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*Research Article*

## FEATURES OF THE LEGAL REGULATION OF LABOR MIGRATION IN THE CIS STATES AT THE PRESENT STAGE OF SOCIAL DEVELOPMENT

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*The article discusses the legal framework for regulating labor migration in the Commonwealth of independent states (hereinafter referred to as the CIS). Particular attention is paid to the definition of 'labor migration' in the legal literature, international legislative documents and agreements about labor migration within the CIS. The author analyzes the UN Convention 'On the Protection of the Rights of All Migrant Workers and Members of Their Families', the ILO Migration for Employment Convention No. 97 (Revised), 1949, and the Agreement between the CIS states 'On the protection of labor migrants and members of their families', as well as individual intergovernmental agreements between the CIS states, some legislative acts of the CIS states. He defines the essence and features of the legal regulation of labor migration in the CIS states at the present stage of social development. At the conclusion the author presents his opinion regarding the definition of the term 'labor migration' and the ways of legal regulation of labor migration within the CIS.*

**Key words:** labor migration, labor migrant, labor activity, foreign citizen, convention, agreement

### Introduction

Today, one of the important global issues that need to be addressed all over the world is the regulation of migration processes due to the movement of people in order to use abandoned lands, develop productive forces, form and study cultures, languages and peoples. Population migration as a complex social process affects almost all areas of the social and political life of peoples around the world, playing an important role in the history.

According to the report of the International Organization for Migration for 2020, the number of migrants in the world is estimated at 281 million people. 2/3 of them are labor migrants<sup>1</sup>.

With this in mind, at the initiative of the UN, on December 10, 2018, a new document was adopted – the Global Compact for Safe, Orderly and Regular Migration<sup>2</sup>. This agreement is advisory, and its main objectives and implementation are in line with the 2030 Agenda for Sustainable Development, where special attention is paid to the national independence of states.

<sup>1</sup> World Migration Report 2020. Available at: [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/imr2020\\_10\\_key\\_messages\\_en\\_1.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/imr2020_10_key_messages_en_1.pdf) [Accessed 8 July 2022].

<sup>2</sup> Global Compact for Safe, Orderly and Regular Migration, December 10, 2018. Available at: <https://refugeesmigrants.un.org/migration-compact> [Accessed 8 September 2022].

The rights of migrant workers and members of their families in states of employment must be ensured by providing adequate access to employment, health care, housing and education on an equal basis with citizens of those countries. These issues are clearly a part of the most important social rights protected by international human rights and labor treaties.

### Materials and Methods

The basis of the methodology in preparing the article was a comparative analysis of international acts on labor migration: acts of the UN, ILO, agreements concluded by the CIS states. The involvement of statistical data made it possible to show the problems in this area and propose changes to the legislation on labor migrants. These changes are intended to protect the rights of such people and their families.

### Discussion

The CIS states after their independence faced the problem of a sharp migration flow of people from one state to another, the number exceeded several million people. The main part of the migrating population remained for permanent residence, or was engaged in temporary labor activity. Starting from that period, the CIS states needed to regulate labor migration processes, both in states of migrants outflow and in receiving states. Over the past 20 years, migration has become one of the significant phenomena of the CIS states with a significant impact on all areas of the life: economic, social, political, demographic.

Based on this, today the migration processes regulation, especially of labor migration, is important for the CIS states. Some CIS states: Tajikistan, Uzbekistan and Kyrgyzstan have a young population structure. There is an increase in population and, accordingly, in the labor force in these countries. For example, the annual population growth in Tajikistan averages 2.2%<sup>3</sup>. Tajikistan ranks first in the region in terms of population growth. According to statistics, an average of 500,000 citizens leave Tajikistan every year for labor migration<sup>4</sup>.

Labor migration of citizens of the CIS states mainly occurs within the CIS. The main countries receiving labor migrants within the Commonwealth are the Russian Federation and the Republic of Kazakhstan.

