The Legal Regulation of Migration: International and National Experience

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Abstract: Currently, many countries are faced with the processes of migration. This phenomenon is considered as one of the consequences of globalization, representing a world process and clearly requires international legal settlement. This article discusses the legal regulation of migration policies at the international level. Also some problems of regulation of migration policies in the Republic of Kazakhstan. Concluded that in most countries there is a tough immigration policy. Investigated elements of immigration policy. We prove that the mechanism for implementing migration policy includes both attracting and restrictive means. Considered typical workarounds immigration legislation. Studied system of migration legislation of the Republic of Kazakhstan. Concluded the need to further improve the legal framework for the successful implementation of Kazakhstan's migration policy. Research objectives are: a comprehensive study of the specifics of the legal regulation of migration in the European Union, excluding the migration of refugees and other forced migrants, consideration of theoretical and practical problems associated with the implementation of migration of legal documents of the European Union, as well as the development of scientific and practical recommendations proposals in relation to the chosen topic.

Key words: Migration in Kazakhstan • Regulation • International law • Enforcement measures

INTRODUCTION

Migration policy of Kazakhstan is part of the state's foreign and domestic policy and its implementation is one of the priorities of the state. Migration affects many aspects of society, as a social, economic, foreign trade, demographic development and the national security of the Republic of Kazakhstan.

Despite active development in recent years of immigration legislation, migration law has not yet emerged as an independent branch of law. Gradually the process of forming a branch of the national legislation as "Migration Law" [1]. According to Yu. Tikhomirov, the industry "reflects the complex processes in the field of migration relations and, of course, has a complex character". The support layer" system regulation is the principles and norms of international law, including acts of international organizations and intergovernmental organizations, as well as international migration institutions" [2].

Legislation regulating relations in the field of migration, in addition to constitutional, administrative, administrative and procedural law and also contained in the employment, housing and family subject to joint management of the Republic of Kazakhstan and its subjects [3].

The sources of immigration law, in addition to laws and other normative - legal acts, regulations, court decisions should include, domestic contracts and agreements normative nature, international treaties of the Republic of Kazakhstan. Kazakhstan today joined almost all international instruments on human rights, as well as to the legal acts regulating relations in the sphere of migration and universally recognized norms of international law.

In this situation it is necessary to the definition of the main goals of demographic and migration policy and development in the context of socio-economic development of the Republic of Kazakhstan for the long
term. A national program of population is a practical realization of the right of the Republic of Kazakhstan as a sovereign state under its laws and in accordance with international standards of human rights.

Multiethnic population of the Republic of Kazakhstan presented more than a hundred nationalities. Under the influence of intense demographic processes and especially migration in population structure has undergone substantial changes. They, in turn, have an impact on the dynamics and structure of the national population, which also requires the study of the processes, identifying the main trends and forecast evaluation. This is important for maintaining civil harmony and stability in international relations. To this end, the development and introduction of the concept of population policy as an integral part of socio-economic policy of the Republic of Kazakhstan population and development programs, which should be clearly stated main objectives and implementation mechanism. A concept of population development must be closely linked with the concept of migration policies to realize the right of every citizen to freedom of residence and work, as well as out, the concept of full and productive employment.

Hypothesis of the study. On the basis of the author's analysis of the current foreign policy of migration, their international legal norms is possible to a certain extent, to formulate the basic conditions of a relative political stability during the transition period, to recognize the priority of international law over national law in the field of migration policy. The essence of the author's conception is that the combination of orientation on the universal values of democracy with domestic traditionalism help solve the main problems of immigration and emigration, which under reasonable control will have a positive impact on domestic economic and demographic development of Kazakhstan.

The Elements of Immigration Policy: In most countries that are recipient countries, there is a tough immigration policy, which includes the following elements:

- The quota system, to limit migration flows [4];
- Quality selection system, in order to attract the most profitable part of the state workers;
- System preferences and privileges for certain applicants for the same purpose;
- Policies aimed at family reunification [5];
- System privileges and restrictions aimed at regulating the seasonal labor, health, tourism and migration for education [6];
- Special visas for migrants who commit certain investments in the country's economy;
- Lottery system for an indefinite circle of migrants;
- Amnesty program for immigrants living illegally in the country [7].

These elements in a given volume form the basis of the mechanism of implementation of migration policy and are included in it, depending on the quantity and quality of potential migrants.

Requests for permission to enter the country, as a rule, can be made at the embassies of the host country or at points of entry into the host country.

