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Labour migration and forced labour in the context of economic integration: new challenges and realities: statement of the problem

Annotation

Main problem: The main idea of this study is the development of proposals for improving the legislation of the Republic of Kazakhstan, as well as the regulatory framework of the Eurasian Economic Union, taking into account the experience of the European Union countries (as the largest integration association), towards the further development of the legal framework for cooperation in the social-labor sphere, as well as improving the integration and migration policy of the Eurasian Economic Union countries in general, and the Republic of Kazakhstan, in particular.

In addition, this study intends to develop practical recommendations aimed at improving the activities of the law enforcement agencies of the Republic of Kazakhstan, as well as the EAEU countries, in the field of combating illegal migration and forced labor on the territory of this integration association. Moreover, this project suggests the legal promotion of the results obtained, both on the territory of the EAEU and beyond.

Purpose: The aim of the study. To develop proposals for improving the legislation of the Republic of Kazakhstan and the EAEU countries in the field of legal regulation of labour migration and counteracting its negative consequences such as illegal migration, forced labour in the territory of this integration association.

Methods: The methodological basis of the study is made up of traditional general scientific and special legal methods used in comparative jurisprudence: system-structural, historical-legal, social-legal and comparative-legal.

Results and their significance: All of the above testifies to the relevance and necessity of research in the framework of this study, since its implementation, taking into account the expected results, will further improve the regulatory framework in the field of combating illegal migration, human trafficking and other illegal manifestations resulting from insufficient regulation of the labour migration sphere.

Key words: legal regulation of labour, labour migration, forced labour, economic integration, human trafficking, organized crime.

Introduction

After the collapse of the USSR, the post-Soviet states have embarked on the path of their sovereign development, and pragmatically seek the most acceptable ways to capitalize on the globalization that they have entered. Upon opening to the rest of the world, the post-Soviet space remains closely interconnected in the economic and social context. Visa-free movement of the population between most of the former Soviet republics is a “natural” and humane migration regime for the space in which families, relatives and compatriots – people who lived in one country called the USSR – were separated by state borders. At the same time, the countries of the region demonstrate significant differences in the rates of economic development, GDP per capita, poverty level and economic opportunities of their citizens [1]. The growing role of socio-economic factors in determining the nature and intensity of migration flows, including the expansion of short-term, labour and undocumented migration [2] is especially pronounced in the territory of the former USSR.

Over time, the former post-Soviet states, bound by centuries-long history and ties, following global trends, directed their efforts towards economic integration, creating the Eurasian Economic Union (hereinafter – the EAEU). The creation of integration associations of states in various regions of the world is associated with the problems of the world community, which has entered a long period of globalization when the ability of nation-states to ensure their sustainable social-economic development and security is objectively reduced, and they cannot be independently resolved by one state. At the same time, scientific justification of new approaches to the joint actions of the member states of integration associations is required, including the Eurasian integration, which may result in the use and development of the competitive advantages of the EAEU member states to ensure their continued sustainable development and security in qualitatively new conditions.

Materials and methods

The methodological basis of the study is made up of traditional general scientific and special legal methods used in comparative jurisprudence: system-structural, historical-legal, social-legal and comparative-legal.

The systemic-structural approach will make it possible to form a holistic view of labor migration as a social phenomenon, and to identify the multiplicity of connections between its components and combine them into a single theoretical system. For this purpose, the very essence of the research subject will be investigated, furthermore, the main social and legal factors that determine the imperfection of labor migration legal regulation and the associated negative consequences.

The use of historical and legal analysis directly follows from the need to study the history of the formation and development of labor migration as a social phenomenon, as well as such negative consequences of its insufficient legal regulation as forced labor and human trafficking. In addition, the use of the historical and legal research method will reveal the characteristic features and disadvantages of the protection of social and labor rights in Kazakhstan and abroad in a historical retrospective.

The sociological and legal method will allow the research group members to analyze the current state of legal regulation of labor migration in the Republic of Kazakhstan and the EAEU countries applying sociological methods used in law. In this case, the following sociological methods will be used, such as: a survey, questionnaires, interviews, an expert question, etc. In this case, it is planned to study such target groups as: labor migrants, potential employers using migrant labor, government agencies, non-governmental organizations, as well as law enforcement agencies representatives involved in combating crime in the field of organizing labor migration and human trafficking.

