

ENSURING DECENT WORK STANDARDS FOR MIGRANT WORKERS

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Abstract. The article deals with the problems of ensuring decent work standards for migrant workers. Migrant workers should not be excluded from the Decent Work Agenda, and, therefore, it is important for the states to establish policies that would take into account the need to respect and protect labor rights of migrants. The significance of international standards in the legal regulation of migrant labor is noted. By ratifying the international act, the state assumes commitments envisaged by it, which helps to protect the interests of migrants working abroad. At the same time, not all states are ready to fully open the domestic market for migrant workers, so it is important to investigate national and international regional practices of the specified problem. The legislation of the Russian Federation was an example of the national regulation of labor activity of foreign citizens; the regulation of labor of workers of the member states of the EAEU –regional. It is concluded that the solution of the problem of equality of labor rights of migrant workers and the protection of national interests are possible at the level of international regional regulation.

Key words: labor migration, migrant workers, decent work, decent work program.

Introduction. In 1999, the Director General of the ILO “Decent Work” in the report put forward and justified the Concept of Decent Work [1]. According to the International Labor Organization (ILO), it is this Concept on the basis of which a modern strategy for the development of social and labor relations should be built.

The concept of decent work includes six aspects:

- 1) the opportunities for women and men to find work;
- 2) work under conditions of freedom, that is, work should be chosen without compulsion;
- 3) labor must be productive, so that workers could provide for maintenance of their families;
- 4) equity at work, which means the need for a fair, honest and equal treatment at work;
- 5) security at work, which reminds of the need to guarantee health, pensions and livelihoods;
- 6) dignity at work requires workers to be treated with respect, and that they can represent their interests collectively.

Thus, decent work implies laying the groundwork for equal access of all workers to fundamental rights and freedoms - the right to work, decent remuneration for work, freedom of association, the principles of equality of opportunity for everyone, the inadmissibility of discrimination and forced labor.

Every year, hundreds of thousands of people in search of decent work move to other countries, forming a stream of international labor migration. According to the ILO, in 2015, there were 150,3 million migrant workers out of approximately 232 million international migrants in the world [2]. Under such conditions, it is important for states to formulate a policy that, on the one hand, will take into account the impact of external labor migration on social and labor relations, on the other hand, will be oriented towards observing the standards of the rights of migrant workers.

Given the coverage of external labor migration and the priority of the right to decent work, we will consider how this right is ensured for migrant workers.

Methods. The method of analysis and synthesis made it possible for us to consider the various manifestations of migration processes in modern conditions and, on the basis of this, formulate general conclusions and recommendations. The sociological method was used to reveal the positive and negative consequences of labor migration for public relations. The formal legal method was used to analyze the current international and Russian legislation in the field of migration.

Results and Discussion. Problems of Contemporary Labor Migration. The working conditions of migrants in practice are too remote from the ideals of decent labor. «It is often said that migrant labor fills the “three-D” jobs: dirty, difficult and dangerous. ... Today, migrant labor continues to be used in many countries to ensure low cost provision of agricultural produce, to provide domestic service, to ensure low cost construction labor» [3]. In contrast to the earlier definition of decent work, we point out that labor of migrants most often is the work in unsafe conditions, with infringement of labor standards, low wages and frequent discriminatory pressure. One creates myths about the labor of migrants, that «migrant workers are a burden», «migrant workers steal our jobs», «migrant workers drive down wages» [4]. At the same time, one cannot deny the fact that migrant workers make a significant economic and social contribution to both the countries of emigration and countries of immigration. So, in 2015, migrants sent \$US 601 billion in remittances to their home countries [5]. Migrants leave a considerable part of their income in the countries of

their residence, being the consumers who pay for goods and services. It is significant that many countries would be much poorer without migrants [6]. The contradiction between the role of migrants in the modern world and their actual situation stresses once more on the importance of respecting decent work standards with regard to migrant labor.

International standards for decent work for migrant workers. The standards enshrined in international acts play an important role in the legal regulation of international labor migration. By ratifying the international treaty, states assume the obligations provided in it, which guarantees the observance of the rights of migrants abroad.

The problems of international labor migration are solved at the universal international level within the framework of the UN and ILO, at the international regional level (the Commonwealth of Independent States, the Council of Europe, the Eurasian Economic Union), and through bilateral agreements between the states.

