

A.Bozhkaruly

*E.A.Buketov Karaganda State University (E-mail: altai6969@mail.ru)*

## **To the problem of the normative basis of migration in the Republic of Kazakhstan**

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, types of migration, commuting, migration, labor migration, migration factors, ethnic migration, migration policy concept of migration.

The Declaration of the State Independence brought many changes and challenges to the development of the country. As many other countries of the former Soviet Union, Kazakhstan also began to construct a new political, economical, legal country and an open democratic society with the market economy.

The entry into the world community and an active participation in the market economic system of the Republic of Kazakhstan has influenced development itself. Today Kazakhstan is considered as one of the most reached countries in the globalization and secure of world relations with its high potential to create a peaceful community. It proves firstly human dimension that is considered to be the highest value in the country according to the first article of the Republic of Kazakhstan's Constitution [1].

However, there are several problems regarding the protection of the rights and fundamental freedoms of people and citizens. One of them is the problem of international migration, or in other words, «irregular migration», «undocumented migration» or «illegal migration», which is mostly illegal inflow of non-citizens to the foreign countries.

Migration is a global problem in the context of globalization nowadays. The main task of almost all states is to regulate legal and illegal migration that is flown on their territories. The problem of illegal migration became one of the vital issues for the economically developed states. In most cases it depends on non-appropriate economically conditions of home countries where people have to enter the foreign higher-income country in violation of country's laws. The issue of migration is also relevant for Kazakhstan, because Kazakhstan has become a major country of destination for foreign workers through its high level of economic growth.

In the global scale of migration process the countries of Central Asia and CIS states are emerging as transit regions themselves. Kazakhstan is also a state of transit and origin in Central Asia on a sub-regional scale. The citizens from neighbouring states as Tajikistan, Kyrgyzstan, Uzbekistan, Turkmenistan, China and Mongolia use the territory of Kazakhstan as a transit way to Russia and Europe. From ancient years the territory of Kazakh land was a transit for the caravans of goods and it remains the same nowadays.

The characteristic feature of migration refers to a mass character. Migration appears as a movement of people in large numbers then. In this regard, we note that migration has a great impact on functioning on any sphere of society. Kazakhstan, for sure, refers to the economic investment. Being the country with an expanded employment opportunities Kazakhstan attracts attention of citizens from less developed countries. All varieties and forms of labour migration are actively present in Kazakhstan where local residents refuse to work due to the low wages. Agriculture, construction and the services sector are considered to be low skilled jobs. Moreover, there is an advantage of labour migration where employer hire good-trained and narrow-skilled professionals from the developed countries. In such a way Kazakhstan tries to attract foreign investors to the development and improvement of state economy.

As an origin, transit and destination country of labour migration, Kazakhstan gives such a good opportunity as to send its citizens to the developed countries with the purpose of upgrading their qualifications, learning new specialties and obtaining new work skills in the sphere of advanced technologies and organizing the labour process, which leads to an increase in the competitiveness of the national labour market. This is an advantage in the sphere of supporting temporary state labour migration.

According to the Conception of the migration policy of the Republic of Kazakhstan in 2007–2015, several phenomena characterize current process of the migration within the country:

1. Growth of labour migration. In 2006 it brought about 40.9 thousand people or 0,51 % of the economically active population within the quota of foreign labour for employment on the territory of the Republic of Kazakhstan. The Government of the Republic of Kazakhstan establishes it annually. Due to the increasing economic attractiveness of Kazakhstan, a great number of migrant workers wish to work in Kazakhstan as well;

2. Increasing of illegal migration. The geopolitical position of Kazakhstan, the transparency of the borders with the CIS countries, the lack of a single coherent policy and the imperfection of legislative base, a favourable economic climate, socio-political stability, a liberal international migration policies are key factors that contribute to illegal migration. During the legalization in 2006, there were revealed 164,5 thousand foreigners who work illegally on the territory of the Republic;

3. Presence of refugees. Accession to the UN Convention on the Status of Refugees in 1951 and Protocol of 1967, an unstable socio-economic and socio-political situation in some neighbouring states have led to the presence of refugees in the Republic of Kazakhstan. The number of refugees in the country reached at 582 in 2006;

4. Intense of internal migration. It was created by the migration from rural areas to regions with higher levels of life and infrastructure, and from ecologically disadvantaged regions to regions with better environmental management [2].