The COVID-19 crisis has shown that there are serious problems in the regulation of labor migration and that there exists the problem of inequality in social protection of migrants. Labor migrants accessing social protection (in comparison with citizens of the states of employment) face additional obstacles that are of a theoretical and practical nature. In our opinion, many of these problems arise precisely because the legal status and the legal stay of labor migrants are still not paid enough attention to, both at the legislative level and in science in general.

In this context, there are also questions about the terminology and definitions content used in the scope of labor migration. In the scientific legal literature, labor migration has many names: 'labor migration', 'external labor migration', 'foreign labor'. The relations arising with these workers are referred to as 'relations with the participation of foreign elements', similar in content to 'international labor market', 'international labor exchange', 'international movement of labor resources'.

Legislation contains the terms 'labor migration' and 'external labor migration', but it does not provide clear criteria for what is meant by labor migration and who is it, although the term migrant worker is often used in both national and international law.

It is no coincidence that in the literature this is often paid attention to. For example, it is noted that the definitions of 'migrant', 'migration' still remain unsettled, the concepts of 'migrant worker' and 'foreign worker' are not agreed upon (Khabrieva, Andrichenko, Eleonsky 2004: 754).

Among scientists there are different opinions regarding the definition of the concept and the legal essence of labor migration. According to I.Ya. Kiselev, external labor migration (international labor) is labor relations complicated by a foreign element. At the same time, a foreign element can be present both in the subject composition (the subject of the relationship is a foreign worker or a foreign employer) and

<sup>3</sup> Population Growth in Central Asian Countries. Available at: <https://www.mir-geo.ru/centr-aziya/nasel/prir-nase> [Accessed 9 April 2022].

<sup>4</sup> Labor Market in Tajikistan//Statistics Agency under the President of the Republic of Tajikistan, 2017. Available at: <https://www.stat.tj/ru/> [Accessed 4 September 2022].

in the object composition (the work of an employee takes place abroad, although the participants in the relationship may belong to the same state) (Kiselev, 1997: 13).

V. E. Rybalkin sees external labor migration as the movement of labor from less developed countries to economically developed countries for temporary work with subsequent return to their homeland (Rybalkin, 2000: 150). Z. A. Ikrami disagrees with the definition of external labor migration given by V. E. Rybalkin. In his opinion, at present labor resources are moving both between developed and developing countries (Ikrami, 2007: 11).

V. A. Iontsev, focusing on the purpose of movement, defines international labor migration as legal work in the country of entry for a certain period of time (from 1 day to several years), after that this migrant returns to the country of departure (Iontsev 1999: 308).

Z. A. Ikrami defines external labor migration (international labor migration) as the interstate movement of a person in order to perform temporary labor activity in the country of entry and receiving remuneration for his work during the work permit period of validity (Ikrami, 2007: 12), and also as an independent form of international socio-economic relations associated with the crossing of the state border by the labor force, a certain urgency of movement, remuneration of migrants in the country of entry and the intention to return to their homeland (Ikrami, 2007: 11).

Labor migration is estimated by many authors as entirely voluntary migration (Moskvin, 1995: 34). It seems that labor migration is always or almost always a forced migration, because the homeland country is idle in production, there are not enough jobs, or because of low wages that cannot satisfy the basic needs of a person or of a family.

There is also no consensus in the designation of the person – labor migrant. For example, G. S. Skachkova suggests using the term ‘migrant worker’ to designate this person (Skachkova, 2006: 264). Others prefer the term ‘foreign worker’. Z. A. Ikrami considers it more correct not to use the above terms, but to use the term ‘migrant worker’, since it can be applied not only to the employees, but also to other persons engaged in any labor activity (Ikrami, 2007: 11). Referring to the international law and international acts, Yu. V. Zhiltsova also sees it appropriate to choose the term ‘migrant worker’ (Zhiltsova, 2011: 18). In her opinion, it is incorrect to use the term ‘foreign worker’ in the legislation, since the Labor Code understands an employee as a person who has entered into an employment relationship with an employer, i.e. entered into an employment contract.

