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Principles of migratory right

The problem of migration is characterizing with special complexity, as it covers not only legal aspects, but also the problems of sociology, demography, political economy, ethnogeography, the problems of labor resources in the economics. The legal aspect have the special important place, because the migration is closely connected with the legal security, regulation and organization of migration processes, from which depends other problems of essential value for living conditions of the society.

Key words: migration, the migration process, international treaties, laws, illegal migration.

Before turning to the principles of immigration law, you need to determine the modern concept of the term «principle».

Word of the principle (from the Latin principium — beginning base) used in Russian to refer to the core, the initial position of any theory, doctrine, science, philosophy, political organizations, etc., scientific or moral principle, the base, the rules, the basics from which no retreat. It is in the sense of the main assumptions of any theory, doctrine, science, philosophy — the concept is most often used in science. It is in the sense of the basic starting position «a theory, scientists, science, world» this concept is most often used in science.

The two main ways are given understanding of the term «principle» in the philosophical encyclopaedia: subjective and objective. In the subjective sense — is the main position, background, and objective — is the main position, background, and objective — the starting point, the first principle, the very first. Aristotle understands the principle in an objective sense as the first value: is based on something that exists or will exist. Kant interprets the principle of subjective: he distinguishes constitutive principles (for empirical use) and regulatory (for transcendental or just for practical use).

The principles of law are considered by us as the objective laws which have a place in society and reflects the priorities of the state. The rights may be exercised only those ideas that do not conflict with the fundamental interests of economic and political domination of the social forces. Therefore seems quite logical position of professor G.Z. Kozhakhmetov that defines the principles of law as the basic assumptions as legally enshrining the objective laws of social life.

According to Professor L.S. Akhmetova, the principles of law are a variety of legal laws, as they are the ideological, scientifically based form of reflection of the objective laws.

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The question of the concept of the principles of law has frequently been the subject of discussion in the legal literature. For example, in the Soviet period, under the principles of the right to understand the basic, guidelines that express the most essential features of law; basic ideas underlying the law and finding their implementation, not only in the legal form but also in the social relations that it mediates; theoretical expression (scientific abstraction) public respect — material and ideological; the right-hand initial regulatory guidelines describing its content, its base, enshrined in the laws of social life there.

The above definition indicates that the principles of the right inherently belong to the domain of ideas. The specifics of these ideas is that they are fundamental in nature, expressing the essence of law and in a concentrated form is characterized by its content. On the basis of the principles can be judged not only on the law as a whole, its essence, but also on the trends of its further development.

To determine the principles of law as the source, defining the idea, a position setting, which is a moral and institutional framework of origin, development and functioning of the law, it can be argued that the principle of law is that, on what basis the formation, dynamics and effect of law. This allows you to determine the nature of this right as a democratic, or vice versa, the totalitarian. The principle of law can be reduced to some basic provisions, ideological principles, characteristic for a particular legal system. This gives rise to an

important statement that the principles of law must be justified by public policy and ideology conceptually reflecting the totality of relations in the society.

In this regard, it is essential that the establishment of a new political system in our country, the formation of the rule of law demanded radical changes in the state's attitude to the rights and freedoms of man and citizen, and their consolidation as general legal principles. Kazakhstan recognized international legal standards and to ensure the protection of human rights. Human and civil rights apply to the sphere of relations of the individual to the state, which is supposed to not only protect the rights of foreign intervention, and actively assist in the implementation of such rights. The Universal Declaration of Human Rights includes the following rights and freedoms: the right to life, liberty, security, equality before the law, etc.; the individual's right to recognition of its legal personality, to freedom of movement and choice of residence, asylum, to a nationality, to own property, and so on. etc.; political rights; economic, social and cultural rights. For general legal principles of the immigration law include principles such as the rule of law, justice, democracy, humanism, protection and defense of the rights of citizens.