Labour migration is the movement of people across national borders for seeking good salary and conditions in employment. Law on Legal Status of Foreigners in the Republic of Kazakhstan from June 19, 1995 sets the basic rights and duties for the foreigners in the Republic. In accordance with it, the foreigners can carry labour activity on the basis and in the order established by the legislation and international contracts of the Republic of Kazakhstan just like the fellow citizens with certain limitations on the labour activity of the foreigners (Article 6) [3]. Thus, paragraph 4, Article 12 of the Constitution of the Republic of Kazakhstan states the same that the foreigners and people without citizenship in the Republic of Kazakhstan have rights and freedoms, as well as bear responsibilities established for the citizens unless otherwise stipulated by the Constitution, laws and international treaties [1]. The concept of «labour migration» includes not only the employment of foreigners and people who do not have citizenship of certain country in the Republic of Kazakhstan, but also export our citizens for work. There were created governmental bodies and arranged intergovernmental agreements for the protection of the rights and fundamental freedoms of own citizens abroad. All this suggests that labour migration is a complex, nation-wide problem where migrant workers, on the one hand, should have the right to equality of opportunity in employment, on the other hand — a priority must be attributed to the protection of internal labour markets in regulation of labour migration, which is declared by the Law of Republic of Kazakhstan «On Population Migration» (Article 5) [4].

As it is already known, many factors influence on the level of labour migration. They primarily include the constitutional construction, political system, economic development of state and an adequate legislative support. The Republic of Kazakhstan in the last two decades attracts foreign workers and it should be emphasized that the state is making efforts to control labour migration. However, there are a number of other problems that are well known for the experts, but, nevertheless, cannot be solved over the years. First of them is the violation of conditions of entry of foreign labour. In this regard, the Head of State, speaking at the Foreign Investors Council, said, «from year to year the number of attracting foreign workers is increasing. This is justified if high-quality narrow specialists as engineers and technologists are invited to the country. But in reality, within the quota allocated to Kazakhstan such labour workers come to work where there is no shortage in our country. They are cooks, workers of different building trades. There also exists quite widespread unjustified differentiation of wages and differences in social allowances of foreign and local workers. In turn, foreign employers often do not meet the conditions for vocational training of local personnel, having to produce excessive demands on our fellow citizens in the selection of the work on a competitive basis».

Another set of problems is related to the labour migration within the CIS. Kazakhstan, as a dynamically developing country, is attractive to the citizens of neighbouring states seeking work outside their nationality. Thus, they are labour migrants from Kyrgyzstan, Uzbekistan and Tajikistan, as it was mentioned above. Of course, the world financial crisis reduced inflow of labour migrants, but their total number remains considerably higher, especially its latent part. The most common violations of employers in Kazakhstan to the migrant workers are to bring to work without entering into an employment contract, without providing

the appropriate conditions and safety, as well as partial payment or even non-payment of labour. There is sometimes a separate application form forced labour, etc. In the meantime, all states — members of the ILO, including Kazakhstan, have an obligation arising from the very membership in the Organization, even if they have not ratified a convention, including respect of migrant workers. It comprises following fundamental principles such as freedom of association and effective recognition of the right to collective bargaining agreements; the elimination of all forms of forced labour or compulsory labour, effective abolition of child labour, elimination of discrimination in employment and occupation. All these rules are universal, and they should be applied by all Member States of the ILO, regardless of the level of economic development [5]. These problems, which were mentioned by the member of Constitutional Council of the Republic of Kazakhstan A.M.Nurmagambetov, are the main ones in labour market migration. It is clear that such a situation can occur easily in the Republic. Today Kazakhstan has been seen as a major growth of irregular and unauthorized labour migration. However, any evaluation of its scope is obstructed by a number of factors, such as the absence of a visa regime with most of the former Soviet Union Republics, a high level of informal employment in some sectors of the economy, such as, trade, construction, transport, and etc. Of course, these spheres of illegal labour migration can lead to the violation of the rights of working people that was announced earlier by the President of Kazakhstan.

Through the establishing democratic legal state Kazakhstan made the formation of the legislative framework for the legal regulation of labour and the status of migrant workers.

Kazakhstan has been an ILO member since 1993 and ratified 16 conventions of the International Labour Organization, including 8 fundamental conventions. Along with the above ILO conventions, Kazakhstan has ratified a number of international human rights conventions that are important for the protection of migrant workers' rights. In particular, these include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and two Optional Protocols to it.

At the regional level, the Republic of Kazakhstan is a party to a number of multilateral labour migration agreements concluded by members of the Commonwealth of Independent States (CIS). Amongst them, it is worth mentioning the 1994 Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers, the 2004 Agreement on the Mutual Nostrification of Secondary (General), Primary Professional and Secondary Professional (Specialized) Education Certificates. Kazakhstan has also signed bilateral and trilateral agreements on labour migration with Azerbaijan, Belarus, Kyrgyzstan, Mongolia, Tajikistan, and Uzbekistan. It should be noted that many similar agreements have been signed with the neighbouring Kyrgyz Republic too [6].

The legal regulation of labour migration is based on several sources. They primarily include Labour Code of the Republic of Kazakhstan, Laws of the Republic of Kazakhstan «On employment», «On Legal Status of Foreigners in the Republic of Kazakhstan», «On Population Migration», as well as Rules for establishing the Quota, the Procedures and Conditions for Issuance of Permits to Employers for Engaging Foreign Labour in the Republic of Kazakhstan and other legal acts.