In accordance with Art. 2 of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the term ‘migrant worker’ means ‘a person who will be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national’<sup>5</sup> and his work is not limited to employment.

Many authors suggest it is expedient to include in the content of ‘labor migration’ the implementation of labor activity, both within the framework of labor contracts and civil law contracts. In their opinion, this makes it possible to regulate labor migration more correctly, since labor performed under an employment contract within the framework of civil law agreements needs legal protection. For example, Yu.V. Zhiltsova considers it necessary to replace the term ‘labor activity’, which the legislation defines as the work of a foreign citizen on the basis of an employment contract or a civil law contract about work or services, with the term ‘activity on the basis of an employment contract or civil legal contract about work or services. In her opinion, the term ‘labor’ is more labor than universal in nature; accordingly, the use of the term ‘labor activity’ as such a broad concept seems illogical (Zhiltsova, 2011: 18).

In our opinion, Art. 2 of the International Convention ‘On the Protection of the Rights of All Migrant Workers and Members of Their Families’, is not applicable to all persons who are migrant workers. This rule, when referring to a migrant worker engaged in a remunerated activity other than work under an employment contract, also indicates the nature of the work performed by the migrant worker, as a rule, ‘on his own’, which may not apply to the work performed in under civil law contracts. In this case, self-employment, which provides a migrant worker with the means for his subsistence, includes entrepreneurial activity. The independent nature of entrepreneurial activity indicates the Civil Code

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<sup>5</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers> [Accessed 15 September 2022].

of the Republic of Tajikistan<sup>6</sup>. In accordance with Art.1 of the Civil Code of the Republic of Tajikistan, 'entrepreneurial activity is an independent activity carried out at one's own risk, aimed at systematically obtaining profit from the use of property, the sale of goods, the work or the provision of services by persons registered as such in the manner prescribed by law'.

'Systematic profit' should be understood as the regular extraction of profit (income).

Citizens have the right to engage in entrepreneurial activities without forming a legal entity (Art. 24 of the Civil Code of the Republic of Tajikistan). This means that entrepreneurial activity includes not only the work or services under civil law contracts, but also goods production and sale, which, in fact, is carried out by an individual entrepreneur independently, and not depends on the conclusion of labor or civil law contracts.

Therefore, we consider it expedient to include in the content of 'labor migration' the implementation of entrepreneurial activities without the formation of a legal entity.

Based on the foregoing, in order to fully cover the concept of 'labor migration' and specify it legally, the following definition seems appropriate: 'Labor migration is a temporary change in the place of residence of a person for the purpose of engaging in paid activities in a foreign state'. This wording must be used in the legislation of the CIS states. At the same time, it is necessary to distinguish between the area of civil and labor law in relation to migrant workers.

In accordance with art. 2 of the Universal Declaration of Human Rights, 1948 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...'. In addition, 'no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs...'<sup>7</sup>

The special nature of the Universal Declaration norms is in the realization of these rights, not conditioned either by citizenship or non-permanent residence in a certain territory. The possibilities of their restriction are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (Part 2, Art. 29 of the Universal Declaration of Human Rights).

ILO Migration for Employment Convention (Revised), 1949 (No. 97) defined a migrant for employment as a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment (art. 11)<sup>8</sup>. The UN Convention 'On the Protection of the Rights of All Migrant Workers and Members of Their Families' defines the concept of a 'migrant worker' as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (art. 2). It also includes in the concept of 'migrant worker' entities engaged in paid activities both on the basis of labor and civil law contracts, as well as remunerated activities carried out personally or jointly with the family.

