



LEGAL NATURE OF LABOR MIGRATION: REVIEW OF INTERNATIONAL DOCUMENTS

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Abstract

This research is aimed to study the legal nature of the main international treaties regulating international labor migration, the specifics of consolidating the concept of “migrant worker” in universal and regional international agreements. In accordance with this, the author determined the content of international acts, conducted a review of international universal and regional treaties that regulate the main categories of labor migration. Author concludes that the international legal regulation of the status of a migrant worker is the recognition of his legal personality, the concept of “migrant worker” enshrined in international treaties is intended for the category of migrant workers who are present and work in the state of residence only on legal grounds, the absence of the term “illegal labor migrant” in international treaties is a gap in international law.

Keywords: migration, migrant worker, international treaty, convention, UN, ILO.

INTRODUCTION

COVID-19 pandemic had an unprecedented impact on the world economy and the world of work. International Labor Organization (ILO) estimates [1, P.11] that 93% of workers around the world live in countries that have implemented measures to close jobs due to COVID-19. Especially many international migrants suffered as a vulnerable group. According to the International Organization for Migration (IOM), the number of international migrants worldwide is 281 million people, which is 3.6% of the world's population, 164 million of them are international migrant workers[14]. The most important aspect of globalization is the rapid increase in mobility worldwide. This, in turn, allows the movement of labor resources between countries with different forms of labor distribution.

A comprehensive definition of migration is given in the “Glossary on Migration” published by IOM. According to it, “migration – the movement of persons away from their place of usual residence, either across an international border or within a State”





[2, P.137]. Migration covers any type of movement, regardless of the duration, composition and reasons of migration, and includes the migration of refugees, displaced persons, economic migrants.

On the other hand, international migration is evaluated as “the movement of persons away from their place of usual residence and across an international border to a country of which they are not nationals” [2, P.113].

THE MAIN PART

The international legal regulation of migration has a complex nature and is carried out in the territory of the receiving countries, which determines that it is carried out in harmony with the national legal framework. In modern international law, there is still no universal treaty codifying the norms and principles regulating various forms of migration. It should be noted that the regulation of migration is inextricably linked with international human rights law and international economic law. International human rights law regulates the international legal status of migrants, which is a set of rights, obligations and guarantees, as well as the regime of stay in the country of persons seeking asylum, refugees and labor migrants. And international economic law regulates relations related to forms of integration within international economic organizations, which include mutual exchange of labor resources.

International legal mechanisms for regulating migration include the following elements: a) international agreements and other international legal documents binding on member states (charters and resolutions of intergovernmental organizations operating in the field of migration); b) international customs that demonstrate the strict practice of states in relations in the field of migration; c) international legal documents of a recommendatory nature related to the field of migration (declaration and guiding principles); d) special international legal principles that strengthen the foundations of the relations of the subjects of international law in the field of migration; e) international legal institutions operating in the field of accepting different categories of migrants, providing guarantees and determining regimes of stay in the country.

The main place in international migration is occupied by labor migration. Economic factors are usually cited as one of the main reasons for migration. That is, the payment of sharply different wages for the same work in two countries aggravates the issue of migrants. International migrant workers are persons who are able to work in the host country and fall into one of the following two categories: a) permanent residents: persons who are either employed or unemployed in the labor force of the host country in which they normally reside during a given reporting period; b) non-resident foreign



workers: persons who are not habitual residents of the host country during a certain reporting period, but are located in this country and have labor relations [3].

Today, the international legal regulation of labor migration is carried out in the following directions: 1) ensuring international legal protection of the rights of migrant workers; 2) legal regulation of the movement of workers within regional integration organizations.

International legal regulation of labor migration is a relatively new process, and in any case, it is required to be implemented together with domestic state regulation. According to IOM, migration processes of workers are regulated by the migration legislation of countries and “some countries play an active role in creating favorable conditions for their citizens to carry out external labor migration abroad” [4, P.130]. In turn, it should be noted that each state has the priority right to regulate the entry of migrants into its territory, their living arrangements, employment and other issues with the help of its national legislation. This right is specifically emphasized in international legal documents on human rights. Article 12 of the International Covenant on Civil and Political Rights affirms that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own”. Clause 3 of this article defines that “the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant” [5].

This norm is further strengthened in the Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, adopted by General Assembly resolution 40/144 of 13 December 1985. According to it, the provisions of this Declaration shall be interpreted as “legitimizing the illegal entry into and presence in a State of any alien, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens” [8]. So, a number of international documents recognize the right of states to take measures to prevent illegal migration.

It is known that everyone's right to work is a universal international legal standard. The content of this right is expressed in Article 6 of the International Covenant on Economic, Social and Cultural Rights of 1966 as “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right” [6].





