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MIGRATION THROUGH THE PRISM OF CONSTITUTIONAL RIGHTS: ETHNIC AND DEMOGRAPHIC CONTEXT, LABOR MOBILITY

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Abstract. Migration in the period from 1990 to 2022 significantly changed the ethnic map of the Republic of Kazakhstan. This circumstance prompted the research, since the most active labor and reproductive part of the national potential of the Republic of Kazakhstan dominates in the composition of the outgoing migrants. The problem of the most powerful migration movements in the conditions of growing globalization and multi-vector cooperation within the framework of the Eurasian Economic Union was actualized. The study revealed legal, socio-economic problems and threats to national security for Kazakhstan as a result of a huge flow of labor migration from less prosperous neighboring countries of post-Soviet Central Asia, carried out, in particular, on illegal grounds. It is important that migration is accompanied by violation of constitutional rights, as a result of exploitation, illegal movements, xenophobia, human trafficking, illegal importation of migrants.

The presented research is aimed at forming an idea of the problematic aspects of migration through the prism of violations of constitutional rights, necessary for the most correct assessment of the consequences and threats of the outflow of human resources from Kazakhstan. In the article the authors conclude that today the migration situation is one of the key factors of social tension in the Republic of Kazakhstan, which seriously affect the effectiveness of ensuring the national security of the state, ensuring and protecting the constitutional rights of the people. In this regard, the situation requires immediate and thoughtful solutions, since it can have long-term consequences for the economic and social development of Kazakhstan and neighboring states. We believe that there are prerequisites for the stabilization of the migration situation in the Republic of Kazakhstan, since the processes under consideration have a socio-economic basis, and therefore the solution of the issue directly depends on the effectiveness of the authorities, the preparation of legislation and the level of economic well-being.

Keywords: human right, migration, labor resources, demographic situation, national security, pandemic.

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КОНСТИТУЦИАЛЫҚ ҚҰҚЫҚТАР ПРИЗМАСЫ АРҚЫЛЫ КӨШІ-ҚОН: ЭТНИКАЛЫҚ ЖӘНЕ ДЕМОГРАФИЯЛЫҚ КОНТЕКСТ, ЕҢБЕК РЕСУРСТАРЫНЫҢ ҰТҚЫРЛЫҒЫ

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Аннотация. Көші-қон 1990 жылдан бастап 2022 жылға дейінгі кезеңде Қазақстан Республикасының этникалық картасын айтарлықтай өзгертті, бұл зерттеу жүргізуге түрткі болды, өйткені көшіп кететін қоныс аударушылар құрамында Қазақстан Республикасы Ұлттық әлеуетінің неғұрлым белсенді еңбек және репродуктивтік бөлігі басым. Өсіп келе жатқан жаһандану және Еуразиялық экономикалық одақ шеңберіндегі көпвекторлы ынтымақтастық жағдайларында аса қуатты көші-қон орын ауыстырулар проблемасы өзектілендірілді. Зерттеу Қазақстан үшін құқықтық, әлеуметтік-экономикалық проблемалар мен ұлттық қауіпсіздікке төнетін қауіптерді посткеңестік Орталық Азияның аз дамыған көрші елдерінен, атап айтқанда, заңсыз негізде жүзеге асырылатын еңбек көші-қонының үлкен ағымының нәтижесінде анықтады. Көші-қон қанау, заңсыз қозғалыс, ксенофобия, адам саудасы, мигранттарды заңсыз әкелу нәтижесінде Конституциялық құқықтардың бұзылуымен қатар жүретіні маңызды болып табылады.

Ұсынылған зерттеу Қазақстаннан адами ресурстардың кету салдарлары мен қатерлерін мейлінше дұрыс бағалау үшін қажетті конституциялық құқықтарды бұзу призмасы арқылы көші-қонның проблемалық аспектілері туралы түсінікті қалыптастыруға бағытталған. Мақалада авторлар бүгінгі таңда көші-қон жағдайы мемлекеттің ұлттық қауіпсіздігін қамтамасыз етудің тиімділігіне, адамдардың конституциялық құқықтарын қамтамасыз етуге және қорғауға елеулі әсер ететін Қазақстан Республикасындағы әлеуметтік шиеленістің негізгі факторларының бірі болып табылады деп тұжырымдайды. Осыған байланысты, жағдай жедел және ойластырылған шешімдерді талап етеді, өйткені оның Қазақстан мен шектес мемлекеттердің экономикалық және әлеуметтік дамуы үшін ұзақ мерзімді салдары болуы мүмкін. Қазақстан Республикасында көші-қон жағдайын тұрақтандыру үшін алғышарттар бар деп ойлаймыз, өйткені қаралатын процестердің әлеуметтік-экономикалық негізі бар, осыған байланысты мәселені шешу билік қызметінің тиімділігіне, заңнаманы дайындауға және экономикалық әл-ауқат деңгейіне тікелей байланысты болады.