Among the universal legal acts, it is necessary to mention the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (the Russian Federation is not a party), as well as ILO Convention № 97 “On Migrant Workers” of 1949 and № 143 “On Abuse in the Field of Migration and the Provision of Equality of Opportunity and Treatment to Migrant Workers” of 1975 (the Russian Federation is not a party). These acts include, inter alia, the norms aimed at ensuring decent work for migrants, regulating the issues of remuneration for work, vacations, working hours, age for admission to employment, social security, etc. The main way to ensure a decent level of labor rights for migrants is the fixed rule on establishing a regime for migrants no less favorable than for national employees.

Most likely, it is the need of extending the national treatment to migrants is the reason for unpopularity of these conventions: the states simply do not want to accept such broad commitments to ensure and observe the rights of migrants. Thus, the UN Convention of 1990 was hardly ratified by 20 states minimally required, therefore, it came into effect only on July 1, 2003. At the same time, the countries of origin of migrants that are interested in protecting the rights of their citizens by the norms of international law are mainly among the ratifying countries.

Within the Council of Europe, the European Social Charter has been adopted (partially ratified by the Russian Federation), which provides for the right of migrant workers and their families to be protected and assisted on the territory of any participating country (article 19). The legal position of migrant workers in Europe is also regulated by a special normative act - the European Convention on the Legal Status of Migrant Workers of 1977 (not ratified by the Russian Federation). This Convention provides for a number of state obligations to provide the migrant worker and his family members with a high level of minimum standards, including in the areas of social security, medical care, access to housing and education, employment services in case of dismissal.

At the level of the Commonwealth of Independent States (CIS), the Convention on the Legal Status of Migrant Workers and Members of Their Families of the CIS Member States of 2008 (not ratified by the Russian Federation) should be mentioned. This Convention contains a provision that each party, in accordance with its legislation and in its own interests, can impose for migrant workers restrictions not only on the categories of work and occupation, but also on access to remunerated work for the protection of the national labor market and ensuring the priority right of their citizens to work and choose their occupation. Moreover, in fact, an overwhelming majority of multilateral agreements at the CIS level and bilateral agreements of the Commonwealth states have enshrined the principles of protecting national labor markets and the priority right of “their” citizens to working place [7].

As one can see, the Russian Federation has not ratified the fundamental acts in the field of migrants’ rights. At the same time, Russia is one of the leaders in terms of the number of migrants, so the question of how to ensure their interests is current. In connection with this, we will consider the legal status of migrant workers who legally dwell in the territory of the Russian Federation.

Legal Regulation of Labor of Migrants in the Russian Federation. The legal regulation of the labor activities of migrant workers is based on two principles. On the one hand, Article 62 of the RF Constitution declares that “foreign citizens and stateless persons enjoy rights in the Russian Federation and perform duties together with citizens of the Russian Federation, except cases established by federal law or an international treaty of the Russian Federation”. In other words, migrant workers are generally affected by the national regime (with some exceptions). On the other hand, Federal Law № 115- FL of July 25, 2002, “On the Legal Status of Foreign Citizens in the Russian Federation” proclaims the principle of the priority use of national labor resources, taking into account the labor market situation. Consider how the combination of these principles occurs.

Protection of the national labor market in foreign labor utilization is carried out through a strict administrative mechanism: first, the annual quotas fixing for attracting foreign workers in the subjects of the Federation; second, determining the permissible share of foreign workers according to type of activity; third, restricting the performance by foreign workers of certain types of labor activities; fourth, the permissive procedure for attracting foreigners residing temporarily in the Russian Federation on the basis of a visa or in the course not requiring a visa (note that foreign citizens permanently or temporarily residing in the Russian Federation can work without obtaining permits).

Within the very period of labor activity, migrant workers are subject to the rules established by the Russian labor legislation, unless otherwise stipulated by the international treaty and the laws of the Russian Federation (Part 5, Article 11, Article 327.1 of the Labor Code of the Russian Federation). In particular, the Labor Code of the Russian Federation includes a special chapter 50.1 on the regulation of labor of foreign citizens.

Many other decent work standards apply to migrant workers:

1) in accordance with Part 1 of Article 13 of Federal Law № 115- Φ3 of 25.07.2002 “On the Legal Status of Foreign Citizens in the Russian Federation”, foreign citizens exercise the right to freely dispose of their abilities to work, to choose the kind of activity and profession, taking into account the restrictions provided for by the federal law.

