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PROSPECTS OF UKRAINE IN DEVELOPING THE LEGAL AND REGULATORY FRAMEWORK FOR LABOUR MIGRANTS' RIGHTS

Abstract. Purpose. Prospects of Ukraine in developing the legal and regulatory framework for labour migrants' rights. **Results.** The article focuses on the need to ratify a number of international legal instruments in the field of labour migration. As a normative source, the author uses the Recommendations of the parliamentary hearings on "Ukrainian labour migration: State, problems and ways to solve them" of 5 November 2013, which clearly outlines the international acts that are waiting for their enforcement. The purpose of the article is to reveal the key aspects of these treaties and, thus, to substantiate and focus on the need for their ratification in Ukraine. It is clarified that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a kind of "Constitution" for migrant workers and members of their families. Moreover, it requires States to take measures to prevent irregular movement as well as to employ migrants in crisis. The Convention also emphasises that the fundamental rights of irregular migrants shall also be guaranteed. Therefore, Ukraine's delay in signing the Convention puts labour migrants in a discriminatory position in relation to those migrants who come from countries that have ratified it. In this context, it is important for the Cabinet of Ministers of Ukraine to at least intensify negotiations with recipient countries of Ukrainian labour migrants with whom agreements have not been concluded to regulate employment and social protection of labour migrants. Only under such conditions Ukraine can guarantee labour migrants certain protection and support abroad. **Conclusions.** It is concluded that international legal framework for external labour migration, with due regard to the analysis of the above sources, is limited to the settlement of the following main issues: liberalisation and simplification of existing labour migration flows; levelling excessive bureaucracy, optimisation of the process of movement across State borders; balancing the interests of the parties; ensuring a regime that is as acceptable as possible for labour migrants and their families; strategic planning of migration flows; reducing the rate of illegal migration. Therefore, international standards are both instruments of administrative and legal framework for labour migration and the basis for the legal status of labour migrants.

Key words: labour migrants, protection of rights, legal status, ratification, interaction.

1. Introduction

Issues related to the protection of the rights of migrant workers and their families have been relevant since the foundation of the United Nations. In general, to date, the international community has done a tremendous amount of work in this area: a huge number of international, regional and national legal instruments have been adopted, relevant institutions have been established, and cooperation is underway.

Unfortunately, not all states are ready to join this work. The reasons for this inaction can vary from weak economic development to internal and external conflicts and the unwillingness of the state to cooperate.

Ukraine strives to develop in this direction. A number of international treaties have been ratified, but it is also worth noting that many issues remain open. For example, the Recommendations of the parliamentary hearings on "Ukrain-

ian labour migration: State, problems and ways to solve them" of 5 November 2013 emphasises the importance of ratification of the following Conventions: 1) Migration for Employment Convention (No. 97); 2) Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers; 3) Maintenance of Social Security Rights Convention (No. 157); 4) ILO Private Employment Agencies Convention (No. 181); 5) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, adopted by UN General Assembly Resolution 45/178. This need is due to the need to ensure full protection of human, economic, professional, social and other interests and rights of Ukrainian labour migrants and their families. Therefore, the purpose of the article is to reveal the key aspects of these treaties and, thus, to substantiate and focus on the need for their ratification in our country.

External labour migration is a fairly widespread phenomenon that has been studied by many scholars, such as K. Levchenko, I. Harna-Ivanova, S. Husarov, Ye. Malyshev, M. Azarov, O. Bandurka, O. Vostroknutova, Ye. Nikiforova, O. Sazonova, Ye. Malynovska and a number of others. We will try to continue this chain of scientific activities so that public policy on external labour migration can reach a new level of development.

2. Main non-ratified international conventions regulating the rights of labour migrants

In our opinion, we should begin to characterise and substantiate the fundamental provisions of the non-ratified treaties with the Migration for Employment Convention. Its key requirements are as follows:

- Maintain an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information or make sure that such service already exists in its country;

- Facilitate the departure, journey and reception of migrants for employment.;

- Maintain, within its jurisdiction, appropriate medical services responsible for: 1) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health; 2) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination;

- Apply, without discrimination in respect of nationality, race, religion or sex, to immi-

grants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals.