On the territory of the CIS states, including the Republic of Tajikistan, the Agreement between the CIS member states dated April 15, 1994 'On the protection of labor migrants and members of their families' is in force<sup>9</sup>. For the purposes of this Agreement, the term 'migrant worker (or worker)' means a person with permanent residence in the Party of departure who is lawfully engaged in a paid activity in the Party of employment (art. 2). From the content of the norms of the Agreement, it is assumed that the term 'labor migration' covers only activities carried out under an employment contract. In particular, the Agreement regulates the main areas of cooperation of the Parties in the field of labor activity and social protection of persons and members of their families who permanently reside in the territory of one of the states of the Parties and carry out their labor activities at enterprises, institutions, organizations of all forms of ownership in the territory of another state Party in accordance with the law. In addition, Art. 2 of the Agreement also considers the term 'Party of Employment' as a state where a migrant worker carries out his labor activity on the terms of an employment contract. The term 'working conditions' is also used here as a set of factors of the working environment that affect the health and performance of a person in the

<sup>6</sup> Akhbori Majlisi Oli of the Republic of Tajikistan. 1999. No. 6. Art. 153.

<sup>7</sup> Universal Declaration of Human Rights. Available at: <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> [Accessed 14 September 2022].

<sup>8</sup> Migration for Employment Convention (Revised), 1949 (No. 97). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C097](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097) [Accessed 14 September 2022].

<sup>9</sup> Interparliamentary Assembly of the CIS Member States. 1997. No. 2. P. 3-7.

process of work, including the working hours and rest time length, holidays, remuneration in accordance with the labor legislation of the Party of employment.

Art. 6 of the Agreement deals with the form, content and termination of an employment contract between a migrant worker and an employer.

The nature of labor migration based on an employment contract is also indicated by many international treaties of the Republic of Tajikistan. For example: Agreement of May 4, 2006 between the Government of the Republic of Tajikistan and the Government of the Republic of Kazakhstan ‘On labor activity and protection of the rights of migrant workers, citizens of the Republic of Tajikistan temporarily working on the territory of the Republic of Kazakhstan, on labor activity and protection of the rights of migrant workers, citizens of the Republic of Kazakhstan temporarily working on the territory of the Republic of Tajikistan’<sup>10</sup> applies to persons permanently residing on the territory of the Party of departure who are legally engaged in paid labor activity on the territory of the state of the Party of employment (Art. 1). Although this article does not indicate an employment contract, nevertheless, it is precisely about labor activity on the basis of an employment contract that we are talking about, which is expressly provided for in Part 1 of Art. 6 of the Agreement: ‘The labor activity of a migrant worker is carried out on the basis of an individual labor agreement (contract) concluded with the employer in one or more languages, in accordance with the legislation of the Party of employment’. The same wording exists in the Agreement of May 6, 1998 between the Government of the Republic of Tajikistan and the Government of the Kyrgyz Republic ‘On labor activity and social protection of migrant workers’<sup>11</sup>. But these international treaties contain a mention that the persons falling under the scope of these agreements are migrant workers.

It should be noted that the Agreement of October 16, 2004 between the Government of the Republic of Tajikistan and the Government of the Russian Federation ‘On labor activity and protection of the rights of citizens of the Republic of Tajikistan in the Russian Federation and citizens of the Russian Federation in the Republic of Tajikistan’<sup>12</sup>, which determines persons to whom this act extends. They are persons engaged in temporary labor activity in accordance with: a) contracts for the work or services concluded between legal entities or individuals of the host state, legal entities of the state of permanent residence – employers for the employee (referred to as contracts for the work); b) civil law contracts for works (services), concluded by them with customers of works (services) of the host state; c) employment contracts concluded by them with the employer of the host state.

It is this provision that makes it possible to regulate labor migration more correctly, since labor carried out under an employment contract and within the framework of civil law agreements also needs legal protection.

