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INTERNATIONAL LEGAL REGULATION OF LABOR MIGRATION ISSUES

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The fact of widespread labor migration is proved not only among the population of Ukraine, but also among the world community as a whole. The main reasons for the movement of the working-age population in the context of globalisation processes are identified. The main aspects of the need for a unified model of compliance of national legislation with international standards are identified. It is proved that the unanimity of legal regulation of the labor migration process would help to eliminate contradictions between the provisions of legal systems of different states. The list of international documents which define the fundamental concepts of regulation of the area of public relations under study is outlined in the article.

Key words: legislation; international law; international standards; employment; labor migration.

Introduction. The threats inherent in modern Ukraine (the spread of the 2019 coronavirus pandemic, the armed attack of the russian federation, economic and humanitarian crises) have not in any way hindered the process of reforming all spheres of our country's life. One of the most important areas of this activity is the regulation of the continuous mechanism of labor migration, the challenges of which are inherent in the society of each country. A comparative (comparative legal) analysis of countering these threats is extremely important not only from a scientific point of view, but from a legal point of view as well. The study under consideration is aimed at clarifying the provisions of those international legal acts which determine the direction of development of the foreign countries' positive experience with regard to administrative regulation of labor migration issues.

Among a number of ways to improve the effectiveness of the administrative legislation of Ukraine, the most successful method is considered to be the borrowing of the best foreign experience in solving clearly defined issues. Studying the practice of implementing similar activities in any country (from the point of view of compliance of foreign legal provisions with international standards) is a valid prerequisite for establishing the need for changes in domestic administrative and legal provisions. Obviously, the states of the world have a richer experience of the legal systems functioning, and therefore of legal traditions regulating social relations. For comparison, it is worth mentioning such legislative acts as the Law on the Protection of Private Property of England (1689), the Criminal Code of Germany (1871), the Constitutions of Italy and Germany (1948), etc. [1, p. 52]. Considering that Ukraine gained state independence only at the end of the 20th century, accordingly, the updating of legislation in any field of law also took place in the most recent period. In addition, the processes of labor migration are characterized by constant changes, since this type of social

relations directly depends on aspects of the development of not only the national economy, but also global trends in general. The outline only confirms the appropriateness of carrying out a comparative legal analysis of the regulation of labor migration issues of foreign legislation with Ukrainian legislation.

At the same time, it should be emphasized that despite the similarity of administrative and legal regulation measures, each country has individual features arising from the peculiarities of their development and establishment, legal customs, cultural aspects, historical events, vital activities of the population, etc. Accordingly, only divergent features will be of scientific interest, which will ensure the identification of the best forms of influence on social relations arising in the course of labor migration. This is precisely what indicates the relevance of addressing the issues raised in this paper.

Objective. Scientific research of the requirements of international legal acts on certain issues of regulation of labor migration; identification of common and divergent features of regulation in the international legal system and the national one; identification of certain theoretical, legislative and applied issues related to the regulation of labor migration; formation of reasonable possible ways to solve the identified problems.

Results of the study. The development of the modern world is accompanied by universal processes of globalization, which have a significant impact on changing the conditions of states' existence. One of the consequences of this "erasure" of borders is the emergence of a large number of migrant workers. However, the work of this category of persons is usually characterized by difficult conditions, which indicates their insufficient legal protection, and in many cases, the lack of real opportunity to exercise the rights granted to them. According to International Labor Organization (ILO) estimates, at the beginning of the 21st century there were between 36 and 42 million migrant workers in the world. Today's realities already point to a much higher number – 70 million official labor migrants [2].

Due to the integration processes in the economy, labor migration and labor relations generated by it, which are linked to more than one legal order, are becoming more widespread. Due to the extremely large-scale cross-border movement of goods and services, internationalization of production, scientific and technological progress, attraction of foreign capital, creation of transnational corporations, joint ventures, etc., interstate labor migration is characterized by the involvement of a significant number of people.

The increase in labor migration is influenced, among other things, by political factors: the collapse of some states and the creation of others, changes in the nature of the political system, international and inter-ethnic conflicts, wars, etc. As a result, most developed countries today have a certain stratum of people who legally (or not) stay in their territory, permanently or temporarily, for the purpose of employment.

As a result of the spread of labor migration, labor relations related to more than one legal system arise and exist. For example: labor of citizens of a certain country for foreign employers within the country and abroad (labor emigration of citizens, concluding labor contracts with foreign firms for work within the country, work in foreign joint ventures); business trips of citizens to work abroad; work at enterprises that are legal entities under national law but belong to foreign capital and are part of the orbit of transnational corporations; labor of foreigners on various grounds (labor immigration, work at enterprises with foreign investment).

