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Constitutional and legal regulation of the staying of foreign citizens and stateless persons in the territory of the Republic of Kazakhstan as a means of suppression of illegal immigration

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, labor migration, migration factors, international agreements, illegal migration, ethnic migration, migration policy, concept of migration.

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Illegal migration is in large part a special form of international labor migration, as the motive of illegal undocumented migrants is usually illegal employment in the destination country.

Illegal migration is a purposeful appearance. It is a subjective factor (the desire to illegally cross the border for illegal or criminal illegal economic activities) defines the essence of irregular migration.

Illegal employment — is employment without an employment contract, without obtaining appropriate permits. Migrants often avoid official registration procedures and obtain permission from the bureaucratization of the existing procedures. Employers, however, also interested in the informal employment of foreign workers, as it provides them with competitive thanks to understated labor costs and operating illegally working.

On the one hand, it may be beneficial, as the presence of illegal migrants cost of the product will become cheaper and thus with the prices in the consumer market will be lower, but on the other hand takes over the operation of operating illegally and violated their human rights.

Shadow demand of local entrepreneurs for cheap migrant labor and imperfection of the legislation of the Republic of Kazakhstan to promote the immigration of citizens from Kazakhstan and other countries.

Since illegal migration incalculable, then the number of illegal migrants and criminal immigrants to official statistics remains unclear. This is due to the inferiority of registration of migrants from the CIS countries. Basically, in Kazakhstan there are illegal immigrants from countries such as Azerbaijan, Georgia, Central Asia, Kyrgyzstan, Uzbekistan and non-CIS countries: China, Vietnam, India, Pakistan, Bangladesh and others.

The main factors of illegal migration are the socio economic sky and geopolitical context. Socio-economic factors related to the situation in the field of employment, widespread shadow relations in economic and non-economic spheres of society. The shadow economy that includes informal and latent criminal sector makes an increasing demand for illegal migrants.

Stimulants influx of illegal migrants 1) the lack of a full-fledged border infrastructure, 2) poor control of individual sections of the Kazakh border and 3) an open border between the states of the CIS countries, particularly in the Central Asian direction.

Illegal migration has: 1) a contradictory effect on the scope of employment, 2) a large number of migrants from — abroad are outside the legal settlement, 3) economic losses of the state from illegal migrants due to a budget shortfall payment for the use of foreign labor, 4) tax evasion and 5) inhibition of productivity and efficiency of labor productivity growth in Kazakhstan.

In the twenty-first century the Republic of Kazakhstan already holds a leading position in the world community. One of the most important evidence that is holding EXPO – 2017 in the territory of the republic.

This suggests that countries with the entire international community have a great deal of trust and respect to Kazakhstan. Also leader of the nation Nursultan Nazarbayev in his address to the President of the Republic of Kazakhstan to the people of Kazakhstan «Strategy» Kazakhstan – 2050»: a new policy established state» confidently declares that the Republic of Kazakhstan today — a successful state with its own face, its features and its position. Currently, humanity is faced with new global challenges of the XXI century. As the President in his Address in 2013: «For our country and the region, I highlight ten key challenges. We have to consider each of them, if we plan to continue to achieve new progress in its development». The major global challenges that will bring victory over Kazakhstan but a new historical level are the acceleration of historical time, the global demographic imbalance, the threat of global food security, an acute shortage of water, global energy security, exhaustible natural resources, the third industrial revolution, increasing social instability, a crisis of values in our civilization and the threat of a new global destabilization.

