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The Legal Treatment of Migrant Workers as Vulnerable Groups:

The Case of Migrant Workers from Central Asia in Russia

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Abstract

In this work, the role of the International Labor Organization (ILO) and the United Nations in protecting migrant workers as a vulnerable group was defined. The causes of labor migration from Central Asian countries to Russia were established. The problems of legal regulation of the status of labor migrants are revealed.

Based on the 1990 UN Convention on Migrant Workers, the significance of determining the status of "migrant worker" was analyzed. The definition of the International Labor Organization Convention was used as a comparison. The reasons were established why "migrant workers" of the former Soviet republics (especially Tajikistan and Uzbekistan) do not have equal status at the legislative level and are in different legal provisions.

The article discusses the demographic problems of the CIS (Commonwealth of Independent States) countries and also

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identifies the reasons for the mass labor migration of Central Asian citizens to the Russian Federation due to the economic consequences caused by the sharp increase in the population of these countries.

Within the framework of this work, the basic principles of observance of human rights were considered based on the Constitution of the Russian Federation, which recognizes the norms of international law as an integral part of its legal system. Within the framework of the established domestic and international law, the problems of the legal status of illegal migrant workers are discussed, as well as further complications of violation of the order of entry or stay on the territory of the Russian Federation.

The article briefly analyzed the economic state of Russia, within the framework of which decisions are made regarding the position of labor migrants in Central Asia (Tajikistan and Uzbekistan).

Keywords: ILO, UN, Migrant Workers, Convention, Labor Migration, Vulnerable Groups.

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Introduction

Currently, the problem of labor migration is one of the key issues for the entire international community. Almost all countries of the world today are involved in the exchange of labor as its importers or exporters, which indicate the global nature of labor migration. An example is the labor migration flow of post-Soviet countries. Especially this phenomenon intensified after the collapse of the USSR, where the inhabitants of Central Asia, due to the poor economic situation, began to migrate to Russia in large numbers in search of work, labor forces of various professions.

According to the UN, at present, approximately 120 million people worldwide work outside the country of their citizenship. In his message on International Migrant Day on December 18, 2005, UN Secretary-General Kofi Annan noted that "the global economy is increasingly dependent on migrant workers" and that "migrant workers are essential for success in large sectors of the economy both developed and developing countries." However, the Secretary-General also mentioned the many problems created by migration, stressing the need to "do more to ensure respect for the human rights of migrant workers and members of their families". The need to pay increased attention to those aspects of migration-related to human rights was also mentioned in the latest report of the Secretary-General on the work of the Organization at the 64th session of the UN, where, in particular, it was noted: "The aggravation of economic difficulties exacerbated by the

global economic crisis has led in many countries of the world to increase xenophobia and discrimination against migrants."

The role of the International Labor Organization (ILO) in protecting the migrant worker

Every year, the number of men and women traveling to other countries in search of work and a better life for themselves and their families is growing. At the same time, migrant workers remain a particularly vulnerable category of people whose rights are constantly violated. Russian scientist, doctor of jurisprudence, professor, I.I. Lukashuk rightly notes, in many countries, migrant workers perform the hardest and lowest paid jobs, live under the threat of dismissal and deportation, are deprived of medical and social security, thereby together with members of their families remaining the most powerless and exploited part of the population.[1] Sustainable labor migration has led to the segmentation of labor markets in developed countries and the identification of sectors mainly occupied by migrants. These are primarily non-prestigious jobs that do not require high qualifications, with difficult working conditions and low pay, the most discriminated, informal or shadow sectors of employment.

[1] I.I., Lukashuk. 1991. "The rights of migrant workers." *Sov. Journal of international law* 3 (4): 134-135.

The problem of labor migration is of great importance both for the states that accept migrant workers and for the states supplying labor.