The comparative legal method will make it possible to analyze foreign experience in the legal regulation of labor migration, countering forced labor and human trafficking (both in the countries of the former USSR and in the EU countries), as well as to study the features of the implementation and protection of the social and labor rights of labor migrants and compare it with application practice in Kazakhstan. All of the above will contribute to the development of a mechanism for cooperation between the EAEU member states in the field of legal regulation of labor migration. In addition, the borrowing of the positive experience of foreign states in this area (especially the EU countries) will be used in the development of the draft Law of the Republic of Kazakhstan "On Labor Migration".

The area of legal support for the cooperation of the EAEU member states in the social and labour sphere requires such a methodological approach to its implementation, in which all regulatory legal acts adopted in this field must undergo mandatory examination for compliance with international agreements and obligations of the Republic of Kazakhstan of the relevant draft laws to exclude the autonomous development of the social and labour legislation of the Republic of Kazakhstan without taking into account its international obligations.

Results

One of the problems that arose on the territory of the EAEU is the problem of migration, including labour migration, as well as the problems of its legal regulation, both within the national legislation and the international legal acts of the EAEU.

It should be noted that the problem of labour migration and the rights of migrants is typical and relevant for the whole world community, which has entered the globalization and economic integration processes. According to international experts, globally, there are 258 million international migrants [3].

Both historically and at present, migration is determined by the economy. One of the famous laws of migration of Ravenstein was formulated as follows: "Economic factors are the main cause of migration" [4].

According to experts of the UN Economic and Social Commission for Asia and the Pacific (UN ESCAP), labour migration is dynamic and constantly growing... Variable rates of economic growth, deepening regional integration and growing inequality in welfare both within and between countries create powerful incentives to move workers across borders [5].

Today, the agenda of the world community includes the issues of legalizing the migrants' labour, protecting their legal rights, and forming a regulatory framework in the member states retirement systems. The real situation of the citizens of our countries, the ability to freely work in any country in the world as a whole, and the EAEU, in particular, largely depend on the solution of these problems. Thus, UN experts note that "...illegal migration creates many problems, both for states and migrants. This can lead to migrants being exposed to various forms of exploitation, forced labour and human trafficking..." [6].

Around 10 years have passed since the creation of the Customs Union in 2010, that grew into the EAEU later in 2014. During this period, the EAEU included five states (the Republic of Kazakhstan, the Russian Federation, the Republic of Belarus, the Kyrgyz Republic, the Republic of Armenia) with a total population of about 184 million people. At the same time, the participating countries have accumulated considerable experience in the economic and foreign policy cooperation and coordination in the social and labour sphere. The EAEU member states not only achieved positive results in the field of economic, labour and foreign policy integration but also faced several important, previously little-known problems that have now become topical.

Thus, the "open borders" and the lack of a proper regulatory framework for migrant labour within the EAEU, entailed a significant increase in violation of migration laws, as well as the facts of forced labour and human trafficking within the EAEU, especially concerning the environment of labour migrants. It is noteworthy that the economic development of the EAEU countries is relatively different, which is why some participating countries with a higher level of economic development are "recipients" of labour migrants (the Republic of Kazakhstan, the Russian Federation), and others are "suppliers" (Kyrgyz Republic).

Additionally, many states – the main suppliers of labour migrants to the EAEU, are planning their further entry into the EAEU, being in the status of an observer country, such as the Republic of Moldova [7], or are moving to join as observer countries, for example, the Republic of Uzbekistan [8] and the Republic of Tajikistan [9]. As a result, soon, provided that new members join in, the population of the EAEU can reach 230 million people. These factors inevitably indicate that the flow of labour migration within the EAEU will inevitably grow shortly.

Currently, labour migration in the territory of the EAEU is quite spontaneous, since, despite the relative settlement, it needs further legal regulation both within the EAEU and the national legislation of the Republic of Kazakhstan. Uncontrolled labour migration contributes to the growth of such criminal manifestations as illegal migration, human trafficking, the growth of mercenary and violent crimes of migrants in the territory of the EAEU countries.