One of the priority issues faced by Kazakhstan, is the demographic imbalance. «The growing demographic imbalance generates new waves of migration and increases social tension around the world. We in Kazakhstan are faced with migration pressure in certain regions of the country where illegal migrant workers destabilize local labor markets. We also need to understand that it is likely in the foreseeable future may face and the reverse process — labor immigration outside of our country», — noted the President in the Address to the Nation [1]. This is a very important issue for the entire state. Migration processes — constant phenomenon in all phases of history mankind. Migration is one of the ways the mass of the population to respond to changing situations, accurately and clearly reflect the changes taking place in society. It's hard to find another social process that could be compared with the migrations in this regard. The problem of migration in Kazakhstan is gaining social and political urgency and relevance due to the scale of migratory flows and their consequences for the country. Mass migration accompanied by a catastrophic loss of qualified professionals and have serious socio-economic and political consequences for the young independent state. Besides of labor migration as a form of mass migration gains and increasingly growing character. Labour migration is currently one of the most important migratory flows in the world. With the growing integration in the global economy intensified the movement not only of inventory flows and labor. International migration is a mixed group, which includes seasonal workers, workers on temporary contracts, a highly skilled workforce, students, refugees, victims of human trafficking. The ILO estimates that in 2010 the number of international migrants reached 214 million. People, nearly 90% of them are migrant workers and their families [2]. The problem arises in the fact that the majority of immigrants, including migrant workers who moved to the territory of Kazakhstan for a better life is illegal. The most typical violations of immigration law are irrelevant purpose of the stay of foreigners in the country, failure to depart at the end of the registration period, as well as the illegal occupation of employment. Depending on the purpose of entry into the territory of the Republic of Kazakhstan, and stay on the territory of the Republic of Kazakhstan are following main types of immigration:

- with the aim of returning to their historic homeland;
- for the purpose of family reunification;
- to get an education;
- for the purpose of employment;
- for humanitarian and political reasons.

Currently migration processes in the Republic of Kazakhstan have high activity. Over the past 7 years in the country for temporary residence entered more than 170 thousand foreigners. For example, in 2011–2012 the implementation of employment as a goal to stay in Kazakhstan indicated only 1.3 thousand. Foreigners coming from countries of Central Asia, while the private trip — 80 thousand. Man. At the same time for the illegal use of foreign labor brought to administrative responsibility 3 thousand, individuals for whom have worked 9thousands of illegal migrant workers [3]. In this regard, the country is facing the question of strengthening the legal framework in the field of regulation of migration processes.

In the Republic of Kazakhstan held a lot of work in the field of regulation of migration, including illegal migration, both at national level and enhance international cooperation in the field of international relations. Key national documents in the sphere of state regulation of migration processes is currently the law of the Republic of Kazakhstan dated July 22, 2011 «On Migration» (as amended). This Law regulates public relations in the field of migration, the legal, economic and social foundations of migration processes. Thus, in accordance with the Law «On migration», migration — is permanent or temporary, voluntary or forced movement of individuals from one country to another, as well as within the country [4]. Also, given the definition of «illegal migration», ie it is entry into Kazakhstan and stay of foreigners or stateless persons in Ka-

zakhstan in violation of national legislation governing the entry and residence, as well as transit through the territory of the Republic. In the Republic of Kazakhstan are guaranteed not only the rights and freedoms of citizens, and immigrants. Thus, in accordance with Article 5 of the immigrants in the Republic of Kazakhstan have the right to:

- 1) enjoy the rights and freedoms set forth for citizens of the Republic of Kazakhstan, unless otherwise provided by the Constitution, laws and international treaties;
- 2) education, health and social assistance in accordance with the legislation of the Republic of Kazakhstan;
- 3) to move freely on the territory of the Republic of Kazakhstan, open for visits by immigrants;
- 4) free choice of residence in accordance with the legislation of the Republic of Kazakhstan;
- 5) apply to the court and state authorities for the protection of their property and personal non-property rights;
- 6) for a fee-based adaptation and integration services in the centers of adaptation and integration of repatriates, except for oralmans and their families who receive these services free of charge [4]. In addition immigrants must bear the responsibilities among them, the main ones being the observance of the Constitution and laws of the country, including the established order of entry, exit and stay on the territory of the Republic.