An important role in the international legal regulation of the status of migrant workers is played by the International Labor Organization (ILO), one of the tasks of which, according to its charter, is to protect the interests of workers employed in foreign countries. Acting in conjunction with 181-member states, the ILO is developing international labor standards in the form of conventions and recommendations, seeking their recognition and compliance in practice. From the first days of its existence, the ILO aimed at defining and protecting the rights of migrant workers, as well as improving their situation. As early as the 1st session of the ILO General Conference in 1919, Recommendation No. 2 "On Reciprocity in the Field of Attitudes towards Foreign Workers" was adopted. Today, the ILO considers it one of the most important tasks of the international community to develop policies and find resources to improve the management of labor migration so that it contributes positively to the growth and development of both countries of origin and host countries, as well as the well-being of migrant workers themselves and members of their families.

A special group of conventions and recommendations adopted by the ILO to regulate labor migration should be highlighted. Fundamental in the field of legal regulation of labor migration is

ILO Convention No. 97 (revised) on migrant workers of 1949, which defines the concept of "migrant worker": it is "a person who migrates from one country to another intending to get a job, other than on their account, and includes any person who is allowed following the law as a migrant worker" (Article 11).[2] The Convention provides that the participating ILO member states undertake to provide, without discrimination based on nationality, race, religion or gender, immigrants legally residing in their territory conditions not less favorable than those enjoyed by their citizens concerning such matters, such as wages, working hours, paid leave, affiliation with trade unions and taking advantage of collective bargaining agreements, housing issues, social security, court proceedings leadership. Convention No. 97 also defines the rules for the hiring, employment, and relocation to the country of employment; determines the rights of migrant workers in the areas of conditions and remuneration, taxation, transfer of personal savings, etc.

According to some authors, the provisions of the Convention constitute "a comprehensive legal mechanism for regulating labor migration," and, If the Convention has been ratified by all the major states parties to international labor migration, the issues of the rights of migrants and their families, illegal migration and discrimination of workers would not be so acute. Unfortunately,

[2] C097 - Migration for Employment Convention (Revised), 1949 (No. 97) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242 accessed 23, march 2020

the overwhelming majority of states that have ratified the Convention are labor exporting states, while the main importing states do not seek to bind themselves with the strict legal obligations that the accession to the Convention entails.

Convention No. 97 contains a general call for bilateral agreements to regulate relevant issues related to migration in connection with the application of the Convention and proposes to use the model agreement for this purpose contained in Recommendation No. 8611 supplementing the Convention. This model agreement covers many aspects of the migration process and sets out the approximate content of model employment contracts. The conclusion of bilateral agreements is an effective tool that provides a higher level of protection for migrant workers.

While the adoption of the 1949 Convention was motivated by a desire to facilitate the movement of surplus labor from countries where there was an excess of labor to countries with labor shortages, over the next decades, states began to be concerned about unemployment and the growth of unregulated migration. There has been a shift in emphasis from assisting the process of moving surplus labor to establish control over migration flows. The result of the changing migration situation in the world was the adoption by ILO in 1975 of Convention No. 143 on abuses in the field of migration and on ensuring equal opportunities and treatment for migrant workers. This Convention was the first step in the struggle of states against illegal labor migration at the

international level, and unlike Convention No. 97, which focused solely on the regulation of legal labor migration; Convention No. 143 also applies to the situation of illegal migrants. Following the provisions of the Convention, member states must identify illegal migration on their territory and take the necessary measures to reduce it (art. 2, 3). This international legal document stipulates the need for sanctions against the organizers of the illegal or secret movement of migrants, as well as against the illegal use of the labor of migrant workers (Article 6).

Convention No. 14313 states that migrant workers should not only have the right to equal treatment (as provided for in Convention No. 97) but also to equal opportunities, i.e. equality in access to employment, trade union rights, cultural rights and personal and collective freedoms.

Convention No. 143, as well as Convention No. 97, provides for the exclusion from the scope of their application of seafarers, workers in border areas who have entered for a short period of persons of "free professions" and "artists". It also excludes from the scope of its general provisions trainees and students, as well as workers temporarily hired to perform specific work or tasks.