All the principles of the law, depending on the characteristics and scope are subdivided into common law, cross-sectoral and sectoral. General legal, or general (basic) is the source of law, they are common to all branches of law, reflect the nature, qualitative features of law as a whole. These include: the principle of humanity — dominance in the formulation and operation of the legal system of the inalienable natural rights and freedoms, the recognition of human rights and freedoms the supreme value of society; the principle of equality of citizens before the law, according to which all citizens, regardless of nationality, gender, race, religious or other affiliation, employment status have equal civil rights and obligations are equally responsible before the law; the principle of democracy, which means that law, legislation adequately reflects the will and interests of the people (common or concerted will and interests); the principle of the rule of law (rule of law) — the implementation of all forms of state activity, the functioning of civil society on the basis and in accordance with the law, natural rights and freedoms; the principle of justice which specify the demands of justice with regard to the legal forms of activity of the state, its agencies and officials (law-making, the use of law enforcement and justice), legal actions of citizens and their associations, and expressed in a scale equal to the legal conduct and strict proportionality been admitted legal liability offense.

The principle of «legality» in Migration Law is expressed in the legality of stay and residence, as well as sectoral legal principle residence registration. Formation of the principles of immigration law related to the real need of legal regulation, carried out in accordance worldview context, under the influence of the cultured society of justice and legal thinking, as well as in the context of a functioning legal system. The content of the principles of the Migration Law of Kazakhstan is determined by the direction of socio-political development, which consists in the development of the rule of law and civil society, paired with the recognition of the legal significance to the legal system of the rights and freedoms of man and citizen.

In this context, it is necessary to pay attention to the importance of the coherence of the principles and rules of law for the proper functioning and stable development of migration law. In this regard, it is of interest to system limitations of the rights provided any legal system. It is necessary to substantiate the proposition that the problem of restrictions on the right is twofold. First, every state reserves the right to withdraw from the norms of the legislation, the effect of which in particular the social and political situation could harm national security. In this case, the restriction of the right to be considered as a way of realization of the rights and freedoms of man and citizen, justified certain conditions. Secondly, the restrictions may be explained by the imperfection of the legislation. In this case, the problem is allowed to further development of the legal system. This migration has, for the most part, a second embodiment of limitation. Migration Legislation of Kazakhstan is not without flaws sets, although by virtue of it clearly defined legal principles that outline the features of the subject of legal regulation, today presents itself as a special branch of law of the legal system of Kazakhstan.

In the context of the principle of some jurists, the principles of the rule of law. In this state of law recognized form of exercise of democracy, citizens' political organization, functioning on the basis of law; It is considered tool for protecting and promoting the rights, freedoms and duties of each person. The principles of the rule of law are: the rule of law in all spheres of life; connectedness law of the state and its organs; the inviolability of personal freedom and its legal The security; mutual responsibility of the state and the individual; the availability of effective forms of control over the implementation of laws; the separation of powers, the existence of a system of checks and balances; the supremacy and direct effect of constitutional law; legal organization of public authorities; the unity of rights and responsibilities of citizenship; a developed civil society; compliance of domestic legislation with the principles and norms of international law. Most

clearly the principle of justice should manifest itself in the demand «responsible only for the guilty». In the innocent can not be held responsible, and the perpetrator of an offense liable to be inevitable. The concepts of law and justice have the etymological root of «right», «righteous». Based on the legal regulation of these positions — is regulation of social relations based on justice. Justice is a multi-faceted, multi-component categories, which manifests itself in all spheres of public life, integrates the economic, political, moral, legal and spiritual aspects, contains the requirements of the real correspondence between the position of the various individuals and their importance in society between work and reward, the act and retribution. Of interest is the position of the author on the features of legal justice. In his opinion, it is; that justice in the legal sphere is the most clear, formal and definite character, often associated with state coercion. Therefore, the entire legal system is the guardian of justice, it is a means of expression and retention, preservation and protection, and the principle of justice is normative value judgments, laid in the content of the right and is embodied in rights and duties, measures of rewards and punishments. On this basis, it is possible to build the concept of justice in the law: — industry law (civil, labor, housing, business, unsustainable, criminal, etc.) Are designed to carry out justice in the social relations regulated by them; — Justice includes a dialectic combination of elements of equality and inequality. With regard to the legal status of the person, it can manifest as «the equality» and «fair inequalities»; — Justice has a steam room category — «injustice». Eliminating injustice — a means of establishing justice. Advance occurrence of injustice — the most important prognostic feature jurisprudence. On the same activities should be directed state. The legislator who prefers today the development of market relations, should establish an effective mechanism to eliminate the causes that lower socio-economic status of the legal warranty card; — Justice is of particular importance in the relations of distribution. Developed market economy took a long time to accept the fact that the distribution of income, just from the point of view of the laws of the free market, it may be unfair to the common human sense. The market recognizes revenue valid if it meets the cost and promoted investment in business (labor, land, capital, real estate and so on. D.). Other factors and criteria was not interested.