To regulate labor relations, national laws of different countries contain relevant legal provisions in constitutions, codes, laws, employment contracts, etc. The labor law of continental European countries is characterized by a significant proportion of legislative acts and collective bargaining agreements, which are the main sources of labor law. Case law and court decisions are not recognized as sources of law here. In contrast, in Anglo-Saxon countries, collective agreements and court decisions are important sources of law. Only certain issues are regulated by law, such as trade unions, strikes, etc.

The above requires not only legal regulation of the labor migration process, but also unification of legal systems in terms of their impact on this category of social relations. However, before forming one's own migration legislation, it is necessary to have a model according to which there would be no

contradictions between the provisions of the legal systems of different states. That is why it is worth pointing out those international documents which define the fundamental concepts of regulation of the area of social activity under study.

International labor law is a branch of international law that regulates relations between states with regard to ensuring international labor standards, as well as relations complicated by a foreign element in connection with the international protection of human labor rights [3, p. 216]. The scope of international labor law has expanded significantly, in particular due to the activities of transnational corporations trying to operate in different countries (including developing ones) in order to reduce labor costs. On the other hand, employees themselves are trying to solve their social problems related to low wages, unemployment, etc. in the country of citizenship by finding employment in countries with higher working conditions or a wider range of employment opportunities.

The Universal Declaration of Human Rights of 1948 is of fundamental importance in this area, which in its Article 23 establishes the right of everyone to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; the right of everyone to equal pay for equal work and to just and satisfactory remuneration. Although the Universal Declaration of Human Rights is not legally binding, its moral authority allows it to influence other international legal documents [4].

The International Covenant on Economic, Social and Cultural Rights of 1966 recognizes the right to work, which includes the right of everyone to have the opportunity to earn his or her living by work freely chosen or accepted. To this end, States Parties to the Covenant must take measures with regard to vocational education and training programs and employment (Article 6). The States Parties to the present Covenant recognize the right of everyone to just and favorable conditions of work, including, in particular, remuneration which shall secure, at a minimum, to all workers: fair wages and equal remuneration for work of equal value without distinction of any kind; working conditions meeting safety and health requirements; equal opportunity for promotion to higher grades solely on the basis of length of service and qualifications; rest, leisure and reasonable limitation of working hours, paid periodic leave and remuneration for public holidays (Article 7) [5].

Article 10 of the Covenant enshrines the obligation to grant paid leave with adequate social security benefits to mothers for a reasonable period before and after childbirth, as well as guarantees to protect children and adolescents from economic and social exploitation and the establishment by States of the age below which paid child labor is prohibited and punishable by law.

The International Covenant on Civil and Political Rights of 1966 enshrines (Article 8) the prohibition of forced or compulsory labor.

The UN Convention on the Elimination of All Forms of Racial Discrimination of 1966 establishes in Article 5 the obligation to ensure equality of everyone before the law, regardless of race, colour, nationality or ethnic origin, especially in the exercise of the right to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, and fair and satisfactory remuneration [6].

The UN Convention on the Elimination of All Forms of Discrimination against Women of 1979 obliges state parties to take all measures to restore women's equality in employment, in particular, the right to work, the right to equal employment opportunities, the right to free choice of profession, equal remuneration, social security, etc. (Article 11) [7].

The 1951 UN Convention relating to the Status of Refugees sets out the obligation of contracting states to grant refugees lawfully residing in their territory the same rights to employment as foreign nationals in the same circumstances. States are obliged to provide refugees with the most favourable status with regard to the right to engage in independent agriculture, industry, craft, trade, and free professions (Articles 18 and 19) [8].

The 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families establishes in Article 8 the rule that migrant workers and members of their families may freely leave any country, including their country of origin. Migrant workers shall be treated

no less favourably than nationals in matters of employment, remuneration and other conditions of work and employment (Article 25) [9].

According to this Convention, migrant workers and members of their families shall enjoy the right to free movement within the territory of the State of employment and to choose freely their place of residence therein (Article 39). At the end of their stay in the country of employment, migrant workers have the right to transfer their earned savings to their country of origin or another country (Article 47). Migrant workers have the right to freely choose their paid activity (Article 52); they are also granted national treatment in matters of protection against dismissal, unemployment benefits (Article 54), etc.

Thus, the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families enshrines the rights of migrant workers and members of their families: to freedom of movement, personal integrity, humane treatment, recognition of legal personality, to form trade unions, to social security, medical care, freedom of speech, thought, conscience, and religion (Articles 8-32).

The International Labour Organization has adopted many important international labour regulations. It was established back in 1919 under the Treaty of Versailles by the League of Nations as the International Labour Conventions and Recommendations Commission (ILC) to develop conventions and recommendations concerning labor law and the improvement of working conditions. The ILO operates as an autonomous specialised agency tasked with the formulation of international labor standards and their implementation. The ILO's work is carried out through the International Labour Conference held annually in Geneva. The ILO's work results in a number of international instruments relating to human rights, prohibition of forced or compulsory labor, freedom of association, elimination of discrimination in labor and employment, implementation of the principle of equal remuneration for equal work, occupational safety and health, rest, holidays, etc.