About obstacles to ratification of ILO conventions, the governments of many states most often point to the following provisions: Convention No. 97 - Art. 6 (equality of treatment between foreign workers and workers - citizens of the host country) and Art. 8 (preservation of the right to permanent

residence for permanent migrant workers in the event of their disability); Convention No. 143 - Art. 8 (protection of the rights of legally permitted migrant workers in the event they lose their job), Art. 10 (equality of opportunity and treatment) and Art. 14 “a” (the right of labor migrants to geographical and professional mobility).

It is important to note that Russia, which is a large host center, a country of exit and transit of foreign labor, has not ratified any of the ILO conventions on the rights of migrant workers, which significantly reduces the legal framework for labor migration in this country. The time of adoption of the ILO Conventions refers to the period of the existence of the USSR, which almost did not participate in the international labor exchange, as a result of which there were no problems with the regulation of external labor migration. At present, both scientists and politicians are calling for the immediate ratification of the conventions on migrant workers. According to the just opinion of the specialist in the field of labor law Yu.V. Zhiltsova, today it is necessary to ratify international agreements on migrant workers since Russia is actively involved in international labor exchange as a major importer and exporter of labor.[3]

[3] Zhiltsova, Yu. V. 2008. "International legal status of migrant workers." *Russian Journal of Law.* http://www.ruzh.org/rlj/2008/2008_5/DJVU/1660.pdf. Accessed March 23, 2020.

A similar point of view is shared by the Chairman of the State Duma Committee on Constitutional Legislation and State Building of the 4-6 convocation V.N. Plugin, emphasizing that "the issues of migration and migration policy as a whole are among the most important for ensuring the national security of the state, maintaining an optimal balance of labor resources, and maintaining sustainable economic growth."

In addition to the above conventions, other acts developed by the ILO concerning the fundamental principles and rights at work are also applicable to migrant workers.

According to the provisions of the 1998 Declaration on Fundamental Principles and Rights at Work and the Mechanism for its Implementation, all ILO member states have an obligation, stemming from the very fact of their membership in the Organization, to observe four categories of principles and rights at work, even if they are still have not ratified conventions on these principles and rights. These include freedom of association and the effective recognition of the right to collective bargaining; the abolition of all forms of forced or compulsory labor; the effective abolition of child labor; non-discrimination in employment and occupation. The fundamental principles and rights at work are universal and apply to all people in all states. Consequently, they apply to all migrant workers without exception, whether they are temporary or permanent migrants, legal or illegal migrants.

The provisions of Convention No. 181 on Private Employment Agencies of 1997 are also applicable to migrant workers.[4] It contains important provisions aimed at preventing cases of ill-treatment of migrant workers concerning recruitment and employment through private employment agencies. In particular, it is indicated that the recruitment of migrant workers should be free of charge, while certain exceptions are allowed for certain categories of workers and special types of services.

Migrant workers as a vulnerable group for the protection of human rights on the UN list

The United Nations plays a special role in the international regulation of labor migration. Over the years of its existence, the United Nations has adopted a large number of acts relating to the establishment and protection of human rights, including those related to the protection of the rights of migrant workers. The most important among them are the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

The whole system of international law in the field of human rights proceeds from the fact that all people, by their belonging to the human race, have certain rights. The Universal Declaration of

[4] C181 - Private Employment Agencies Convention, 1997 (No. 181) https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312326 accessed 8, April 2020

Human Rights recognizes this principle in Article 2 (1), which states: "Everyone must have all the rights and freedoms proclaimed by this Declaration, without any distinction, such as about race, color", sex, language, religion, political or other beliefs, national or social origin, property, estate or another status."

Similarly, Article 2 (1) of the International Covenant on Civil and Political Rights does not distinguish between the rights of citizens and non-citizens. The same approach is characteristic of Article 4 of the International Covenant on Economic, Social and Cultural Rights, which recognizes a set of key rights that States parties are required to guarantee to all persons at all times, regardless of citizenship status. Among other rights, Art. 6 of the Covenant gives everyone the right to work, and Article 7 recognizes for everyone the right to fair and favorable working conditions.