Түйінді сөздер: адам құқығы, көші-қон, еңбек ресурстары, демографиялық жағдай, ұлттық қауіпсіздік, пандемия.

МИГРАЦИЯ ЧЕРЕЗ ПРИЗМУ КОНСТИТУЦИОННЫХ ПРАВ: ЭТНИЧЕСКИЙ И ДЕМОГРАФИЧЕСКИЙ КОНТЕКСТ, МОБИЛЬНОСТЬ ТРУДОВЫХ РЕСУРСОВ

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Аннотация. Миграция в период с 1990 по 2022 годы существенно изменила этническую карту Республики Казахстан, что и натолкнуло на проведение исследования, так как доминирует в составе выбывающих переселенцев наиболее активная трудовая и репродуктивная часть национального потенциала Республики Казахстан. Актуализировалась проблема мощнейших миграционных перемещений в условиях растущей глобализации и многовекторного сотрудничества в рамках Евразийского экономического союза. Исследование выявило правовые, социально-экономические проблемы и угрозы национальной безопасности для Казахстана в результате огромного потока трудовой миграции из менее благополучных сопредельных стран постсоветской Центральной Азии, осуществляемой, в частности, на нелегальных основаниях. Важным является то, что миграция сопровождается нарушением конституционных прав, в результате эксплуатации, нелегальных передвижений, ксенофобии, торговли людьми, незаконным ввозом мигрантов.

Представленное исследование направлено на формирование представления о проблемных аспектах миграции через призму нарушения конституционных прав, необходимого для наиболее корректной оценки последствий и угроз оттока человеческих ресурсов из Казахстана. В статье авторы делают вывод о том, что на сегодняшний день миграционная ситуация является одним из ключевых факторов социальной напряженности в Республике Казахстан, серьезно влияющих на эффективность обеспечения национальной безопасности государства, обеспечение и защиту конституционных прав людей. В связи с этим, ситуация требует немедленных и продуманных решений, поскольку она может иметь долгосрочные последствия для экономического и социального развития Казахстана и сопредельных государств. Полагаем, что в Республике Казахстан имеются предпосылки для стабилизации миграционной ситуации, поскольку рассматриваемые процессы имеют социально-экономическую основу, в связи с чем решение вопроса напрямую зависит от эффективности деятельности властей, подготовки законодательства и уровня экономического благосостояния.

Ключевые слова: права человека, миграция, трудовые ресурсы, демографическая ситуация, национальная безопасность, пандемия.

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Introduction

Mass migration of the population of the Republic of Kazakhstan, primarily to Russia, Germany, Israel, the USA and several other countries, was due to the effects of disordered migration situation, which dramatically changed

the ethnic composition of the population.

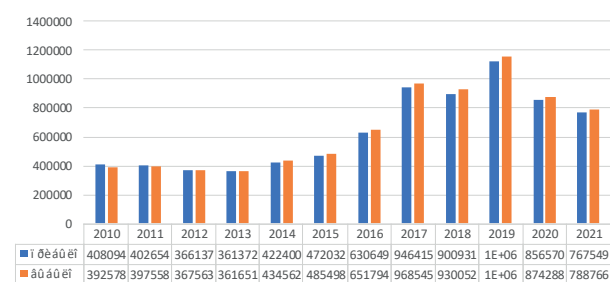
The destruction of stable economic ties between the republics of the former USSR led to the collapse of the system of providing raw materials and marketing products, as a result, most enterprises in Kazakhstan were forced

to stop production, which together became a decisive factor for motivating the emigration of the population involved in these enterprises.

The study of the most powerful migration flows is of considerable interest in the legal dimension, since this direction contributes to the formation of the national migration policy of the Republic of Kazakhstan, the improvement of the regulatory array regulating this range of problems. In addition, Kazakhstan, like any other State, is concerned about the situation of systematic violations and abuses of the rights of migrants, since the dynamic process of resettlement always entails weak legal protection for the participants. This is despite the fact that the basic principle of regulating the migration of the population is to guarantee the human rights enshrined in the Constitution to free choice of place of residence, freedom of work, free choice of occupation and occupation, Freedom of departure, freedom of movement.

