mission by the Convention. Such an approach will emphasize the independent large economic impact of the developed countries, including the issue of readiness to assume responsibility for the socio-economic well-being of migrants.

Footnotes

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