

GENESIS OF CITIZENS' RIGHTS AND SECURITY: LEGAL ASPECTS

GÊNESE DOS DIREITOS E SEGURANÇA DO CIDADÃO: ASPECTOS JURÍDICOS

**GÉNESIS DE LOS DERECHOS Y LA SEGURIDAD DE LOS CIUDADANOS:
ASPECTOS LEGALES**

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ABSTRACT: This study reveals the problem of protecting the rights of migrant workers in the CIS countries. The authors conduct a comparative analysis of international law in the context of the protection of the rights of migrants. The study demonstrates the priority use of bilateral international cooperation agreements that provide the necessary level of protection of the rights of migrant workers. In comparison with bilateral agreements between countries, international cooperation within the framework of bilateral regulation allows for a higher level of protection of migrant workers and their social security. The article demonstrates that the international legal field basically contains generalizing norms and provisions on the status, rights and obligations of migrant workers. On the other hand, the bilateral agreement is being concretized and relevant regulatory legal acts are being implemented more successfully.

KEYWORDS: Migrant. Human rights. CIS countries. Legal aspects. Regulation.

RESUMO: *Este estudo revela o problema da proteção dos direitos dos trabalhadores migrantes nos países da CEI. Os autores realizam uma análise comparativa do direito internacional no contexto da proteção dos direitos dos migrantes. O estudo demonstra a utilização prioritária de acordos bilaterais de cooperação internacional que proporcionam o nível necessário de proteção dos direitos dos trabalhadores migrantes. Em comparação com os acordos bilaterais entre países, a cooperação internacional no âmbito da regulação bilateral permite um maior nível de proteção dos trabalhadores migrantes e sua segurança social. O artigo demonstra que o campo jurídico internacional contém basicamente normas e*

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dispositivos generalizadores sobre a situação, direitos e obrigações dos trabalhadores migrantes. Por outro lado, o acordo bilateral está sendo concretizado e atos normativos relevantes estão sendo implementados com mais sucesso.

PALAVRAS-CHAVE: *Migrante. Direitos humanos. Países da CEI. Aspectos legais. Regulamento.*

RESUMEN: *Este estudio revela el problema de la protección de los derechos de los trabajadores migrantes en los países de la CEI. Los autores realizan un análisis comparativo del derecho internacional en el contexto de la protección de los derechos de los migrantes. El estudio demuestra el uso prioritario de acuerdos bilaterales de cooperación internacional que brinden el nivel necesario de protección de los derechos de los trabajadores migrantes. En comparación con los acuerdos bilaterales entre países, la cooperación internacional en el marco de la regulación bilateral permite un mayor nivel de protección de los trabajadores migrantes y su seguridad social. El artículo demuestra que el campo jurídico internacional contiene básicamente normas y disposiciones de carácter general sobre el estatus, derechos y obligaciones de los trabajadores migrantes. Por otro lado, se está concretando el acuerdo bilateral y se están implementando con mayor éxito los actos jurídicos reglamentarios pertinentes.*

PALABRAS CLAVE: *Inmigrante. Derechos humanos. Países de la CEI. Aspectos legales. Regulación.*

Introduction

The problem of migration relations in general and the protection of migrants' rights in particular is very close and relevant for all CIS countries. This problem is especially relevant when it comes to labor migration. The CIS countries and mainly the Russian Federation are attractive regions for solving the problem of employment, as a rule. Labor migration benefits not only the migrants themselves and their families, but also have a significant impact on the socio-economic development of both the migrant-sending country and the receiving countries.

Recipient countries also have certain benefits from labor migration. Firstly, migrants fill those areas of work that local residents do not seek to occupy, thereby solving the problems of labor shortage. This is, first of all, the sphere of housing and communal services, in which (if, for example, we talk about Russia), as a rule, people from Central Asia work as janitors. Also, here it is necessary to name the construction sector, where most of the labor force consists of migrants. Secondly, by agreeing to work for low wages, migrants thereby provide the host State with cheap labor.

But speaking about labor migration as a social phenomenon, it is impossible not to mention the reverse (negative) side of it, which is experienced by both the receiving part and

the migrants themselves. Arriving at a new place, migrants often face many social, intercultural, interethnic and legal problems.

Low level of education, lack of legal literacy, insufficient language proficiency force migrants to resort to the services of various shadow structures using fraudulent methods and other methods of organizing migrant labor in the process of housing and employment. This situation leads to an increase in crime among migrants, worsens the social and criminogenic situation in the host countries.