Migration Policy of the Republic of Kazakhstan is based on the following principles:

- compliance fundamental rights and freedoms enshrined in the Constitution of the Republic of Kazakhstan, other normative acts, international treaties, of which the Republic of Kazakhstan;
- not allowing discrimination on grounds of race, nationality, language, religion, sex, ethnic or social origin, views, political affiliation, personal property or for any other reason;
- compliance migrants legislation of the Republic of Kazakhstan;
- combination of interests of the individual and the state, to unite the efforts of all branches of government and public associations and organizations;
- Priority national interests in terms of security and the preservation of the social, economic, political, ethnic, religious stability and tolerance in the context of respect for internationally recognized standards in the field of management and regulation of migration processes;

Storing and development of the national identity of the country, suggesting a systemic and consistent implementation of the policy aimed at promoting the return, especially compatriots living abroad;

- development of the competitive advantages of Kazakhstan, based on the promotion of attracting highly skilled staff from abroad to work in the priority sectors and preparation of own qualified personnel;
- selective based on a selective approach to immigration, taking into account their education, occupation, investment and financial capacity;
- transparency and legitimacy, involves a continuous monitoring in the country, including technical, organizational and economic measures to ensure transparency and the legalization of immigrants stay in Kazakhstan, as well as the organization of various legal measures to ensure their stay;
- compliance principle of non-refoulement (nonrefonlment) in respect of persons, asylum seekers or refugees [1].

Basic principles of state policy in the field of migration:

- 1) recognition and guarantee of the rights and freedoms of migrants, in accordance with the Constitution of the Republic of Kazakhstan, laws and international treaties;
- 2) protection of national interests and national security;
- 3) The combination of the interests of individuals, society and the state;
- 4) the transparency of the regulation of migration processes on the basis of renewal and re-usable information;
- 5) The differentiated approach to the regulation of the state of various kinds of immigration [2].

The main principles of the state policy on refugees are:

- 1) ensuring asylum seekers and refugees the right of asylum in accordance with the procedure established by law;
- 2) non-discrimination on the grounds of social origin, race, ethnicity, nationality, religion or political beliefs during the procedures for refugee status;
- 3) The confidentiality of information about the private lives of asylum seekers and refugees;
- 4) facilitate the reunion of separated families of asylum seekers and refugees;
- 5) protection of the rights of child refugees in the Republic of Kazakhstan in accordance with the laws of the Republic of Kazakhstan on the Rights of the Child;
- 6) preventing the expulsion of asylum seekers and refugees on the grounds provided.

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А.Божқараұлы

Көші-қон құқығының қағидалары

Көші-қон мәселесі өзінің күрделілігімен ерекшеленеді. Себебі онда тек қана құқықтық сұрақтардан басқа, саяси-экономикалық, демографиялық, әлеуметтік сұрақтармен қатар, этногеографиялық және экономикадағы еңбек ресурстары мәселелері де өзектілігімен көрінуде. Солардың ішінде заңдық аспектісі ерекше орынды иеленеді. Заң саласы көші-қон үрдісін ұйымдастыру мен оны реттеуді құқықтық қамтамасыз етуде маңызды рөл атқарады.

А.Божқараұлы

Принципы миграционного права

В статье отмечено, что проблема миграции характеризуется особой сложностью, так как в ней переплетены не только правовые вопросы, но и вопросы социологии, демографии, политической экономики, этногеографии, проблемы трудовых ресурсов в экономике. Автор подчеркивает, что юридический аспект среди них занимает особое место, поскольку от надлежащего правового обеспечения, регулирования и организации процессов миграции зависит решение других вопросов, имеющих существенное значение для жизнедеятельности общества.

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