The first stage in the formation of the foundations of international legal regulation of labor migration was the adoption of ILO Migration for Employment Convention (Revised), 1949 (No. 97) (entered into force in 1952). According to Article 11 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” [7]. The Convention does not apply to frontier workers, short-term entry of members of the liberal professions and artistes and seamen.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN General Assembly on December 18, 1990, gives a broader interpretation of the term “migrant worker”. Article 2 of the Convention the term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” [9]. In this definition, the citizenship of a migrant worker is different from the citizenship of the host country. Also, it has been established that not only persons who want to work or are currently performing such work, but also persons who previously worked in the host country are considered migrant workers. Here, in contrast to the ILO Convention No. 97, it is clearly defined that the migrant worker performs paid work activities. The UN International Convention of 1990 also defines the concepts of “frontier worker”, “seasonal worker”, “project-tied worker”, “specified-employment worker”, “self-employed worker”.

It should be noted that the definition of the concept of “migrant worker” provided in this Convention does not contain any provision regarding the need for them to be legally present in the territory of the receiving state. The definition of the concept of “migrant worker” is also strengthened in a number of international agreements adopted at the regional level. Among them, we can mention the European Convention on the Legal Status of Migrant Workers, adopted on November 24, 1977 within the framework of the Council of Europe. In accordance with Article 1 of this Convention, the term “migrant worker” shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment [10]. It should be noted that the definition of the concept of “migrant worker” given in the European Convention of 1977 differs from the definitions established in universal international agreements. According to N. Zinchenko, the different features of this Convention are shown in the following. First, the European Convention clearly states that a migrant worker must be a citizen of the member states of the Convention. Secondly, in this agreement, without special emphasis on the fact that these persons are engaged in paid activities in the receiving





country, the main attention is focused on whether this country will give permission to the worker-migrant to live and work in its territory [11, P.73].

According to Article 2 of the Agreement on Cooperation in the Field of Labor Migration and Social Protection of Workers-Migrants, adopted by the Commonwealth of Independent States on April 15, 1994, a worker-migrant is a person who lives permanently in the country of arrival and is legally engaged in paid activities in the country of employment [12]. In this norm, it is not clearly defined whether this definition applies only to the citizens of the participating states or to the citizens of other states as well. The above definition, which envisages engaging in paid employment in the host country "on a legal basis", only indirectly allows us to assume the function of authorization by the state.

CONCLUSION

Analyzing the different definitions given to the concept of "migrant worker", it can be concluded that the provisions of the above-mentioned international agreements are intended for the category of migrant workers who live and work legally in the host country. At the same time, it should be noted that the international convention of the UN of 1990 does not provide requirements regarding the legality of the migrant worker's stay in the host country. Accordingly, the definition established in Article 2 of this Convention applies both to migrant workers who work legally and to persons who work illegally.

Although the definition of the concept of "illegal labor migrant" is not given in most international legal documents regulating labor migration processes, ILO Conventions No. 97 and No. 143, as well as the 1990 UN International Convention contain provisions on the prevention and prohibition of illegal labor migration. For example, according to the provisions of ILO Convention No. 97, "any person who supports clandestine or illegal labor migration shall be subject to appropriate penalties" [7]. ILO Convention No. 143 on Migrant Workers (Supplementary Provisions) of 1975 obliges States Parties to take all necessary measures to end "clandestine migration and illegal recruitment of migrants" [13].

In the 1990 UN International Convention, great attention is paid to the issue of preventing and ending illegal labor migration. Article 68 of the Convention enumerates measures to be taken by states to combat illegal migration. They consist of: (a) appropriate measures against the dissemination of misleading information relating to emigration and immigration; (b) measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or





assist in organizing or operating such movements; (c) measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation [9].

Based on the analysis of international agreements regulating international migration, including the legal status of migrant workers, the following conclusions can be drawn.

First, universal international legal documents regulating labor migration strengthen certain common standards for dealing with migrant workers. At the same time, the adoption of regional agreements within the framework of the Council of Europe, the EU, and the CIS in the regulation of labor migration allows further specialization of migration processes based on regional characteristics.

Secondly, international legal regulation of the status of migrant workers at the universal level is related to the recognition of their legal subjectivity. In the 1990 UN International Convention and a number of ILO conventions, it is noticeable that migrant workers are equalized with the citizens of these countries in a number of rights issues, without taking into account the specific aspects of the host country.

Thirdly, the analysis of the definitions given to the concept of "migrant worker" in the provisions of many universal and regional international agreements allows us to conclude that the provisions of these agreements are intended for the category of migrant workers residing and working on a legal basis in the host country.

Fourthly, the absence of a clear legal definition of the concept of "illegal migrant worker" in the current international legal documents shows that it is one of the gaps in international law. Accordingly, it is appropriate to introduce a definition to the concept of "illegal migrant worker" in Article 2, Clause 2 of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is the main international document defining the legal status of migrant workers.

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