In addition, Convention 97 contains amendments to: 1) recruitment, introduction and placing of migrants for employment who are recruited otherwise than under Government-sponsored arrangements for group transfer; 2) recruitment, introduction and placing of migrants for employment who are recruited under Government-sponsored arrangements for group transfer (Migration for Employment Convention, 1975).

Provisions of Convention (No. 143) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers are aimed at suppressing clandestine movements of migrants for employment and illegal employment of migrants, and as well as at ensuring equal rights, opportunities and decent treatment of migrants' labour, social security, etc. according to Article 12 of the Convention, each Member shall, by methods appropriate to national conditions and practice: 1) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in this Convention; 2) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy; 3) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection; 4) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy; 5) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment; 6) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue; 7) guarantee equality of treatment, with regard to working conditions, for all

migrant workers who perform the same activity whatever might be the particular conditions of their employment (Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, 1975).

Furthermore, the Convention provides for a number of other requirements for states that have ratified it, which is one of the reasons why Ukraine has been delaying its signing.

Maintenance of Social Security Rights Convention (No. 157) has been ratified by the smallest number of states to date. However, it refers to a number of important proposals to preserve the rights of migrant workers in the field of social security. These include: 1) medical care; 2) sickness benefit; 3) maternity benefit; 4) invalidity benefit; 5) old-age benefit; 6) survivors' benefit; 7) employment injury benefit, namely benefit in respect of occupational injuries and diseases; 8) unemployment benefit; 9) family benefit (Maintenance of Social Security Rights Convention, 1986).

The provisions of the Private Employment Agencies Convention (No. 181) of 19 June 1997, which are also awaiting ratification by Ukraine, are equally important. This Convention guarantees the protection of the rights of labour migrants from various abuses concerning the activities of private employment agencies. It underlines that in order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability. Furthermore, the processing of personal data of workers by private employment agencies shall be, first, done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice; second, limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information (Private Employment Agencies Convention, 1997). In addition, Private Employment Agencies Recommendation (No.188) provides for that Private employment agencies should not knowingly recruit, place or employ workers for jobs involving unacceptable hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind, as well as should inform migrant workers, as far as possible in their own language or in a language with which they are familiar, of the nature of the position offered and the applicable terms and conditions of employment. Moreover, Pri-

vate employment agencies should be prohibited from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction, social origin, ethnic origin, disability, marital or family status, sexual orientation or membership of a workers' organisation (Private Employment Agencies Recommendation, 1997).

3. Recommendations of the parliamentary hearings as a promising basis for further regulatory and legal improvements in regulating the rights of labour migrants

Furthermore, Recommendations of the parliamentary hearings on the topic: "Ukrainian labour migration: State, problems and ways to solve them" focus on the need for the Cabinet of Ministers of Ukraine to take steps to sign and ratify International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990. The Convention was adopted by UN General Assembly Resolution 45/178 (On the Recommendations of the parliamentary hearings on the topic: "Ukrainian labour migration: State, problems and ways to solve them": Resolution of the Verkhovna Rada of Ukraine, 2013). This Convention provides a rather extensive classification of labour migrants but it shall not apply to: 1) persons, whose admission and status are regulated by general international law or by specific international agreements or conventions; 2) persons who participate in development programmes and other co-operation programmes, whose admission and status are regulated by a specific agreement and who, in accordance with that agreement, are not considered migrant workers; 3) persons taking up residence in a State different from their State of origin as investors; 4) refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned; 5) students and trainees; 6) seafarers and workers on an offshore installation who have not been admitted taking up residence and engage in a remunerated activity in the State of employment (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990). Furthermore, the Convention prohibits discrimination against the rights of labour migrants, and a wide range of rights are guaranteed to them and their family members, including the right to free movement, the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the prohibition of slavery or forced labour, the right to freedom of thought, the right to privacy

and family life, the right to property, the right to humane treatment and respect for one's personality, the prohibition of collective expulsion, the right to recognition of the legal personality of a labour migrant and his/her family members, the right to social protection and a number of other vital opportunities.