The state policy in the field of migration is based on the following principles:

- 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 [4].

Law «On Migration» is not the only means of regulating migration processes. In the Republic of successfully implemented concept of migration policy for 2007–2015, which is aimed to improve the quality of existing and development of new areas of migration management in Kazakhstan. In accordance with the concept of an important part of the migration policy of the Republic of Kazakhstan will be to ensure the country's security, the fight against illegal migration. In this direction will be technically and organizationally a new strengthened and turned the country's borders, to improve the system of technical registration and granting of visas. In order to comply with the principles of transparency and legitimacy will be ongoing monitoring of migrants in terms of their legal admission and good stay in the country. In case of violation of any condition of stay of illegal migrants to apply national and internationally recognized rules of detention, return or deportation order or certification of its stay in the country [5]. Thus, according to the Concept of Migration Policy in 2013–2015 years will be settled by the labor market in accordance with the socio-economic needs of the country.

Overall, the Concept will help to protect labor and social rights of migrants, the successful adaptation and integration of immigrants into society, to ensure the needs of the economy as a highly skilled labor force and the balance of supply and demand on the labor market.

Objectives of migration policy are not limited to their achievement only at the national level. Questions about combating illegal migration are traditionally considered in the discussion of the implementation of interstate programs to combat crime at every meeting of the MIA of RK. In order to manage the return and reception of migrants illegally residing in the territories of the contracting parties, Kazakhstan working on the issues of readmission agreements with 12 countries in Europe and Central Asia. Currently signed readmission agreements with Germany, Norway, the Czech Republic, the Swiss Confederation, Latvia and Lithuania [6].

As part of the legal framework of the Eurasian Economic Union as regards freedom of movement of labor law of the Republic of Kazakhstan from June 27, 2011 ratified the Agreement on the Legal Status of Migrant Workers and Members of Their Families, signed by the Government of the Republic of Belarus, Kazakhstan and the Russian Federation 19 November 2010 in St. Petersburg [6].

Today the international legal framework in the field of migration rather extensive. The proof is the Agreement between the Government of the Republic of Kazakhstan and other countries in the fight against illegal migration. Thus, the Decree of the Government of the Republic of Kazakhstan dated December 8, 2011 approved the Agreement between the Government of the Republic of Kazakhstan and the Government

of the Republic of Estonia on cooperation in combating organized crime and other forms of crime, providing for the fight against illegal migration. Also approved the Agreement between the Government of the Republic of Kazakhstan and the Government of Russia on inter-regional and cross-border cooperation, providing for cooperation in the fight against illegal migration. These examples are not exhaustive. Also on the territory of Kazakhstan of the conclusion of the Agreement in Astana — the CIS member states to exchange information in the fight against crime, as well as the Convention on the Legal Status of Migrant Workers and Members of Their Families states — participants of the CIS.

Within the framework of the Customs Union has developed and ratified an agreement:

- cooperation on combating illegal migration from third countries;
- on the legal status of migrant workers and their families.

In matters of immigration control and the fight against illegal migration The Republic of Kazakhstan is working closely with international organizations such as the Collective Security Treaty Organization, the EEC.

The legislation of Kazakhstan in regulation of migration processes is still improving. The latest innovation was the news that the activities of migrant workers in Kazakhstan plan to legalize. Mazhilis plenary session, in which the Chamber approved on second reading the draft law «On amendments and additions to some legislative acts of Kazakhstan on labor migration». «The main purpose of the bill is the legalization of migrant workers, as well as the improvement of state regulation of migration processes in terms of simplification of the procedure for issuing permits for foreign labor by individuals», — said a member of the House Committee on Legislation and Legal Reform Majilis Olga Kikolenko presenting Bill in Astana. According to her, the adoption and implementation of the bill would lead to the legalization of foreigners engaged in illegal employment and improving the protection of the domestic labor market, increase revenue, reduce factors for corruption and immigration offenses. Deputies made to the bill new legal concepts — immigrant labor, immigrant employment authorization, established a mechanism for entry and residence of labor migrants in Kazakhstan. And the procedure for issuing permits to immigrant labor obligatory payment prior payment of individual income tax. In addition, changes and additions to the Law «On Migration» on the competence of the Interior, the authorized body on migration, aimed at the implementation of the Decree of the President of the Republic of Kazakhstan on January 16, 2013 [7]. The legalization of migrant workers from CIS countries will be an effective way for the implementation of migration control.