The General Comment No. 15 of the Human Rights Committee provides the following clarification: "... the rights enshrined in the Covenant apply to all persons, irrespective of the principle of reciprocity, of their citizenship or lack thereof" (paragraph 1). And further: "... the general rule is that each of the rights established in the Covenant should be guaranteed without discrimination between citizens and foreigners" (paragraph 2).

In 1990, the UN General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was the result of

ten years of work by the UN special working group. The Convention states that migrant workers and members of their families employed abroad constitute an unprotected part of the population, whose rights are often not enshrined in the national legislation of the host country or their country of origin.

It is important to note that the 1990 UN Convention applies to all migrant workers and members of their families (Article 1).[5] The definition of the term "migrant worker" in the UN Convention is broader than the definitions contained in ILO conventions and covers workers in border areas, seafarers, and self-employed people. Following Art. 2 of the Convention, "migrant worker" means a person who will engage in, engage in, or have engaged in paid activity in a state of which he or she is not a citizen.

The 1990 UN Convention enshrines the responsibility of host countries in recognizing and protecting the rights of migrant workers and members of their families, including civil, political, economic, social, and cultural rights that apply to all migrant workers, regardless of their legal status. It also provides for additional rights for migrant workers and members of their families who have established documents or an appropriate status, in particular, the right to free movement across the territory of the

[5] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990 https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx accessed 12, march 2020

state of employment; on the creation of associations and trade unions; on the enjoyment of political rights in a state of employment (if it provides them with such rights); equal access to education, housing, social services, and healthcare, protection against dismissal, unemployment benefits, equal to citizens of the country.

Compared with ILO conventions, the UN Convention more broadly articulates the principle of equality of treatment of migrant workers (regardless of their status) and citizens of the host state: in addition to courts and judicial authorities in the field of remuneration and other working conditions, as well as in the field of workers' access, migrants to emergency medical care and the education of children of migrant workers (Articles 18 (1), 25, 28 and 30 of the Convention).

The causes of the flow of labor (worker) migration from Central Asian countries to Russia

The migration corridor between Russia and the countries of the Central Asia region is one of the most stable in the world. It was appeared with the collapse of the Soviet Union and has been accompanying the country since the emergence of Russia as an independent state. However, the nature of migration has undergone certain changes. In the 1990s, there was a huge influx of so-called forced migration to Russia from countries in which there was an unstable political situation, the oppression of certain ethnic groups, and civil wars, such as in Tajikistan. Also, in the

90s of the XX century, the majority of migrants were the Russian-speaking population, who returned, in fact, to their historical and cultural homeland. The huge flow of migrants after the collapse of the USSR caused the creation of the Federal Migration Service of Russia in 1992 and laid the foundation for the development of migration legislation that would somehow determine the status and rights of immigrants, in particular, one of the first laws passed in 1993 on refugees "And" On internally displaced persons. Currently, the Head Office for Migration of the Ministry of Internal Affairs of the Russian Federation, created by the decree of the President of the Russian Federation on April 5, 2016, is dealing with migration issues in the territory of the Russian Federation, as well as the fight against illegal migration.

Currently, the bulk of the migration flow is labor migration. Migrants from Central Asian countries provide Russia with labor resources for various sectors of the economy. In the republics of Central Asia, the decline in economic growth after the collapse of the Soviet Union with a rapidly growing population in the countries of this region led to unemployment and the depreciation of labor. The main factors stimulating labor migration are the difficult economic situation of Central Asian countries, the widening gap in living standards from other countries, unclear prospects for the development of the region's economy, and the low average monthly wage, according to data provided by the CIS Interstate Statistical Committee.

The main source countries for the flow of labor migrants to the Russian Federation from the Central Asian region are Tajikistan, Uzbekistan, and Kyrgyzstan.