As of today, the migration situation has become one of the key factors of social tension in the Republic of Kazakhstan, which seriously affect the effectiveness of national security. Moreover, due to the objective socio-economic success of it's development, Kazakhstan is primarily a receiving country for migrants from neighbouring republics and a transit territory for migrants to Russia and Europe. For example, Kazakhstan now ranks 15th in the world in the processes of emigration and immigration. Figure 1 shows the migration of the population of Kazakhstan over the past 10 years. The analysis shows that the balance of migration for 2021 year was 21,217 people.

The diagram № 1. Migration of the population of the Republic of Kazakhstan for 2010-2021



The diagram № 2 shows the results of the external migration of the population of

Kazakhstan. The analysis shows that the number of immigrants in Kazakhstan is decreasing, while the number of emigrants shows an increase.

The diagram 2. External migration of the population of the Republic of Kazakhstan for 2010-2021



It is also important to point out such an aspect of migration policy as the return of ethnic Kazakhs to their historical homeland. Thus, according to the official statistics of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan, from 1991 to 2022, one million 96.9 thousand ethnic Kazakhs returned to their historical homeland, which is 5.6% of the total population. The number of ethnic migrants of working age is 63.1%, 23% of people are younger than able-bodied and 13.9% are pensioners².

Of course, the changes in the sphere of internal migration are enormous. According to the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan, only in 2021, 756510 people moved from one region to another³.

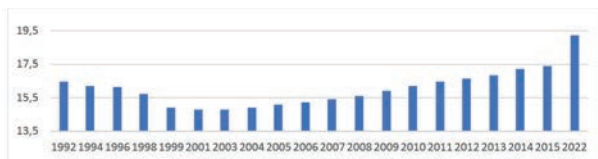
From 1991 to 2004, the demographic situation in Kazakhstan was the most tense. Drawing attention to the results of the 1999 census, we will see that the total population of the Republic of Kazakhstan was about 15 million. declining further. In 10 years (from 1989 to 1999) the population of Kazakhstan decreased by 7.7%⁴. (Diagram №. 3) Large-scale emigration, a sharp decrease in entry into the republic, a low birth rate, a high mortality rate and the number of abortions - all these and other factors negatively affected the demographic situation of the country.

² O merah podderzhki dlya kandasov [About support measures for Candace] [Electronic resource]. – Available at: <https://www.gov.kz/memleket/entities/enbek/press/news/details/414573?lang=ru> (Accessed: 18.08.2022).

³ Statistika migraci [Migration statistics]. [Electronic resource]. - Available at: <https://www.gov.kz/memleket/entities/qriim/press/article/details/13120?lang=ru> (Accessed: 18.08.2022).

⁴ Operativnye dannye (operativnaya informaciya, byulleteni) [Operational data (operational information, bulletins)]. [Electronic resource]. - Available at: http://www.stat.gov.kz/faces/wcnav_externalId/homeNumbersPopulation_afLoop=10388007911702932%40%3F_afLoop%3D10388007911702932%26_adf.ctrl-state%3D8ibmvdff9_143 (Accessed: 18.08.2022).

Diagram. 3. Population of the Republic of Kazakhstan for 1992-2022



As of July 1, 2022, the population of Kazakhstan was 19246300 people⁵. The growth of the population of our state, of course, allows us to make optimistic forecasts for the further socio-economic development of the country, but at the same time we should be aware of the need to take into account both the total number and the age division into able-bodied groups, children and pensioners, or rather, to take into account changes in the age structure of the population. In this regard, it should be pointed out that the impact of migration processes and the demographic situation in the Republic of Kazakhstan on ensuring national security, legal security of citizens and socio-economic development of the country, actualize the creation of a new Concept of migration policy. However, the task is complicated by the lack of accurate statistics of migration phenomena, which are largely illegal. And here the monitoring of public awareness is an additional statistical resource that allows identifying latent areas of migration policy.

In particular, L.M. Junisbekova examines the legal regulation of labor migration of post-Soviet states and concludes that this is a consequence of globalization processes that cause the constant movement of labor resources [1]. An important point of this study is the author's proposal on the need to adopt the EAEU Convention on Migration, which will create a mechanism for protecting the rights of migrants. The idea of creating a single legal document that will lay the foundations for the formation of a legal mechanism for protecting the rights of migrants is not new, for example, some authors pointed out the need to develop a Migration Code of the CIS countries [2].

A similar position is held by the researcher Ghost B. who conducts a critical analysis of the insufficient recognition of the constitutional rights of migrants in international treaties and national legislation of countries [3]. He concludes that legislation is often not elaborated and often hinders migrants' access to basic human rights, which leads to a sharply increased vulnerability of migrants in certain

special situations.