Discussion

Recent studies of unregulated population migration indicate that illegal migration for labour and other purposes, including from Asian countries, is currently growing, which requires attention from regional politicians. In recent decades, there has also been an increase in the criminalization of migration in the form of lucrative human capital – human trafficking [10].

All of the above necessitates a comprehensive study and consideration of the issues of labour migration as a social phenomenon in the EAEU, the study of methods and techniques for its settlement, as well as methods and forms of counteracting its negative consequences such as illegal migration, forced labour and human trafficking. Additionally, it is necessary to develop recommendations for improving the legislation of the Republic of Kazakhstan in this area, as well as a comprehensive strategy against its negative consequences.

Currently, in the Republic of Kazakhstan, there are no special comprehensive studies devoted to the study of the legal regulation of labour migration and counteraction to its negative consequences within the framework of the EAEU. There are only a few works (Bekmagambetov and Boretskiy [11; 12], partially devoted to this issue, namely, combating human trafficking in the Republic of Kazakhstan. At the same time, there are no studies regarding legal problems of regulation, both migration in general and labour migration, in particular, in Kazakhstan at the moment.

There are no comprehensive studies of the theoretical and practical foundations of integration in the social and labour sphere in the modern period in the Eurasian (post-Soviet) space. Scientific sources reflect the results of the analysis of only certain issues of legal support for cooperation in the field of social and labour partnerships and the provision of labour rights in the member states of the Eurasian Economic Union.

Currently available studies by foreign scientists (Ivakhnyuk [1]; Korobkov [2]; Curley [3]; King and Collyer [4]; Anukoonwattaka and Heal [5]; Hartwell [13]; Cadier [14]) are devoted to the study of general issues of integration processes, the problems of legal support of mechanisms for the implementation of labour rights, and the fulfillment of the state social function.

As for scientists who have made a significant contribution against trafficking in persons, who have studied them internationally, it is worth highlighting the studies of scientists like S.W.Stoecker [15], D.M.Hughes [16], E.B.Mizulina [17], L.I.Shelley [18], F.David, K.Bryant and J.J.Larsen [19] et al.

All of the above indicates the insufficient study of the problems of legal regulation of labour migration within the EAEU and its negative consequences, as well as the relevance and novelty of this study.

Conclusions

According to the authors of the study, it is necessary to identify a certain procedure for conducting scientific research, which will ensure that the above problems are consistently solved:

- study of the national legislation of the Republic of Kazakhstan and international integration agreements, in the aspect of identifying existing problems in the field of labor migration and the implementation of international standards for the protection of labor rights in Kazakhstan;
- study of legal problems in the field of legal regulation of labor migration and counteraction to forced labor, human trafficking, as well as factors that determine modern cooperation in the social and labor sphere of the EAEU, as well as the results obtained will be systematized as a basis for subsequent stages of work;
- analysis of the system of normative legal acts governing social and labor relations in the EAEU member states;
- processing and analysis of the law enforcement practice results (judicial practice, work of state bodies, NGOs), of legislation protecting the labor rights in the EAEU member states;
- study of the EAEU member states policy in the field of social and labor rights and freedoms of citizens, counteracting illegal labor migration and human trafficking;
- development of the draft Law of the Republic of Kazakhstan “On Labor Migration”.
- development of a mechanism for international cooperation of the EAEU member states against illegal labor migration, forced labor and human trafficking;
- study of the EAEU member states national legislation against illegal labor migration, forced labor and human trafficking in terms of identifying the existing problems and developing proposals to improve cooperation between states in this area;
- formation of proposals on the possible implementation of international standards into the national legislation of the Republic of Kazakhstan.