These restrictions are related to the ban on foreigners' holding certain positions (for example, a ship's captain, a notary, an officer of foreign intelligence agencies, etc.). Note that, in accordance with Article 3 of the RF Labor Code, the establishment of such restrictions and preferences is not considered to be discrimination;

2) the principles of the prohibition on compulsory labor and the prohibition on discrimination by race, color, nationality, language, etc., are fully applicable to migrant workers.

3) Article 132 of the Labor Code of the Russian Federation establishes the principle of prohibition of discrimination in establishing and changing the terms of payment. Thus, migrant workers cannot be discriminated against in matters of payment for the work performed;

4) the labor legislation of the Russian Federation does not distinguish between citizens and foreign workers in matters of labor protection and the provision of safety working conditions;

5) migrant workers may be members of trade unions (Article 2 of the Federal Law of December 12, 1996 "On Trade Unions, Their Rights and Guarantees of Activities");

6) migrant workers can be recipients of various types of social welfare.

Thus, the Russian Federation differentiates the legal regulation of labor relations with foreign workers, depending on the legal status of the foreign person under the migration legislation. This differentiation is largely due to the implementation of the measures concerning protection of the national labor market.

The Model of Labor Migration Within the Framework of the EEU. A fundamentally different model of labor relations with migrants is formed within the framework of international regional cooperation of the states of the Eurasian Economic Union (EEU). Currently, the members of the EEU are Belarus, Russia, Kazakhstan, Armenia and Kyrgyzstan. The Treaty on the Eurasian Economic Union, signed in Astana on May 29, 2014, provides for equal labor rights for migrant workers of the member states of the EEU. We draw attention to the fact that the term "worker of a member state" is legalized in the Treaty on the EAPP instead of the term "migrant worker". According to the Treaty on the EEU, employers and (or) customers of the works (services) of a member state have the right to engage workers of the member states into labor activities without taking into account restrictions on the protection of the national labor market. It makes it possible to conclude with the citizens of the member states of the EEU primarily permanent contracts of employment, i.e. with an indefinite period of validity for any work activity [8].

Thus, it is obvious that within the framework of the Eurasian Economic Union a model of labor migration that is similar to the model existing in the European Union is in force. This model is based on the freedom of movement of labor within the member states of these unions [9, 10]. It should be noted that, taking into account the European social model for the development of the Decent Work Program, the ILO adopted a new concept "Quality of Labor and Employment in Europe" in 2007 [11].

Summary. At the turn of 20th-21st centuries international (external) labor migration has many reasons, but the economic reasons concerning the search by the migrants for decent work remain the dominant one.

Decent work implies arrangement of conditions for productive and safety work, fair wages, social protection of workers and their families, the possibility of social dialogue. Migrant workers should be sure that their rights will be protected abroad, and international standards aimed at protecting the rights of migrants play an important role in this issue. It is true that many economically developed countries do not want to undertake accessory obligations to migrants, so the fundamental acts on migration are ratified by few countries. The Russian Federation has also ratified neither the UN Convention nor the ILO Convention. Moreover, the principle of priority use of national labor resources has been fixed in the Russian Federation. At the same time, the establishment of administrative barriers to the labor market and the refusal to ratify the fundamental international instruments in the field of migration do not mean that the labor rights of migrants are not secured. The application of the norms of the Russian labor legislation to migrant workers makes it possible to equate them with Russian citizens in many decent work standards.

To date, the Russian Federation guarantees the equality of rights of labor migrants only at the level of the Eurasian regional labor market, they are entitled to move free without restriction of time of their residing in the territories of the EEU states. This model allows us to conclude that at this stage the solution of the problem of equality of labor rights of migrant workers and protection of national interests is possible only at the level of international regional regulation.

Conclusion. Migration is a global phenomenon that will not change in the future. The states should become aware of the importance of modern migration flows and pursue a policy of minimum differentiation between citizens and migrants. The problem of international migration should be solved, including by means of labor law, from the standpoint of protecting labor rights and freedoms of a person regardless of citizenship and place of permanent residence on the basis of the Decent Work Agenda. Leah F. Vosko rightly notes the changing migration policy of states in the context of understanding the need for legal protection of migrant workers as a general world trend in the global labor market, writes about the inadmissibility of the exclusion of migrant workers from legal protection systems [12].