Some acts adopted by the ILO have already been mentioned in the context of the issues under consideration. It seems appropriate to analyse in more detail those that relate directly to the topic of the study under consideration. First, ILO Convention No. 97 on the Rights of Migrant Workers. This document contains norms that oblige states to provide information on policies, legislation, special institutions, and measures concerning labor migration. States are required to establish competent and free-of-charge assistance services for migrant workers, take measures against misleading propaganda on migration issues; measures to facilitate the departure and relocation of migrant workers; and provide national treatment in matters of wages, benefits, collective bargaining privileges, housing, social security, taxes and fees, and judicial proceedings.

ILO Convention No. 143 concerning Migrant Workers and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975) imposes an obligation on the State parties to the organisation to take measures to suppress clandestine migration, illegal recruitment, and against organisers and employers of illegal migrants (Article 3); detection of illegal employment of migrant workers, application of administrative, civil and criminal liability to persons who illegally use the labor of migrant workers, organise migration of workers to obtain work (Article 6) [10].

At the same time, if the grounds for residence are legal, states must ensure equality with regard to guarantees of employment, provision of work, temporary work, and retraining for migrant workers (Article 8 of ILO Convention No. 143). States must implement national policies aimed at promoting equality of opportunity and treatment, social security, trade unions, cultural rights, individual and collective freedoms of migrant workers and members of their families who are legally in the country (Article 9).

A number of other ILO Conventions regulate labor relations: Convention concerning Equality of Treatment of Nationals and Aliens and Stateless Persons in the Field of Social Security No. 118 (1962 p.) [11]; Wage Protection Convention No. 95 (1949 p.) [12], Annual Leave (Protection) Convention No. 52 (1936 p.) [13], Employment Policy Convention No. 122 (1964 p.) [14].

The European Union's acts on human rights at work play an important role for the European Community. Thus, in accordance with Article 2 of the Treaty establishing the European Union [15], the Community has the task of promoting harmonious, balanced and continuous development of economic

activity, high levels of employment and social protection in the Member States. The Community aims to promote employment, improve living and working conditions (Article 136).

The European Social Charter in Part I, establishes the following rights and principles: everyone shall have the opportunity to earn his or her living through free choice of profession and occupation, the right to fair and safe working conditions, fair remuneration, and social security [16].

Citizens of any state party to the Charter have the right to any gainful employment in the territory of another state party to the Charter on a basis of equality with its citizens, while having the right to protection and assistance for themselves and their families, etc. For this purpose, states must apply the existing rules in a liberal spirit, simplify formalities and eliminate legal costs for foreign workers, liberalise the rules governing the labour of foreigners, and recognise the right to leave the country and engage in profitable activities in the territory of another country (Article 18).

Migrant workers, in accordance with the European Social Charter, should be provided with access to services to assist them, ensure their departure, relocation, necessary medical and hygienic services, national treatment with regard to wages, trade union membership, housing, taxation, and judicial procedures (Article 19).

The European Union also adopted the Charter of Fundamental Social Rights of Workers (1989) [17], which, in particular, guarantees freedom of movement of workers within the EU, provides for the right to employment in any job within the EU on the basis of the national treatment of local workers in terms of access to work, its conditions and social protection; hamonization of living conditions in EU member states; elimination of non-recognition of diplomas or equivalent professional qualifications; improvement of living and working conditions of frontline workers.

Conclusions. The content of the scientific research confirms not only the impact of labor migration on the socio-political and economic development of each State, but also the need for appropriate legal regulation of this phenomenon. Accordingly, the international community, taking into account the significance of this phenomenon for the development of each sector of society, has introduced a number of international legal acts regulating migration processes. Intending to be a part of the international community and choosing the course of Euro-Atlantic integration, Ukraine has not only ratified certain provisions of international law, but also introduced a number of changes to domestic legislation. Being a part of the international community requires aligning the content of Ukrainian norms with international requirements.

The identical perception and interpretation of international regulations in all countries will allow labor migrants to use the opportunities enshrined in international law on an equal level.

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МІЖНАРОДНО-ПРАВОВЕ РЕГУЛЮВАННЯ ОКРЕМИХ ПИТАНЬ ТРУДОВОЇ МІГРАЦІЇ

Доведено факт поширення трудової міграції не лише серед населення України, а й серед світової спільноти загалом. Визначено основні причини переміщення працездатного населення в умовах глобалізаційних процесів. Встановлено головні аспекти необхідності існування уніфікованої моделі відповідності законодавств держав міжнародним стандартам. Доведено, що одностайність здійснення правового регулювання процесу трудової міграції сприяла б усуненню суперечностей між приписами правових систем різних держав. Окреслено перелік тих міжнародних документів, що визначають основоположні концепції регулювання досліджуваної галузі суспільних відносин.

Ключові слова: законодавство; міжнародне право; міжнародні стандарти; працевлаштування; трудова міграція.