In addition to the criminogenic factor, these reasons and the low qualifications of migrants have a strong impact on the social conditions in which they must live and work. They often work overtime for 10-12 hours a day for low pay, do not have access to medical care and social and other benefits, they do not have a permanent job and their earnings are unstable. This situation equates them to the category of socially vulnerable segment of the population without rights and state protection (SKACHKOVA, 2006).

Thus, poor knowledge of the Russian language, culture, traditions of the host population, laws of the host State, low degree of qualification lead migrants to serious trials related to their social and legal adaptation and violation of their rights and interests. Constant economic crises further worsen the situation of migrants.

Methodology

International cooperation aimed at the international legal regulation of migration processes is very important for solving such problems. Only international cooperation in this direction can contribute to ensuring the national interests of each of the countries involved. As noted in the special literature, problems related to the regulation of the socio-legal status of migrants cannot be solved effectively if states act in isolation (ZINCHENKO, 2011), therefore, the effectiveness in this matter directly depends on the level of interaction of the countries concerned with each other. Moreover, the urgency of developing a mechanism for international legal regulation of labor migration within the CIS is due to the idea of forming an integration space on the territory of these countries.

Within the CIS, the issue of international cooperation on migration issues is one of the priorities of international policy. Over the years of existence of this interstate integration association, a number of international documents have been adopted regarding international cooperation in the field of migration processes. Among them are a large number of policy documents and international treaties of a broad orientation aimed at regulating migration

processes and creating a mechanism to counter illegal migration in the territory of the post-Soviet space. Among such significant international documents should be named the Agreement on visa-free movement of citizens of the CIS states on the territory of its participants dated 09 October 1992, thanks to which persons permanently residing in the territory of the CIS countries, including labor migrants, can freely move through the territory of all CIS countries (OVSYUK, 1979).

International agreements such as the Agreement on Mutual Recognition of Visas of the CIS Member States of 13 November 1992 and the Agreement on Priority Measures for the Protection of Victims of Armed Conflicts and on Assistance to Refugees and Internally Displaced Persons of 24 September 1993 also played an important role in regulating migration processes in the post-Soviet space.

Also here it is impossible not to mention the Declaration on the Coordinated Migration Policy of the CIS member States of 05 October 2007, within the framework of which the participants agreed to pursue a coordinated migration policy; not to discriminate against migrants; strengthen cooperation in regulating labor migration; provide mutual assistance in preventing, identifying and suppressing channels of illegal migration; deepen cooperation in terms of convergence of national legislation in the field of migration (DOBYSH, 2011).

Along with multilateral regulation, bilateral cooperation is widely used in CIS practice, which amounts to the conclusion of bilateral agreements between individual countries. In comparison with the multilateral format, bilateral regulation is recognized as the most flexible legal instrument for regulating migration processes contracting States, since in most of their existing multilateral international legal acts, as a rule, contain general program provisions and reference norms (BEKYASHEV, 2013). International cooperation within the framework of bilateral regulation allows for a higher level of protection of migrant workers in the field of their social security.

At the same time, international agreements of this level, as a rule, only lay down one or another idea of legal regulation of certain relations (in our case, the protection of migrants' rights), turning it into the corresponding obligations of the contracting countries. The very mechanism of legal regulation, methods and forms of implementation of the obligations assumed by the parties to international agreements are embodied with the help of domestic law. And only domestic law, by virtue of the sovereign rights of the State, can contain mechanisms for the legal protection of the rights of foreigners. This is also indicated by the Declaration on the Human Rights of Persons Who are not Citizens of the Country in which They Live, approved by UN General Assembly Resolution 40/144 of 13 December 1985. In particular, its

part 1 of Article 2 states that no provision in the Declaration should also be interpreted as restricting the right of any State to adopt laws and regulations concerning the entry of foreigners and the conditions of their stay. However, such laws and regulations must be compatible with the international legal obligations assumed by that State, including human rights obligations.

The same conclusion follows from the meaning of the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by UN General Assembly resolution 45/158 of 18 December 1990. In particular, the Convention obliges States parties to develop and apply adequate measures at the national level aimed at ensuring and protecting the rights of migrant workers in the field of social support, health and education (TILEUBERGENOV *et al.*, 2021).