Taking into account the fact that migration processes have been actualized on an international scale in recent decades, caused by military conflicts in a number of countries (Syria, Iraq, Afghanistan, Ukraine), a large number of foreign studies have appeared aimed at studying both the legal problems of migration and its individual aspects. For example, M. Scott Migration/Refugee Law (2021) [4], M. Collier. Migrants, Migration and the Security Paradigm: Constraints and Opportunities (2016) [5], Sergio Carrera and Andrew Geddes The EU Migration and Asylum Pact in the light of the United Nations Global Compact on Refugees International experiences of deterrence and Mobility and their impact on trust and rights. Editors [6].

I would like to pay special attention to the research of Werner F. Menski «*Rethinking Legal Theory in the Light of South-North Migration*», which leads the phenomenon of migration from the south to the north. In so doing, the author questions a number of axioms of the law, considering that they create obstacles in understanding new trends in migration and their legal consequences [7].

However, the processes of migration in the countries of Central Asia and its legal and socio-economic consequences are insufficiently studied, since its scale compared with migration flows from the zones of military conflict is not comparable.

All the above testifies to the urgency and lack of knowledge of the problems of legal regulation of migration and its negative consequences, as well as to the novelty of the present study.

Materials and methods

As the main methods of research in the work have been applied the following:

- structural and functional method for studying the functional content of migration processes through the prism of constitutional human rights and various social and legal consequences;
- historical and legal analysis of normative acts was used to identify features of the legal regulation of migration relations in each studied period;
- abstract - to identify and systematize the motivations behind migration, as well as the negative consequences of its insufficient legal regulation, such as violations of the

⁵ Demograficheskaya statistika [Demographic statistics]. [Electronic resource]. - Available at: <https://stat.gov.kz/official/industry/61/statistic/7> (Accessed: 18.08.2022).

constitutional rights of migrants and various abuses in this area, forced labour and trafficking in persons;

- a comparative method of analysing a number of provisions of legislation in the field of migration of the Soviet and post-Soviet periods has clearly demonstrated continuity in the legal regulation of migration;
- tabular and graphical methods - to visualize theoretical provisions, obtained research results;
- the analysis of statistical data has improved the credibility of the study's findings.

Discussion and results

Demographic overview: retrospective analysis and current status.

The rapid changes in the world's demographic situation pose an unprecedented challenge to all States. As a country with a low birth rate and a high mortality rate, Kazakhstan also faces these problems. For Kazakhstan, it is important to strategically address the demographic issue. In this connection, issues of demographic policy find expression in State programmes that support the family and motherhood, especially since such support has constitutional backing (art. 27 of the Constitution of the Republic of Kazakhstan).

With the ninth largest territory in the world, Kazakhstan continues to be a sparsely populated country. It ranks 64th in the world ranking - just over 19 million. The population density is 184 (7.1 persons per square kilometre). The dynamics of the population of the Republic from 1991 to 2022 show that the high birth rate compensated for the losses caused by the high level of emigration in the 1990s. In the last 25 years, our population has grown by 10%. The life expectancy of Kazakhstanis also increased from 63.5 to almost 70 years from 1995 to 2022. Life expectancy for men is 65.75 years and for women 75.06 years. As for the birth rate, it has increased by 11 per cent over the past five years. In 2020, 426,824 children were born in Kazakhstan, 24,514 more than in 2019. And in 2021, 296.5 thousand children were born. That is 8.4% more than last year [4].

The threat of a demographic crisis has accompanied Kazakhstan throughout history. The beginning of mass migration of Kazakhs from the historical homeland dates back to the XVIII century, when Kazakhstan stood on the verge of a demographic catastrophe. The Zhungarian invasion, which began in the XVII century, resulted in the death of 2/3 Kazakhs [8, p. 7].

The decline in the number of Kazakhs

was greatly influenced by two demographic disasters of the beginning of the XX century. - in 1916-1921 and 1929-1933. As a result of the forcible land expropriation carried out by the Resettlement Office in Kazakhstan, a massive migration of Kazakhs to China took place between 1912 and 1914. In the period from 1902 - 1913 the number of the Kazakh population decreased by 8 - 9%, and amounted to about 286 thousand people [9, p. 121].

In 1930 - 1932, a mass famine broke out in Kazakhstan. Of the 6.2 million Kazakhs, about 2.1 million died. In the course of forced collectivization in 1928 - 1932 began the mass resettlement of Kazakhs, estimated at 1 million. 30 thousand, to Russia, Uzbekistan, Turkmenistan, Karakalpakia, China, Iran, Afghanistan [9, p. 11]. Of these, 616 thousand Kazakhs have left irrevocably, including about 200 thousand Kazakhs have gone to China, Mongolia, Afghanistan, Iran, and 414 thousand Kazakhs, subsequently returned to Kazakhstan [10, p. 12].