In scientific literature, this type of labor migration is called differently: ‘commercial migration’, ‘shuttle migration’ and is characterized by the most massive type of economic migration. Commercial migrants conduct trading business abroad, buying goods in other countries and bringing them for resale for profit. Commercial migrants can hire workers or involve their relatives or other people on a gratuitous or paid basis. A characteristic feature of commercial migrants is the informal nature of their activities: as a rule, they are engaged in trading business without registration with state services. But, unfortunately, its legal definition has not been formulated, therefore, this definition is absent in the agreements within the CIS and, accordingly, in the national legislation of the CIS states.

On this issue, the reason for judgment is the problem on determining the legal status of migrant workers engaged in individual entrepreneurship. Such cases take place in the regulation of the labor activity of migrant workers by the Agreement of May 4, 2006 between the Government of the Republic of Tajikistan and the Government of the Republic of Kazakhstan ‘On labor activity and protection of the rights of migrant workers, citizens of the Republic of Tajikistan temporarily working on the territory of the Republic of Kazakhstan, on labor activity and protection of the rights of migrant workers, citizens of the Republic of Kazakhstan, temporarily working on the territory of the Republic of Tajikistan’<sup>13</sup>. According to the Art. 2 of the Agreement, self-employed persons are not recognized as migrant workers. This means that migrant workers – citizens of the Republic of Tajikistan, who are actually individual entrepreneurs and

<sup>10</sup> Akhbori Majlisi Oli of the Republic of Tajikistan. 2006. No. 10. Art. 440.

<sup>11</sup> Decisions of the President and Government of the Republic of Tajikistan. 1998, May.

<sup>12</sup> Decisions of the President and Government of the Republic of Tajikistan. 2004, October.

<sup>13</sup> Akhbori Majlisi Oli of the Republic of Tajikistan. 2006. No. 10. Art. 440.

are mainly engaged in wholesale and retail trade in the markets, were left out. They were not given the status of a migrant worker and they could not use the benefits and the registration procedure established for migrant workers in the Republic of Kazakhstan. Of course, a self-employed migrant worker is not an employee. However, as proceeds from the norms provided for by civil legislation and practice, the work performed by a migrant worker who is engaged in individual entrepreneurship is not limited within the framework of civil law agreements. Therefore, it is necessary to attribute persons engaged in entrepreneurial activities without forming a legal entity to migrant workers. Consequently, is necessary to take it into account and give the status of migrant workers to these persons in the international agreements of the CIS. All migrant workers need protection, not just employees who have concluded an employment contract or perform one-time work under civil law agreements.

As is known, the basic documents of international organizations are of great importance to national legislation, since when forming a national policy of intercountry labor migration, the norms of ratified international conventions should be taken into account. The most vulnerable in this process are family members of labor migrants, including children and minors. The legal regulation of this issue at the international level and by countries receiving migrants has not yet been fully ensured.

In particular, children migration is not a new phenomenon, it has a long history. According to the latest global estimate by the UN Children's Fund, the total number of migrant children has reached about 31 million<sup>14</sup>. This number represents the total number of migrants under the age of 18 who were born in foreign countries and do not have the citizenship of these countries. However, there are still no accurate statistics on the country from which they migrated, the duration of their migration, their legal status and other information about them.

Based on this, both the UN Convention and the ILO Convention on the Rights of Migrant Workers relate to the legal status of members of their families. In particular, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has defined the concept of 'family member'. According to article 4 of the UN Convention, the term 'members of the family' refers to persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned. Similar definitions of 'a family member of a labor migrant' are contained in the Agreement on Cooperation in the Field of Migration and Social Protection of Labor Migrants within the CIS.

For example, according to Art. 30 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of December 18, 1990, 'every child of a migrant worker has the fundamental right to education, together with a national of the host country. Their admission to state preschool educational institutions or schools cannot be limited or prohibited due to the lack of a permanent status'. Unfortunately, family members of labor migrants often face problems of access to social services: education, treatment, employment during their stay in the host countries. Most of the CIS states do not take into account the requirements of international documents regarding the legal status of migrant family members, especially children and minors, in the legal regulation of migration by national legislation.