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Экономикалық интеграция жағдайындағы еңбек көші-қоны және мәжбүрлі еңбек: мәселені белгілеу

Бұл зерттеу негізгі идея ретінде Еуропалық Одақ елдерінде (аса ірі интеграциялық бірлестік ретінде) қолданыстағы тәжірибені зерделеуді ескере отырып, Қазақстан Республикасының заңнамасын, сондай-ақ Еуразиялық экономикалық одақ елдерінің, атап айтқанда, Қазақстан Республикасының интеграциялық және көші-қон саясатын жетілдіру саласындағы әлеуметтік-еңбек саласындағы ынтымақтастық жөніндегі құқықтық негіздерді одан әрі дамыту бағытында Еуразиялық экономикалық одақтың нормативтік базасын жетілдіру жөнінде ұсыныстар әзірлеуді алға қояды.

Бұдан басқа, бұл зерттеу ҚР құқық қолдану органдарының, сондай-ақ ЕАЭО елдерінің осы интеграциялық бірлестік аумағындағы заңсыз көші-қонға және мәжбүрлі еңбекке қарсы іс-қимыл саласындағы қызметін жетілдіруге бағытталған тәжірибелік ұсынымдар әзірлеуді көздейді. Бұдан басқа, бұл зерттеу алынған нәтижелерді ЕАЭО аумағында да, одан тыс жерлерде де құқықтық насихаттауды жүргізуді көздейді.

Зерттеудің мақсаты. ҚР және ЕАЭО елдерінің еңбек көші-қонын нормативтік-құқықтық реттеу саласындағы заңнамасын жетілдіру және оның заңсыз көші-қон, осы интеграциялық бірлестік аумағындағы мәжбүрлі еңбек сияқты жағымсыз салдарларына қарсы іс-қимыл бойынша ұсыныстар әзірлеу.

Жобаның әдіснамалық негізін салыстырмалы құқықтануда пайдаланылатын дәстүрлі жалпы ғылыми және арнайы: жүйелі-құрылымдық, тарихи-құқықтық, әлеуметтік-құқықтық және салыстырмалы-құқықтыққа әдістерікұрайды.

Жоғарыда айтылғандардың барлығы осы зерттеудің өзектілігі мен қажеттілігін көрсетеді, өйткені ғылыми зерттеудің болжамды нәтижелерін ескере отырып, оны жүргізу заңсыз көші-қонға, адам саудасына және басқа да заңсыз көріністерге қарсы іс-қимыл саласындағы нормативтік-құқықтық негіздерді одан әрі жетілдіруге ықпал етеді, бұл көбінесе еңбек көші-қоны саласын жеткіліксіз реттеудің салдары болып табылады.

Түйін сөздер: еңбекті құқықтық реттеу, еңбек көші-қоны, мәжбүрлі еңбек, экономикалық интеграция, адам саудасы, ұйымдасқан қылмыс.

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Трудовая миграция и принудительный труд в условиях экономической интеграции: постановка проблемы

Авторы статьи рассматривают вопросы совершенствования законодательства Республики Казахстан и нормативной базы Евразийского Экономического Союза с учетом опыта Европейского Союза в контексте дальнейшего развития правовых основ сотрудничества в социально-трудовой сфере, интеграционной и миграционной политики стран Евразийского Экономического Союза в целом и Республики Казахстан, в частности.

Кроме того, исследование предполагает выработку практических рекомендаций, направленных на совершенствование деятельности правоприменительных органов РК и стран ЕАЭС в вопросах противодействия незаконной миграции и принудительному труду на территории данного интеграционного объединения. Данное исследование предполагает проведение правовой пропаганды полученных результатов как на территории ЕАЭС, так и за его пределами.

Цель исследования заключается в разработке предложений по совершенствованию законодательства РК и стран ЕАЭС в сфере нормативно-правового регулирования трудовой миграции и противодействию таким её негативным последствиям, как незаконная миграция, принудительный труд на территории данного интеграционного объединения. Методологическую основу исследования составляют традиционные общенаучные и специальные юридические методы, использующиеся в сравнительном правоведении: системно-структурный, историко-правовой, социолого-правовой и сравнительно-правовой.

Результаты данного исследования будут способствовать совершенствованию нормативно-правовых основ в области противодействия незаконной миграции, торговле людьми и иным противоправным проявлениям, являющимися во многом следствием недостаточной регламентации сферы трудовой миграции.

Ключевые слова: правовое регулирование труда, трудовая миграция, принудительный труд, экономическая интеграция, торговля людьми, организованная преступность.

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