Another demographic catastrophe was caused by the disintegration of the USSR and the severe economic crisis, when the contraction of production, rising inflation and unemployment led to a decline in the living standards of the population and the destruction of the social sphere. According to estimates by the Ministry of Labour of the Republic of Kazakhstan, while in November 1992 this group accounted for 11.9 per cent of the population, in 1995 it accounted for 37 per cent of the total population. According to unofficial data, the poverty rate in 1995 was 70-80%. The economic crisis was accompanied by an increase in unemployment. Thus, in 1995, the unemployment rate was 10 per cent of the economically active population, while in regions with conversion enterprises it was 16-18 per cent [11, p. 51].

As of today, the migration process also shows growth dynamics, due to a number of political, social and economic reasons. This is not surprising, as the migration trend is characteristic of the developing country, in connection with which Kazakhstan will be a donor of labour for decades. In particular, the analysis suggests that the main causes of population migration in Kazakhstan are:

- the desire to return to their historical homeland (after the collapse of the Soviet Union in the early 1990s);
- individual manifestations of everyday nationalism and nationalist sentiments;
- «politicization» of the language map in the domestic political arena, periodically pop

up discussion about the status of the Russian language;

- Socio-economic instability;
- extremely low living standards of the population (the migration process must be considered in conjunction with poverty and unemployment).

Return to the historical homeland - «kandas».

In the area of migration, Kazakhstan has generally established a legislative framework that complies with international standards, allowing the return of Kandas to their historical homeland.

Kandas («compatriot», «one-breed») - a term that fell into the legal field in 2021 (part. 13 of art. 1 of the Law of the Republic of Kazakhstan «On Migration of Population»), came to replace the previously used «oralman» («returnee»). Both terms were used to refer to ethnic Kazakhs who were repatriated to Kazakhstan from neighbouring countries (China, Mongolia, Uzbekistan, Russia, Kyrgyzstan, Iran, Afghanistan, Pakistan, etc.).

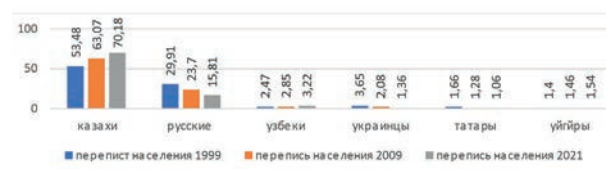
The legislation regulating this process has a fundamental basis in the form of fundamental principles aimed at ensuring the legal security of citizens arriving in Kazakhstan. In particular, the migration legislation of the Republic of Kazakhstan is informed by standards aimed at recognizing and guaranteeing the rights and freedoms of migrants in accordance with the Constitution of the Republic of Kazakhstan, laws and international treaties.

The Constitution of the Republic of Kazakhstan has formed the legal basis for the construction of a legislative framework that regulates the status of migrants, paying particular attention to the Kandas. The set of rights, freedoms and obligations of persons who have returned to their historical homeland, as well as other persons who have found themselves in Kazakhstan as a result of voluntary or forced migration, and constitutional and legal guarantees for their exercise and protection, are reflected in section II of the Constitution. However, the study of migration processes suggests that the current legislation needs to be adjusted to improve the legal protection of migrants and to address the challenges faced by our country.

The ethnic map of Kazakhstan has undergone significant changes in recent decades, and if, before the mass migration of the 90s, the ethnic structure of the population of some regions was represented mainly by Slavic ethnic groups,

currently they are dominated by the titular (Kazakh) ethnic group, this is confirmed by the census data in 1999, 2009 and 2021, given in Diagram № 4.

The diagram №. 4. Ethnic structure of the population of the Republic of Kazakhstan according to the population censuses of 1999, 2009, 2021 (%)

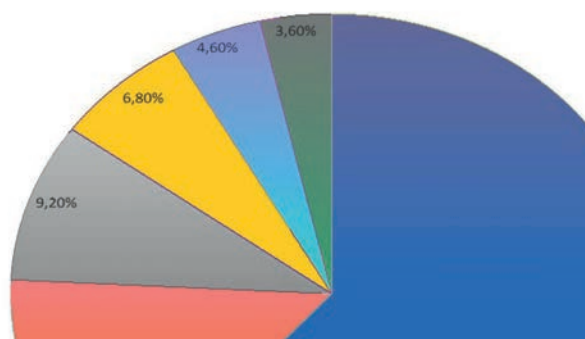


Vitkovskaya G.S. notes that «between 1989 and 1999 there were changes in the demographic structure of the country - the title (Kazakh) ethnic group crossed the threshold of ethnic domination, accounting for 54.3% of the total population of the country. The ethnic composition of the various territories of the Republic has changed significantly. The population of all ethnic groups is stagnant or declining» [12, p. 130-132].