The fight against illegal migration is now officially recognized as one of the priorities of law enforcement agencies of the Republic of Kazakhstan. In recent years, the problem of illegal migration in Kazakhstan moved into the category of the most pressing, Kazakhstan needs the inflow of labor force, but only when and where it is needed in the country. It must be hard put a barrier in the way of those who are breaking the law and acts in shady business. President of Kazakhstan believes that causes harm to the state, not only the fact of illegal migration, but also its indirect consequences.

Sami migrants often find themselves in a marginalized situation and need protection — both in relationships with employers, and in connection with the arbitrariness of the officials, which in turn becomes a breeding ground for crime, worsen criminal situation in some regions».

Infrastructure migration in Kazakhstan is underdeveloped, but is already beginning to develop. It should be purposeful formation of such an infrastructure that would enjoy to the same trust citizens of grants. In the meantime, the shadow and informal relationships often work effective than formal institutions of labor migration. To combat illegal migration are needed: improving the legislative framework regulating migration processes.

Organization of effective border and immigration control, the development of mechanisms for the deportation of illegal migrants, the international cooperation in issue of illegal migrants, the formation of new independent states of the former Soviet Union and the presence of clear boundaries between them, shortcomings in the migration legislation and imperfect institutional system created favorable conditions for illegal stay and employment in the territory of the Republic of Kazakhstan.

Illegal migration processes in Kazakhstan are global in nature. The problem of illegal migration is associated with- the situation on the labor market processes in the shadow economy, criminal individual business areas, the task of ensuring national security and problems respect for the rights of migrants.

Thus, migration is a social phenomenon that can bring both to society and have a negative impact on it. In recent years, the scale of labor migration has increased significantly; the main factors contributing to this — demographic and economic situation in the world. Kazakhstan has emerged as one of the largest centers of attraction of labor not only in the region but in the world. The problem of illegal migration has become

one of the causes of the demographic imbalance in the country, one of the global challenges of the XXI century. However, the regulation of migration processes in Kazakhstan is solved as nationally and internationally. Today Kazakhstan not only to strengthen international cooperation in this area, but also improves the intra-state regulatory framework. All of this suggests that the Republic of Kazakhstan can adequately cope with the global challenges of the twenty-first century.

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А.Божқараұлы

Шетелдік азаматтар мен азаматтығы жоқ тұлғалардың Қазақстан Республикасына келуін конституциялық-құқықтық реттеу заңсыз көші-қонның алдын алу құралы ретінде

Көші-қон мәселесі өзінің күрделілігімен ерекшеленеді. Себебі оған тек қана құқықтық сұрақтардан басқа, саяси экономикалық, демографиялық, әлеуметтік сұрақтармен қатар, этногеографиялық және экономикадағы еңбек ресурстары мәселелері де жатқызылады. Солардың ішінде заңдық аспектісі ерекше орынды иеленеді, өйткені көші-қон үрдісін тиісінше құқықтық қамтамасыз ету, реттеу мен ұйымдастыруға қоғам өмірі үшін маңызды басқа да мәселелердің шешілуі тәуелді болады.

А.Божқараұлы

Конституционно-правовое регулирование пребывания иностранных граждан и лиц без гражданства на территории Республики Казахстан как средство пресечения нелегальной миграции

В статье рассмотрена проблема миграции, которая 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. Как отмечает автор, 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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