Applications for immigration of asylum seekers, sometimes handled host country officials in the country of origin or third countries, in order to improve the verification of the data and to prevent illegal immigration.

Compulsory Measures: When implementing restrictive migration policies in some cases used coercive measures. These include the following.

- Special documentation system designed to thwart counterfeiters;
- Monitoring "carriers" such as airlines and trains;
- Border control by law enforcement agencies and special units;
- Electronic check the status of workers upon application for employment;
- Raids on jobs to find undocumented workers;
- Sanctions and penalties for employers who hire illegal workers;
- Deportation of illegal immigrants [8].

In the most attractive countries for migration (Israel, USA, Canada) migration policy is based on a "wide-open doors and strong borders", i.e. clearly defined who comes and what he will do.

Even more important are the various procedural constraints, which have a much stronger impact on the legal regulation of migration, rather than formal standards legislation. The way will be implemented provisions of immigration legislation in the field, often has a deterrent effect of legal and illegal immigrants.

Making formal requirements inconvenient and cumbersome for potential migrants, host countries may limit the applicants informally. For example, this can be achieved by making documents unnecessarily complicated, expensive or poorly translated, or by setting the requirement for submission of documents directly in the host country, or requiring documents that are not available in their country.
Procedural limitations also come into force when the customs or immigration officers not trained and can show excessive discretion in the case of individual applicants. However, most experts agree that restrictive policies and procedures are ineffective in curbing migration to developed countries. According to the Minister of Foreign Affairs of India, Paradoxically, the ability to control migration declined as the desire to migrate so increased [9].

Consequences of a Policy Restrictions: Interesting pattern is that any attempt to restrict certain kind of migration usually lead to an uncontrolled increase in other species. Thus, restrictions on economic migrants creates an increase in the number of refugees and asylum seekers and vice versa. Changes in family reunification policies create more increase labor migration and vice versa.

Perhaps most importantly, that any reduction in the legal framework for migration creates more illegal or irregular migrants. Curbing migration flows, whether economic or demographic, not weaken it and people who have the motivation, find any way to circumvent the restrictions.

With each new case of tightening immigration policy appear more ways to overcome it, for example:

- Employers and banks that profit from migrant labor and remittances have their lobbyists capable of influencing immigration policy, as well as to evade restrictions;
- Migrant and diaspora communities have great influence on political power, to the same unions lately cover an increasing number of migrants;
- Methods forgery improving all the time;
- Transportation of people spread international flights and weakening interregional boundaries, such as the EU, much simpler;
- In the age of high-tech information communication easier and cheaper than ever before. Immigrants already in the host country can stay in touch and inspire future migrants to change of residence;
- Many difficulties in the mechanism of regulation of migration work against its effectiveness: coordination of national, state and local laws and procedures often allows people to slip through the gaps in the legislation;

The Host Countries: The most popular destination countries in the world are largely democratic and liberal society, the protection of civil liberties supporters. For these countries, it becomes extremely difficult task of controlling the movement of people and employment, whereas totalitarian society could easily solve these problems.

In the main receiving countries such as the USA, Australia, Canada, UK, France and Germany, tend to attach great importance to civil rights. And the treatment of migrants examines data on the state's commitment to its democratic principles and ideals.

In addition, these countries, as the creators and supporters of international organizations are under great pressure from the international community in terms of compliance with international conventions and standards. For example, the Universal Declaration of Human Rights states that "everyone has the right to leave any country, including his own "and" Everyone has the right to seek and enjoy in other countries asylum from persecution" and the UN Protocol against the Smuggling of Migrants recognizes that "illegal migration itself is not a crime". In 2006, UN Secretary General Kofi Annan stated that "the worst effects (migration) occur after any efforts to combat it" [10]. In an attempt to control migration, the main destination countries are highly vulnerable to human rights defenders at the national and international levels.

In addition, some countries migration is seen as the surest and fastest way to solve demographic problems. These countries include Canada, Israel, Germany and from the countries of the former Soviet Union to a greater extent, Kazakhstan and Russia. The special features of these countries migration policies include a large proportion of repatriation. This is due, primarily, historical background. Since the former Soviet Union there are significant numbers of ethnic Germans, Israel collects Jews scattered around the world; Russia attracts Russian compatriots from across the former Soviet Union; Kazakhstan, in the presence of a vast territory, has a very low density of population and about a third of the representatives of the titular ethnic group from outside of the historic territory.