According to some estimates, from 2.5 to 4.3 million people or 10-15% of the economically active population of Central Asia take part in labor migration annually. Given the significant volume of migration, the political, demographic, and economic consequences for both sides that it entails cannot be ignored. In this paper, more attention is paid to the consequences of migration for Russia as a host country.

In the 1990-2010s, a decrease in the population, including the able-bodied population, caused an exacerbation of the labor shortage in Russia. Together with the factor of increasing unemployment in Central Asia, this has led to increased labor migration. We can say that labor migration from Central Asian countries to Russia is mutually beneficial from the demographic issue. Russia has long been in a state of demographic crisis, and the influx of migrants to some extent compensated for the ever-decreasing population. And for states such as Uzbekistan, Tajikistan, and Kyrgyzstan, whose population has doubled since the collapse of the USSR, in turn, the migration of a part of the able-bodied population to Russia is a means of getting rid of an excess of the population in conditions of a lack of jobs.

Problems of legal regulation of the status of migrant workers from Central Asia in the Russian Federation

The problems of determining the legal status of migrant workers are currently being actively discussed by both scholars and practitioners. Disputes are conducted, first of all, about the specific content of the legal status of this category of migrants. Unfortunately, there is still no consensus on what are the features of the legal status of migrant workers about other categories of the population, which allows us to talk about the need to highlight a special legal status.

The legal status of an individual is a basic category based on which the concretization of rights and obligations concerning certain groups of the population takes place.

Based on the division of the legal status of the individual into general, generic, and species, the concept of generic legal status should be used about migrants. "The special or generic status reflects the particularities of the situation of certain categories of citizens. These strata, groups, based on the general constitutional status of a citizen, may have their specifics, additional rights, obligations, and privileges provided for by current legislation."

The legal status of a migrant worker is not formally fixed in the legislation of the Russian Federation. Given the foregoing, we can only talk about the international legal status of migrant workers (Russia is a party to the Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers of April 15, 1994, as well as some bilateral agreements on the social protection of migrant workers). Speaking about the peculiarities

of the legal status of certain categories of migrants, it is necessary to mention the problem of determining the legal status of so-called “illegal” or “illegal” migrants, that is, persons who arrived or are in the Russian Federation in violation of the rules of entry or stay. In some sources, they are called persons with unresolved legal status.

Two main approaches to determining the legal status of this category of migrants can be distinguished. According to the first of them, persons who arrived or are in the territory of the Russian Federation in violation of the established procedure are outside the legal field. Based on the second approach, they still have rights and obligations, with certain exceptions.

Persons arriving or staying on the territory of the Russian Federation in violation of the established procedure have a set of universal rights, freedoms, and obligations enshrined in international law, as well as the rights and freedoms contained in the Constitution of the Russian Federation and other regulatory legal acts that apply to each person.

Following Art. 17 of the Constitution of the Russian Federation in the Russian Federation the rights and freedoms of human and citizen are recognized and guaranteed by generally recognized principles and norms of international law and per this Constitution. Fundamental human rights and freedoms are inalienable and belong to everyone from birth. Therefore, the thesis that illegal migrants are outside the legal field is highly

controversial. The problem is that migrant workers, without obtaining the appropriate legal status, will not be able to realize the additional rights and freedoms that belong to the following international law and national law. Also, in case of confirmation of a violation of the order of entry or stay on the territory of the state, a person can be expelled from it.

At the same time, Russia is making attempts to optimize the model of profitable economic regulation of migration to replenish the affected budget from American and European sanctions, and the fall in oil prices from additional sources. For example, in January 2015, amendments were introduced to the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation". Article 13.3 of the above law establishes patents for all labor migrants from the countries of the Commonwealth of Independent States (CIS).[6] Only foreign citizens who have arrived in the Russian Federation in a manner that does not require a visa can receive a patent following international agreements concluded by the Russian Federation.