Results and Discussions

As a rule, in the CIS countries, a legal regime is established with respect to foreigners at the constitutional level, equivalent to the legal regime of citizens of the host country. As a general principle, it is established that foreign citizens and stateless persons enjoy all rights and duties on the territory of the receiving State on an equal basis with citizens of the receiving State. A deviation from this principle may be expressed in the withdrawal of certain rights (for example, political rights) from the legal capacity of foreign citizens or in the imposition of additional duties on them.

Foreign workers are subject to the general provisions of labor legislation: the right to remuneration, the right to rest, the right to labor protection, the right to social benefits, etc. On general grounds, they can freely dispose of their abilities to work, choose their occupation and profession, freely use their abilities and property for entrepreneurial and other economic activities not prohibited by law, considering the restrictions established by federal legislation. In the field of labor relations, an exception to the general rules is the establishment of the total share of foreign workers employed in various sectors of the economy by economic entities (trade, pharmaceuticals) (LEDYAKH, 1997).

Labor migrants in Russia enjoy social insurance and social security (except pension) in accordance with the legislation of the Russian Federation, unless otherwise provided by a special agreement. The legislation of the Russian Federation foreign workers kam is guaranteed medical care at the expense of the employer (employer) at the same level as Russian citizens.

Income from the employment of highly qualified foreign specialists is taxed on the income of individuals (personal income tax) at a rate of 13% regardless of the tax status of the

employee, while due to 3 Article 224 of the Tax Code of the Russian Federation for most income of individuals who are not residents of the Russian Federation, an increased rate of 30% is established.

The legislation of the Russian Federation provides for several restrictions regarding the employment of foreign citizens in certain types of work: they cannot be in municipal service, be in public service, serve in the police, hold the positions of judge, prosecutor, investigator, notary, adjudicator, be part of the flight crew of civil aircraft and marine ship crews.

This situation means that migrant workers are subject to the general provisions of the labor legislation of the host country, defining the right to labor protection, payment, the right to rest and social security. Based on the general freedoms guaranteed by the constitutional provisions, they have the right to independently choose the type of activity and profession, as well as freely engage in entrepreneurial or other economic activities not prohibited by law. An exception will be certain areas of activity where the host country may impose restrictions on foreign citizens. For example, in the Russian Federation there are rules for the admission of foreigners to work in certain types of economic activity. These rules are determined by the Decree of the Government of the Russian Federation No. 1271 dated 30 September 2019 "On the establishment for 2020 of the permissible share of foreign workers employed by Economic Entities Engaged in Certain Types of Economic Activities on the Territory of the Russian Federation". According to this subordinate regulatory legal act, for 2020, the permissible share of foreign workers used by economic entities, for example, in construction, is set at 80% of the total number of employees; in the retail trade of alcoholic beverages, including beer, in specialty stores – at 15% of the total number of employees; in the retail trade of medicines in specialty stores (pharmacies) – at 0% of the total number of employees (FLORINSKAYA, 2009).

Regarding social security, migrant workers working in the Russian Federation and their family members are subject to social security rights, with the exception of pension provision. This means that they can use medical care at the expense of the employer on an equal basis with Russian citizens.

Despite such legislative consolidation of guarantees and rights of migrant workers, in practice they are not always subject to implementation. Often, among the types of violations of the rights of migrant workers they must face on the territory of the host country, incomplete non-payment of wages, withdrawal of migrant identity documents by the employer, violation of working conditions, failure to provide a social security scheme guaranteed by legislation provided for by the legislation of the host country should be mentioned.

Many researchers of the problem of protecting the rights of migrants also note that “the existing mechanism of the legal status of migrant workers does not ensure the realization of their rights, freedoms and legitimate interests guaranteed by the legislation of the host country, international conventions and bilateral agreements” (TILEUBERGENOV *et al.*, 2021).

Conclusion

In our opinion, the reason for this situation lies not so much in the gaps and shortcomings of legal regulation of this issue, as in the inefficiency of state management of external labor migration. Migration policy in a legal democratic country must necessarily include as a component respect for the rights and legitimate interests of migrant workers. Research have always noted the low effectiveness of legal mechanisms for ensuring and protecting rights: "The state often shows its inability and unpreparedness for strategic migration planning, acting situationally, closing the social "holes" and gaps formed with hasty laws that immediately become inefficient or ineffective."

We believe that at the present stage of the development of migration processes, a fairly complete regulatory legal framework has been formed both at the international and domestic levels. However, for the developed mechanism for regulating the protection of migrants' rights to work effectively, it is necessary to solve a number of organizational problems, primarily related to the organization of effective interaction of the migration authorities of the contracting countries.

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