According to studies and statistics, the total number of nationalities represented in the Republic has remained stable, and the decline in the number of ethnic groups has not been a critical increase.

Thus, in 2022, 7415 ethnic Kazakhs moved to Kazakhstan and received the status of kandas. As we mentioned above, since 1991 the number of Kandas has reached 1 million 96.9 thousand [1]. The ranking of the countries of arrival of ethnic Kazakhs is shown in the diagram № 5.

The diagram №5 Countries of arrival of ethnic Kazakhs (%)



More than half of the arrivals are of working age - 62%, children account for 24.1% and pensioners - about 13.9%. Continuing the

analysis, it is important to note that 11.4 per cent of Kandas of working age by educational level have higher education, 40.3 per cent have secondary specialized education, 47 per cent have general secondary education and 1.6 per cent have no education⁶.

The State's support measures are the provision of necessary social and legal assistance to arrivals. Families included in the regional quota for the admission of Kandas and displaced persons are provided with a state support measure in the form of a subsidy: for relocation – a one-time payment of 35 MCI to each family member; to cover the costs of hiring (renting) housing and utilities, which are paid monthly for 12 months from 15 to 30 MCI per family⁷.

We believe that the implementation of State measures in the field of migration policy in Kazakhstan:

- will allow to regulate the processes of ethnic, internal and external migration and subordinate them to the interests of economic development of regions;
- will improve the quality of life of a significant proportion of ethnic immigrants and internal migrants;
- will encourage the return to the country of citizens of various nationalities who have left Kazakhstan;
- prevent possible social risks related to adaptation and integration difficulties, unemployment and irregular migration;
- will further develop the processes of national consolidation, strengthen social stability and improve the demographic situation.

Migration in the member states of the Eurasian Economic Union (EAEU) and its constitutional and legal regulation.

The process of migration in the countries of the Eurasian Economic Union is conditioned by the interests of the participating countries in the field of employment and the effective participation of the human labour potential for the sustainable development of economic indicators. In this connection, partner countries with a common interest in the development of migration processes are trying to create conflict-free conditions for the movement of people between countries, taking into account the legal and social protection of migrants.

At the same time, States exercising their functions to regulate the migration process understand that the effectiveness of regulation directly depends on a clear constitutional and legal definition of the basic categories of migrants, their constitutional and legal status. In this connection, the system of normative support for the functioning of migration policy is formed on the basis of the national interests of the EAEU member countries.

The constitutional and legal regulation of migration in the EAEU states is purposeful and is carried out with the help of a system of legal means, specific methods of legal regulation that ensure the achievement of the desired results.

The peculiarity of the development of constitutional legal relations of the modern period is the universalization of fundamental rights and freedoms, the extension of guarantees and protection measures not only to citizens, but also to foreign citizens and stateless persons. There is a general tendency of convergence of the legal status of citizens and foreign citizens, stateless persons, legally located on the territory of the host State. By joining the fundamental international human rights instruments, the EAEU States themselves committed themselves to respect the principles of human rights, including the principle of freedom of movement and humane treatment of refugees, asylum seekers and displaced persons. The human rights of a migrant are included in the general system of human rights as objects of constitutional and legal regulation. The constitutions of the EAEU states, as a rule, enshrine the conceptual foundations of legal policy in the field of the rights of foreign citizens.

A more detailed regulation of migrants' rights takes place with the help of the norms of sectoral legislation, primarily migration legislation, which establishes the main directions of state migration policy, determines the scope of migrants' rights, establishes the competence in the field of migration of the relevant state authorities.

By adopting legislative acts in the field of migration, the EAEU states comply with their obligations under international documents that establish certain standards in the field of migrants' rights. The forms of such legislation may be

⁶ *S nachala goda bolee 7 tysyach chelovek poluchili status kandas* [Since the beginning of the year, more than 7 thousand people have received the status of Candace]. [Electronic resource]. - Available at: <https://kapital.kz/gosudarstvo/106951/s-nachala-goda-boleye-7-tysyach-chelovek-poluchili-status-kandas.html> (Accessed: 18.08.2022).

⁷ *Postanovlenie Pravitel'stva Respubliki Kazahstan ot 13 noyabrya 2018 goda № 746. «Ob utverzhdenii Gosudarstvennoy programmy razvitiya produktivnoy zanyatosti i massovogo predprinimatel'stva «Eńbek»* [Electronic resource]. - Available at: <https://adilet.zan.kz/rus/docs/P1800000746> (Accessed: 18.08.2022).

different depending on their legal traditions, geopolitical and historical prerequisites, etc. States may provide for broader rights than those provided for in international treaties, but cannot use national legislation to narrow down the obligations contained in international treaties they have ratified. Moreover, according to the norms and customs of international law, even if the relevant national legislation is not adopted, the State is not exempt from its obligations under the treaties in which it participates.