For citizens of other countries with whom the Russian Federation has concluded agreements on visa-free travel, restrictions on the implementation of labor activities apply.

[6] Federal Law N 115-FL (as amended on April 24, 2020) "On the Legal Status of Foreign Citizens in the Russian Federationhttp://www.consultant.ru/document/cons_doc_LAW_37868/78903dca1f0ac1f3abc08d2f8cd1c0e2fddc826b/ accessed 25, march 2020

Citizens of the Member States of the Eurasian Economic Union (EAEU), following Article 97 of the Treaty on the Eurasian Economic Union (05/29/2014 as amended on 05/08/2015), a patent is not required. Only Kyrgyzstan falls into this category from the countries of Central Asia.[7] Turkmenistan, Tajikistan, and Uzbekistan are not members of the EAEU, and these states, especially Tajikistan and Uzbekistan, where the most migrant workers, will have to carry out their activities based on a patent. This bureaucratic procedure makes labor migrants or employers pay a certain amount from the established salary to obtain a work permit monthly, which worsens the already difficult situation of labor migrants.

As an example, in August 2016, the volume of tax revenues from the income of individuals from migrants living in Moscow amounted to 6.8 billion rubles, which was more than double the income tax from oil companies registered in Moscow. The profit obtained after switching to labor patents allowed the creation of a multifunctional round-the-clock migration-center in the Moscow region, the presence of which allows centralizing the passage of bureaucratic procedures by migrants.

Despite the income that the Russian Federation (RF) receives from migrant workers in its budget, not all labor migration is legal

[7] "Treaty on the Eurasian Economic Union" (Signed in Astana May 29, 2014) (as amended on March15,2018)http://www.consultant.ru/document/cons_doc_LAW_163855/fcf2c38d3616dbe10077fe0638a3c0583855f5cd/ accessed 18, march 2020

due to additional taxes in the form of a patent, and unnecessary bureaucratic procedures that complicate the situation of labor migrants from Central Asia who receive times fewer wages for the same job than citizens of the Russian Federation. Thus, some labor migrants are not registered with the relevant migration control authorities of the constituent entities of the Russian Federation, they also do not have the necessary registration in the databases, and being employed by private entrepreneurs on illegal grounds, they cannot defend their interests in a legal way against illegal actions of the employer.

Therefore, such an attitude towards migrant workers is the reason for the emergence of stereotypes and prejudices towards migrants of a certain origin and, as a result, the negative perception of migration from Central Asian countries by Russian society.

Conclusion

The 1990 UN Convention on Migrant Workers includes most of the basic provisions of the ILO Conventions and, in some cases, goes beyond them. This Convention and ILO Conventions No. 97 and No. 143 may, therefore, be regarded as complementary. The ILO and UN act directly related to migrant workers have common goals: to promote the implementation of the rights and protection of migrants to get a job, to restrain, and, ultimately, eliminate illegal migration.

An important aspect of the UN Convention is the fact that the states that have ratified it do not have the right to exclude any

category of migrant workers from the scope of its application (Article 88).

In the Russian Federation, many labor conventions with the ILO have been ratified (a total of 73 conventions have been ratified (53 are in force, 20 are denounced), but the main conventions of the ILO (No. 97 and No. 143) and the UN ("on the Rights of Labor Migrants" 1990) relate on the situation of migrant workers was ignored. Thus, the migrant workers of Central Asia (especially citizens of Tajikistan and Uzbekistan) are in a very vulnerable position and their basic rights can not only be easily respected, but additional taxes are imposed on a par with private entrepreneurs.

In the era of the COVID-19 pandemic, where organizations and institutions are closing down, the world economy is experiencing great difficulties, the private sector is suffering, small and medium-sized businesses are at the bankruptcy stage, of course, no less, and even in this case Central Asian migrant workers suffer more, who were being in a vulnerable position in normal times. For example, during quarantine, their activities are forced to cease, and they, having no sources of income, must pay a monthly fixed amount for the patent.

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