Intergovernmental agreements between the CIS states about labor migration do not always regulate the legal status of members of the families of labor migrants. For example, intergovernmental agreements of the Russian Federation with other CIS countries, in particular with the Republic of Kyrgyzstan<sup>15</sup>, the Republic of Uzbekistan<sup>16</sup> and the Republic of Tajikistan<sup>17</sup>, do not contain rules regarding the legal status of members of families of migrant workers.

<sup>14</sup> UNICEF, 2018b. Available at: <https://www.unicef.org/reports/annual-report-2018> [Accessed 10 September 2022].

<sup>15</sup> Agreement between the Government of the Russian Federation and the Government of the Kyrgyz Republic on labor activities and social protection of migrant workers of March 28, 1996. Available at: [http://base.spinform.ru/show\\_doc.fwx?rgn=4880](http://base.spinform.ru/show_doc.fwx?rgn=4880) [Accessed 5 May 2022].

<sup>16</sup> Agreement between the Government of the Russian Federation and the Government of the Republic of Uzbekistan on the organized recruitment of citizens of the Republic of Uzbekistan for temporary labor activity on the territory of the Russian Federation of April 5, 2017. Available at: <https://ria.html17498069806898.ru> [Accessed 5 May 2022].

<sup>17</sup> Agreement between the Government of the Republic of Tajikistan and the Government of the Russian Federation on labor activity and protection of the rights of citizens of the Republic of Tajikistan and citizens of the Russian Federation in the Republic of Tajikistan of October 16, 2004. Available at: <http://www.adlia.tj> [Accessed 12 May 2022].

Such gap in these agreements during the stay of family members of labor migrants, especially children and minors from the CIS states, has led to many problems in the Russian Federation and the Republic of Kazakhstan. For example, children and spouses of labor migrants who do not work do not have legal grounds to stay on the territory of the Russian Federation for more than 90 days. Labor migrants are forced to issue work permits for their spouses for their family members to stay for more than 90 days and prevent violations of the law, as well as pay monthly taxes for non-existent activities. For migrants, these unexpected financial costs are significant.

This factor led to the failure to ensure the rights of children of labor migrants to education. When children of labor migrants are admitted to preschool institutions and schools in the Russian Federation, preschool and educational centers require registration of migrant children during the entire academic year, while, according to the legislation of the Russian Federation, registration of children of labor migrants is granted only for up to 90 days.

### Conclusion

The comparative analysis of the relationship between the status of a migrant worker in international and national law shows a number of questions that are of a theoretical and practical nature. So, the CIS states, or in general, the states with the most intensive migration exchange, in our opinion, should strive to harmonize migration legislation, primarily in terms of regulating the legal status of migrants, as well as to unify key legal terms, such as 'migrant', 'migrant worker', 'refugee', 'forced migrant'.

We also consider it necessary, when developing and concluding international treaties within the framework of the CIS in the field of migration, to mandatorily provide for a legal mechanism for ensuring the rights of labor migrants to social security: accounting for work experience, conditions and procedure for pension insurance, the mechanism for pension exporting, social benefits during the period of labor migration, as well as providing medical services, access to housing and education for labor migrants and their family members.

It is necessary to take into account in international treaties of the CIS about labor migration the legal status of family members of labor migrants and include in them the right to family reunification of migrant workers, the possibility of staying family members of a labor migrant in a foreign state for the period of labor migrants' labor activity.

When developing international conventions within the CIS about labor migration, in order to cover all labor migrants, it is necessary to include the following types of work and labor activity of labor migrants, in accordance with:

- a) contracts for the work or services concluded between legal entities or individuals of the host state, legal entities of the state of permanent residence – employers for the employee (referred to as contracts for the work);
- b) civil law contracts for works (services), concluded by them with customers of works (services) of the host state;
- c) employment contracts concluded by them with the employer of the host state;
- d) rules of the employment state to engage in individual entrepreneurship.

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