In 1998, the heads of the participating countries signed the Statement «*About ten simple steps towards ordinary people*»⁸. Subsequently, this document, which defines the main directions for the development of integration within the Community in the social and humanitarian spheres, served as the basis for the adoption of a number of inter-State and intergovernmental acts relating to migration policy problems.

Migrant workers and human trafficking for exploitation. Problems that need to be solved.

Labor migration in the Republic of Kazakhstan is a serious problem that the state should pay attention to, and develop certain state measures aimed at minimizing it, introducing it into a legal channel and ensuring the social and legal protection of migrants.

Today, the main part of Kazakhstan's migrant workers in search of employment are mastering more and more axes, for example, the countries of Western Europe and South-East Asia, South Korea.

It should be recognized that the rate of growth of labour migration is increasing every year. This is in view of the fact that only the proportion of migrant workers who cross borders legally, with employment as the purpose of entry or exit. But it should not be forgotten that in any country there is a large share of illegal migration, including labour. Bearing in mind that any poorly regulated process generates criminalization, there is a need to be concerned about the timely, full and

adequate legal transfer of labour migration, also providing for the development of methods and forms of counteracting its negative consequences, such as illegal migration, forced labour and trafficking in human beings [13, p. 65].

Because of unresolved issues of registration at the place of stay and obtaining work permit documents, most migrants are in the shadow economic space, illegal legal space and cannot legalize their situation.

We believe that an effective step in the regulation of migration processes in the Republic of Kazakhstan will be the adoption of the Law «*On labour migration*», since this will exclude the possibility of using labour migrants as objects of exploitation. We also believe that this Law «*On Labour Migration*» will establish the procedure for the departure of citizens of the Republic of Kazakhstan for employment abroad, to attract foreign labour to Kazakhstan and to define legal norms for the protection and regulation of the activities of migrant workers.

Recently, the issues of human trafficking have become extremely important and relevant in the world community. This requires the consolidation of the efforts of the international community to combat this phenomenon. This problem also affected the Republic of Kazakhstan. In 2020, there was also an increase in human trafficking crimes in the Republic of Kazakhstan, in particular, 43 were registered, which is six times more than in 2019 (seven) and three times more than in 2018 (15)⁹. In the first half of 2021, 63 offenses related to human trafficking were registered in Kazakhstan - twice as many as a year earlier¹⁰.

The problem of human trafficking in the Republic of Kazakhstan is acquiring specific characteristics.

First, when considering the situation of human trafficking in Kazakhstan, it is necessary to understand the duality of the situation. From a global perspective, Kazakhstan was undoubtedly a transit country because of its geographical location, and was also a country of origin for victims of trafficking, which,

⁸ Zayavlenie «O desyati prostykh shagah navstrechu prostym lyudyam» (prinyato Resheniem Mezhdgosudarstvennogo Soveta Respubliki Belarus', Respubliki Kazahstan, Kyrgyzskoy Respubliki, Rossijskoj Federacii i Respubliki Tadzhiqistan ot 28 aprelya 1998 goda № 25) [Electronic resource]. - Available at: https://online.zakon.kz/Document/?doc_id=30259403 (Accessed: 18.08.2022).

⁹ Za vremya pandemii v Kazahstane ustanovlen antirekord po trgovle lyud'mi [During the pandemic, an anti-record on human trafficking has been set in Kazakhstan]. [Electronic resource]. - Available at: <http://kursiv.kz/news/obschestvo/2021-07/za-vremya-pandemii-v-kazahstane-ustanovlen-antirekord-po-torgovle-lyudmi> (Accessed: 18.08.2022).

¹⁰ Kolichestvo ugovnykh pravonarushenij, svyazannyh s trgovlej lyud'mi, vyroslo srazu vdvoe za god [The number of criminal offenses related to human trafficking has doubled immediately in a year]. [Electronic resource]. - Available at: <http://ranking.kz/ru/a/infopovody/kolichestvo-ugovnykh-pravonarushenij-svyazannyh-s-torgovlej-lyudmi-vyroslo-srazu-vdvoe-za-god> (Accessed: 18.08.2022).

although small in size, existed.

Secondly, if we draw attention to the regional situation, Kazakhstan is a country of destination for victims of trafficking from the neighbouring countries of Central Asia and the CIS, due to the predominance of labour exploitation.