According to the Labour Code of 15 May 2007, labour legislation of Kazakhstan was directed to appointing the principles and the rules of labour relations, which identify the equality of rights and opportunities of working people. It concludes following principles like freedom of labour, inadmissibility of restrictions on human and civil rights in the sphere of labour, guaranteed right to working conditions meeting the safety and hygiene requirements, priority of the life and health of the employee over the results of production activities, guaranteed right to rest, equality of the rights and opportunities of employees, state regulation of labour protection and labour safety, guaranteed right to a fair remuneration for labour not lower than the minimum wage [7]. There are separate articles that contain the rules of prohibition of forced labour and discrimination in the sphere of labour. These labour conditions and rights are relevant for all workers; there is no difference between local workers and migrant workers. Therefore, foreign workers have the same opportunities and rights on working conditions of working places.

The Law of the Republic of Kazakhstan «On Population Migration» directly defines legal, economic and social principles of the migration processes and regulate social relations in the field of population migration. It describes such definitions as «migrants», «illegal migrants», «oralmans», «family immigration», «labour migration», «internal migration», «refugees» and etc. All terms are universal except «oralmans». According to the Law «On Population Migration» of the Republic of Kazakhstan the term 'oralmans' means foreign citizens or stateless people of the Kazakh ethnicity, who permanently resided outside Kazakhstan on

the date of gaining sovereignty by the Republic of Kazakhstan and arrived to Kazakhstan for the purpose of permanent residence [4]. In other words, oralmans are Kazakh by nationality, who come back to their Motherland for permanent life. They enter the country within the immigration quota rendered oralmans. People who received the oralman status are given the following privileges in the Republic of Kazakhstan:

1. Rendering assistance in employment, improvement of professional skills and development of new professions;
2. Arrangement of conditions for studying the official language and Russian if necessary;
3. Selection of quota for entering in organization of average vocational professional and higher vocational education in quantity, defined by Government RK;
4. Granting requiring places at schools, in preschool organizations, and also in establishments of social protection;
5. Payment of pensions according to the legislation RK or the international contracts ratified RK;
6. Payment of disability pensions, on occasion of loss of a supporter and on age in RK;
7. Exemption of consular gathering for issue of visa on entrance in RK;
8. Reception of guaranteed volume of free medical care according to the legislation of RK, and others.

Thus, the aim of these documents is to regulate migration processes in the frame of increasing the number of people, in particular, in facilitating the return of former compatriots at home country — Kazakhstan; attracting foreign manpower and regulating labour migration with the purpose of provision of the economic growth in the Republic of Kazakhstan. They are considered to be as the main sources of the migration of the Republic of Kazakhstan.

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А.Божқараұлы

### Қазақстан Республикасындағы көші-қон нормативтік базасы туралы сұрақтар

Мақалада Қазақстандағы 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 реттеуде, құқықтық қамтамасыз етуде маңызды роль атқарады.

А.Божқараұлы

### К вопросу о нормативной базе миграции в Республике Казахстан

В статье отмечено, что проблема миграции в Казахстане 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. Определено, 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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К.С.Муслимова

*Карагандинский государственный университет им. Е.А.Букетова  
(E-mail: karlygash1959@mail.ru)*

### Служба в специальных государственных органах Республики Казахстан

В статье на основе анализа Закона Республики Казахстан «О специальных государственных органах Республики Казахстан», иных нормативных правовых актов рассмотрены организационно-правовые основы специальной государственной службы. Автором исследованы понятие, принципы, права, обязанности, правоограничения служащих специальных государственных органов, отличительные признаки службы в них.

*Ключевые слова:* национальная безопасность, принципы, служба в специальных государственных органах, права, обязанности, правоограничения.

Принятие 13 февраля 2012 г. Закона РК «О специальных государственных органах РК» знаменовало собой новый этап в правовом регулировании института государственной службы в специальных государственных органах [1]. До принятия данного Закона государственно-служебные отношения в системе специальных государственных органов регулировались различными правовыми актами. Отсутствовали единство и системность в регулировании института государственной службы, имелись противоречия и коллизии при регулировании отдельных аспектов. Служба в специальных государственных органах — особый вид государственной службы на должностях в органах национальной безопасности, уполномоченном органе в сфере внешней разведки, в Службе охраны Президента РК.

К особенностям специальной государственной службы относятся следующие признаки:

- специальная государственная служба представляет собой службу в органах национальной безопасности, Службе внешней разведки «Сырбар», в Службе охраны Президента РК;
- целевым предназначением службы в специальных государственных органах является реализация задач и функций государства по обеспечению национальной безопасности;
- специальная государственная служба основывается как на общих принципах государственной службы, так и на отраслевых принципах, установленных законами РК в сфере обеспечения национальной безопасности;
- государственные служащие системы специальных государственных органов наряду с присущими всем государственным служащим правами и обязанностями обладают специфическими полномочиями и дополнительными правоограничениями, обусловленными характером компетенции специальных государственных органов;
- принимая во внимание функциональную направленность специальных государственных органов, к государственным служащим предъявляются повышенные требования к соблюдению государственной и служебной дисциплины;