The presence of ethnic and cultural factors in enhancing the migration activity of the population due to people's desire for consolidation of nations within the historic territories. The majority of workers returning to the present period of their historical homeland (primarily in Germany, Israel, Russia, Kazakhstan), dominated by the socio-cultural and ethno-cultural values and they largely determine the mobility of Germans, Jews, Russian and Kazakh.

And this is not an exhaustive list of reasons for migration mobility. Developed countries are facing a serious crisis of population. In EU countries, fertility has fallen below replacement level (calculated at 2.1 births per woman), which shows a significant decline in population in the coming years [11].
Demographic Challenges and Migration: Population Reference Bureau estimates that the average woman in the developed countries have an average of only 1.6 children [12].

In addition, the number of population in some countries in the coming years will be reduced and changing age structure. With increasing life expectancy and falling birth rates as a consequence of an aging population.

The situation is different in developing countries. The total fertility rate for women in the fifty least developed countries is 4.7, well above the replacement rate. And life expectancy in these countries is significantly lower, which means a surplus of working age in the regions where there is a shortage of jobs [12].

It would seem that these diverging trends provide an ideal opportunity for developed and developing countries in the context of migration from developing to developed countries.

Migrants could make up the shortfall population take up jobs.

Without migration, the developed countries will have to extend the retirement age to 75 years of age or sharply upgrade their systems of social security, to make it through the backlog. Migration solves this problem.

Nevertheless, in the long run, the following factors:

- The number of immigrants needed to stabilize the current population in Europe, can reach up to one million people a year. European countries are not able to support as many migrants;
- In each generation growing up in the host country, immigrant families tend to have fewer children, second and third generation immigrants even less. This means that fewer children, more elderly immigrants, as well as among the indigenous population;
- There is a risk of the prevalence of the number of migrants over the amount of the indigenous population.

Migration Situation in Kazakhstan: These problems are not related to current and future situation in the Republic of Kazakhstan. Migration within and on the borders of the Republic of Kazakhstan - an objective process. This is due to the unique geographical position of the country through which for centuries transit route from Europe to Asia and back. Modern trends forced to look at migration as a forced flow, arising from the enormous differences in the economic situation in Kazakhstan and neighboring states.

Most of the migrants from neighboring countries goes to Kazakhstan in search of work, which has a positive impact on the economic condition, providing migrants with jobs.

Another part of the so-called "transients", whose primary goal - to travel abroad.

Lately, there is another category of causing great anxiety - migrants, under which masked extremists and terrorists.

Illegal migration is perceived by the Kazakh authorities as a threat to national security. Therefore, the migration policy of the Republic of Kazakhstan the main space is devoted to strengthening border security system.

However, analysis of the phenomenon under study in the Republic of Kazakhstan shows that the measures taken to strengthen border security are often not effective.

In such a situation rendered meaningless huge release funds for the resettlement of the Republic of Kazakhstan borders with further fencing off from neighboring states. However, this statement does not imply that the Kazakh leadership should refuse to strengthen the border line. State likely need to review the current approach to migration policy, based on the actual state of affairs.

So, if the international community will continue to respond poorly to transit migration from the Republic of Kazakhstan, the Kazakh leadership should consider whether to continue to spend money on their capture and deportation, even though most of them do not have the goal of settling in the country. Moreover, the Kazakh leadership, you may want to simplify the procedure of crossing the border of Kazakhstan, or create a special document for residents of border regions, which would allow us to move freely in both directions. However, it is clear that even with the successful implementation of all available options, the Republic of Kazakhstan will be difficult to deal with alone. In this sense, the Russian Federation, which is more interested in reducing illegal migration flows from Kazakhstan, can contribute to the country in addressing the issue under study.

CONCLUSION

Thus, migration as a process of movement of citizens is now becoming widespread. In the world of an increase in illegal migration. This process is concerned about all states. In this regard, there is need for tough immigration policy. National migration laws are in line with international standards. This also applies to the laws of the Republic of Kazakhstan.
In Kazakhstan, the further improvement in the legal regulation of migration includes harmonization of migration legislation, the establishment of working closely relevant departments to coordinate the problem of illegal migration, as well as the establishment of a single information center where would contain data about all matters related to illegal migration. For its part, believe that it is necessary to qualitative improvement of the legislative framework for the successful implementation of the Republic of Kazakhstan migration policy.

REFERENCES

11. Used in this paper are taken from the demographic data: World Population Data Sheet. 2006 Population Reference Bureau.