Third, Kazakhstan is a country where there is internal trafficking in human beings, leading to a high risk for internal migrant workers to be subjected to labour exploitation in their home territory. This is due to the fact that, despite the difficult socio-economic situation of individual regions (mostly remote from the cities of villages), there are mega-cities (Almaty, Nur-Sultan), or industrialized cities of regional significance to which internal migrants flock in search of earnings: Undocumented, homeless, unaccompanied, unaccompanied, disabled, unemployed and destitute children.

As a result of these circumstances, Kazakhstan received a negative assessment of the US State Department, in whose report «On trafficking in human beings», our state added to the list of control countries in which this situation requires improvements. Accordingly, 11 recommendations were made to strengthen the response to this type of crime.

Combating human trafficking is one of the priority areas of State migration policy in the Republic of Kazakhstan. Special attention of state bodies is directed to creation of legislative base for effective fight against trafficking in human beings and illegal export of migrants, to increase public awareness of the problem of trafficking in human beings, improving coordination between State bodies and civil society in the fight against human trafficking.

Taking into account all the above, it can be argued that it is necessary to develop an adequate mechanism for countering this type of crime, including the coordinated participation of many stakeholders with both the necessary legal tools and special knowledge in this area.

At the moment, the priority task of the new national policy of our emerging rule of law state, based on the principles of constitutional provision and protection of individual rights and freedoms, real humanism, genuine democracy and social justice, should be to provide the necessary legislative framework for monitoring and analyzing the migration process.

Although an objective and legitimate phenomenon of social development, the migration of the population carries certain risks for any State, and Kazakhstan is no exception. In particular: the process of depopulation and non-admission of fertile agricultural land in

rural regions; the impossibility of preserving socially significant facilities, such as small-scale general education schools, medical institutions, social and service institutions; Changes in the ethnic makeup of the country, a decline in the number of members of a certain ethnic group; a decline in the level of education and training of the employed population as a result of migration processes characterized by the outflow of the most qualified labour force; Regional differences in the intensity of external migration are emerging, some regions have lower negative external migration ratios, while others have high negative external migration ratios (mainly in large cities), and the labour force deteriorates, There is a growing trend of «population ageing».

Given that the economic causes of migration are dominant in modern times, labour migration is becoming increasingly common. External migration contributes to the fact that labor migrants are more vulnerable in socio-economic and legal terms, which exposes them to certain risks, for example, insecurity, non-compliance with constitutional, migration, tax, labor laws in the host country. The development of the migration situation is also influenced by Kazakhstan's accession to the international labour market. Migration is caused by the use of foreign labour in the territory of Kazakhstan and the departure of compatriots to work abroad.

The imperfection of the legal framework on migration and the lack of a clear mechanism for regulating migration flows within the EAEU were the result of illegal migration and the emergence of conditions for the violation of constitutional human rights and freedoms. It is advisable to consider labour migration as an external employment of the population and the most important component of the foreign economic activity of the Republic of Kazakhstan. States should become the regulator of the organizational employment of their citizens abroad, actively influence the structure of emigration flows. Kazakhstan's entry into the Eurasian Economic Union promotes further international integration, creates new jobs, optimizes the activities of both the fiscal authorities and the migration services of the States members of the designated political alliances.

The uncontrolled process of labour migration has led to a system of abuse of the recruitment and exploitation of citizens of the Republic of Kazakhstan, often involving a clear violation of human rights. Migration priorities included regulating labour emigration, providing support

to ethnic Kazakhs returning to their homeland, combating irregular migration, regulating the stay of Kazakh migrants abroad and border controls.

Conclusion

Population migration is a unique challenge to the rapidly changing needs of people as a result of technological progress, the internationalization of the labour market, globalization, changes in market conditions and industrial transformation.

Migration mechanisms are a complex, multi-dimensional system that includes both objective factors and the needs, interests and aspirations of the population. We believe that the state's activities in the field of migration can be focused on several aspects and directions:

- formation of the constitutional and legal regulation of the state migration policy, which is a solid basis for the legislative structure of migration legislation;
- adoption of a legislative framework

adequate to the current situation and aimed at solving the social problems of migrants arriving in Kazakhstan, as well as protecting the rights and interests of those who are forced to temporarily leave the country in search of work;

- focus on long-term programmes on external migration with major partners;
- regulation of the spontaneous nature of external labor migration and protection of the constitutional rights of migrants, in accordance with the norms of international law.

Today in the Republic of Kazakhstan, one of the important tasks is to develop a comprehensive program of legal regulation of labor migration, within which aspects of countering illegal labor migration should be provided. We believe that this program should take into account that labor migration is a special type of economic migration, and therefore the measures envisaged in it should be aimed at solving socio-economic problems.

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