Acknowledgements. The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

1. Decent work. The report by the Director General. The International Conference of Labor. The 87th session. Geneva: ILO, 1999. 107 p.
2. New ILO figures show 150 million migrants in the global workforce // http://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_436140/lang--ru/index.htm (access date: 02.07.2017)

3. Taran, Patrick A. Globalization, labour and migration: protection is paramount / Patrick A. Taran, Eduardo Geronimi. - Geneva : Intern. labour office, 2003. – Pp. 5-6.
4. In search of Decent Work – Migrant workers' rights: A manual for trade unionists. Geneva: Intern. labour office, 2008. – Pp. 46-47.
5. Katajamäki W. Migration, decent work and cooperatives // http://www.oit.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/presentation/wcms_543545.pdf (дата обращения 03.07.2017)
6. In search of Decent Work – Migrant workers' rights: A manual for trade unionists. Geneva: Intern. labour office, 2008. – P. 52.
7. Davletgildeyev R.Sh. International Judicial Co-Operation of the States– the Participants of the Commonwealth of Independent States in the Field of Labor Migration at Modern Stage // Russian Juridical Journal. 2013. №5. P.164-172.
8. Eurasian Labor Law: textbook/ Volk E.A. [and others]; Edited by M.V. Lushnikov, K.S. Ramankulov, K.L. Tomashevsky. – M.: Prospect, 2017. 458 p.
9. Mahdi Fakoor, Amirreza Kosari, Mohsen Jafarzadeh, Revision on fuzzy artificial potential field for humanoid robot path planning in unknown environment, International Journal of Advanced Mechatronic Systems, Volume 6, Issue 4, page 174-183, year 2015
10. Watson Ph. Social and Employment Law: Policy and Practice in an Enlarged Europe Oxford: Oxford University Press Inc. 2009. 537 p.
11. Quality of work and employment in Europe// <https://www.eurofound.europa.eu/> (дата обращения 03.07.2017)
12. Mahdi Fakoor, Amirreza Kosari, Mohsen Jafarzadeh, Humanoid robot path planning with fuzzy Markov decision processes, Journal of Applied Research and Technology, Volume 14, Issue 5, October 2016, Pages 300-310.

THE NECESSITY OF REVISION THE OBJECTIVES, STRUCTURE, AND DUTIES OF THE URBAN PLANNING AND ARCHITECTURE SUPREME COUNCIL OF IRAN

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Abstract. Iran has a long history in the urban planning in the modern style. The urban planning system in Iran has a slow, complex structure that is affected by several pillars. Islamic councils of cities, municipalities, Ministry of Roads & Urban planning, Ministry of the Interior, Planning¹ and Budget Organization are among important and effective pillars. << The Urban planning and Architecture Supreme Council of Iran >> is a specialized pillar in the urban planning system of Iran, which is the highest decision-making authority in the Iranian urban planning and architecture sector after The Islamic Consultative Assembly and the cabinet decree (Cabinet of Ministers). This council is located in the Ministry of Roads and urban planning. The Supreme Council has been in operation since 1966, but the law to establish it was approved in 1971 under the title of <<The Law on the establishment of the Supreme Council for Urban planning and Architecture of Iran>>, and the latest amendments were applied in it in 2009. The Supreme Council has various duties, including the examination and approval of the <<Urban Master Plans²>> and <<Major Urban planning and Architecture Policies>>. According to my opinion, the level of development of architecture and urbanization is not at a favorable level despite the 60th antiquity of modern urban planning in Iran. A part of the failures and unpleasant situations is related to the way of functioning of the Supreme Council, because the structure and duties of this council have been changed a little over the past five decades and have not grown in accordance with the demands and needs of the Iranian urban community. Centralization, lack of long-term memory, lack of a continuous evaluation system, conflicts of the council regulations/approvals with current laws is considered among the problems encountered by the Council. This situation not only does not meet the current needs but will also encounter the basic challenges the urban planning and architecture in the future. For this reason, I believe that the objectives, structure, and duties of the Supreme Council must be corrected fundamentally. This paper follows the critique of the current structure of the Supreme Council and ultimately analyzes and explains the necessity for correction and revision of the objectives, structure, and the duties of the Supreme Council.

¹ -Ministry of Housing and Development», which was renamed the Ministry of Housing and Urban Planning in 1974. Then, in 2011, he merged with the Ministry of Roads and Transportation and titled it to the Ministry of Roads and urban planning.

² Master plan A plan is prepared a scale of 1: 10,000 for urban development. These designs have been modeled on commonly used designs in Western countries.