According to this Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: 1) access to educational institutions and services; 2) access to vocational guidance and placement services; 3) access to vocational training and retraining facilities and institutions; 4) access to housing, including social housing schemes, and protection against exploitation in respect of rents; 5) access to social and health services, provided that the requirements for participation in the respective schemes are met; 6) access to co-operatives and enterprises, which shall be subject to the rules and regulations of the bodies concerned; 7) access to and participation in cultural life (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

In other words, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a kind of "Constitution" for migrant workers and members of their families. Moreover, it requires States to take measures to prevent irregular movement as well as to employ migrants in crisis. The Convention also emphasises that the fundamental rights of irregular migrants shall also be guaranteed. Therefore, Ukraine's delay in signing the Convention puts labour migrants in a discriminatory position in relation to those migrants who come from countries that have ratified it. In this context, it is important for the Cabinet of Ministers of Ukraine to at least intensify negotiations with recipient countries of Ukrainian labour migrants with whom agreements have not been concluded to regulate employment and social protection of labour migrants. Only under such conditions Ukraine can guarantee labour migrants certain protection and support abroad.

4. Conclusions

In general, the international legal framework for external labour migration, with due regard to the analysis of the above sources, is limited to the settlement of the following main issues:

- Liberalisation and simplification of existing labour migration flows;
- Levelling excessive bureaucracy, optimisation of the process of movement across State borders;
- Balancing the interests of the parties;

- Ensuring a regime that is as acceptable as possible for labour migrants and their families;
- Strategic planning of migration flows;
- reducing the rate of illegal migration.

Therefore, international standards are both instruments of administrative and legal framework for labour migration and the basis for the legal status of labour migrants.

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ПЕРСПЕКТИВИ УКРАЇНИ У РОЗВИТКУ НОРМАТИВНО-ПРАВОВИХ РЕГУЛЮВАННЯ ПРАВ ТРУДОВИХ МІГРАНТІВ

Анотація. Мета. Перспективи України у розвитку нормативно-правових регулювання прав трудових мігрантів. Результати. Стаття зосереджена на питаннях про необхідність ратифікації низки міжнародно-правових актів у сфері трудової міграції. Як нормативне джерело використовувалися Рекомендації парламентських слухань на тему: «Українська трудова міграція: стан, проблеми та шляхи їх вирішення» від 5 листопада 2013 року, де чітко прописувалися міжнародні акти, які чекають на свою правозастосовну долю. Мета статті полягала в тому, щоб відобразити ключові аспекти цих договорів і, таким чином, обґрунтувати та акцентувати увагу на необхідності їхньої ратифікації в Україні. З'ясовано, що Міжнародна конвенція про захист прав усіх трудящих-мігрантів та членів їх сімей виступає своєрідною «Конституцією» для трудових мігрантів та членів їх сімей. Більше того, вона вимагає від держав вжити заходів для запобігання незаконному переміщенню, а також працевлаштуванню мігрантів у кризовій ситуації. Конвенція також наголошує, що основні права нелегальних мігрантів також повинні гарантовано виконуватися. Тому зволікання України у її підписанні ставить трудових мігрантів у дискримінаційне становище стосовно тих мігрантів, які прибули з країн, що її ратифікували. За таких умов Кабінету Міністрів України важливо щонайменше активізувати переговорний процес із країнами-реципієнтами українських трудових мігрантів, угоди з якими не укладені, щодо врегулювання питань працевлаштування та соціального захисту трудових мігрантів. Лише за таких умов Україна може гарантувати трудовим мігрантам певний захист та підтримку за кордоном. **Висновки.** Зроблено висновок, що міжнародно-правове забезпечення зовнішньої трудової міграції, виходячи з аналізу наведених джерел, зводиться до врегулювання таких основних питань: лібералізація та спрощення існуючих потоків трудової міграції; нівелювання надмірної бюрократії, оптимізація процесу переміщення через державні кордони; забезпечення балансу інтересів сторін; забезпечення режиму максимально прийняттого для трудових мігрантів та членів їхніх сімей; стратегічне планування міграційних потоків; зниження показників нелегальної міграції. Таким чином, міжнародні стандарти виступають одночасно і інструментами адміністративно-правового забезпечення трудової міграції та основою правового статусу трудового мігранта.

Ключові слова: трудові мігранти, захист прав, правовий статус, ратифікація, взаємодія.

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