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LABOR MIGRATION AS A LEGAL PHENOMENON

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Abstract

First of all, the peculiarities of the legal regulation of the labor activity of migrant workers are due to the possibility to build a Society of General Labor in our country based on a developed market economy, and, in general, with a change in the legal and political system of the Kazakhstani society. This issue is especially acute in connection with the strengthening of integration processes within the framework of modern world politics and the emergence of large economic blocks, a member of which the Republic of Kazakhstan is becoming. In particular, as of January 1, 2015, the agreement on the establishment of the Eurasian Economic Union (EEU) came into force; it is aimed at strengthening social and economic processes between the participating countries: the formation of a single market for goods, services, capital and, what is especially important, labor resources. In this context, we consider it necessary to note that the legal status of migrant workers in the Republic of Kazakhstan has not been subjected to comprehensive theoretical and practical research. In this article, we have sought to identify some theoretical and applied issues that have arisen in the sphere of labor migration, as well as to attempt in helping to eliminate those legal conflicts that have emerged as a result of the ratification of international agreements by the Republic of Kazakhstan and to establish their correlation with national legislation. The aim of the research is to study the legal status of migrant workers, to summarize and analyze certain aspects of their legal situation, to identify legislative ways to regulate the labor activity of migrant workers, and the impact of their activities on improving the institution of social partnership.

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Keywords: Labor law, labor, labor migration, employee, employer, internal migration, external migration.



1. Introduction

Migration of foreign labor today is one of the main components of aggregate migration movements. Within 90% of all international migrants move to economically developed countries in search of permanent earnings (Akumova, 2008). In the context of globalization, a huge number of states get involved into the process of international migration, among them are the newest countries that emerged in the post-Soviet space, including the Republic of Kazakhstan. Migration as a moment of global interaction is considered an important problem in the modern world. The prerequisites for a full study of this problem are determined by its scale, embodied by the tendency to increase migration movements, socio-economic, political, sociocultural results of migration activities (Anisimov, 2008).

In recent years, the Republic of Kazakhstan has moved from the category of countries of origin of labor migration to a group of countries in which there is an active influx of foreign labor. The main reason was the economic growth in our state since the 2000s and the related increase in the number of jobs, the growth of the level of wages and incomes of the population.

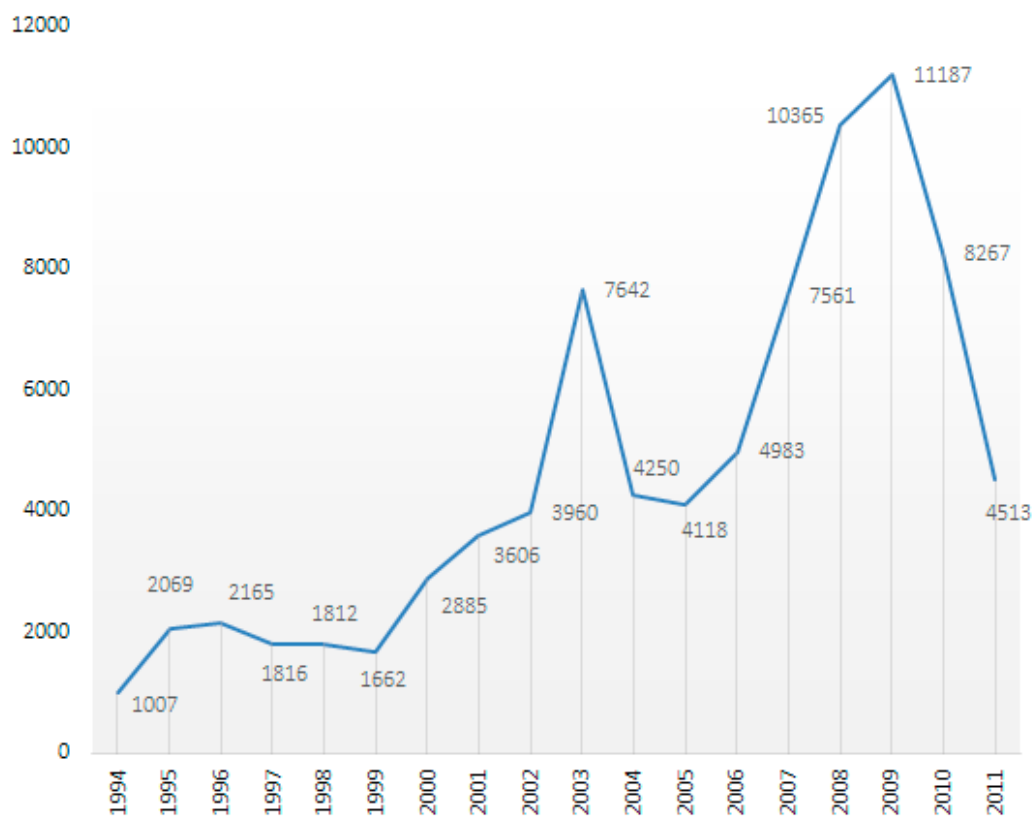


Figure 01. Labor migration from Kazakhstan, thousand people.

At present, there is a significant inflow of labor to Kazakhstan from outside due to:

- 1) Increased use of quotas for entry by oralmans (repatriates) from among ethnic Kazakhs, prior to the acquisition of state sovereignty of Kazakhstan residing outside of it and returning to their historical homeland for permanent residence;
- 2) Acquisition of a residence permit and citizenship by representatives of various ethnic groups

from the former Soviet republics, persons born or formerly being citizens of the Republic of Kazakhstan or the Kazakh Soviet Socialist Republic, and members of their families;

3) Gradual increase in the annual quota for attracting foreign labor;

4) Increasing flows of labor migrants with unregulated status, primarily from neighboring states.

The Republic of Kazakhstan did not ratify the 1990 International Convention "On the Protection of the Rights of All Migrant Workers and Members of Their Families", ILO Convention No. 97 "On Migrant Workers" 1949, and ILO Convention No. 143 "On Migrant Working Population" (Supplementary Provisions). At the same time, since 1993 Kazakhstan has been a member of the ILO, the country ratified 16 conventions of the International Labor Organization, including all 8 fundamental and 4 priority conventions of this organization. Along with the above conventions of ILO, Kazakhstan ratified a number of international conventions dealing with human rights and important in protecting the rights of migrant workers. In particular, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and its two Optional Protocols.

At the regional level, the Republic of Kazakhstan is a participant of a number of multilateral agreements within the framework of the Commonwealth of Independent States (hereinafter referred to as the CIS) concerning labor migration. Among them, the 1994 Agreement "On Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers", the 2004 Agreement "On Mutual Recognition and Equivalence of Documents on Secondary Education (General) Education, Initial Professional and Secondary Professional (Special) Education" deserve special mention. Also, Kazakhstan signed bilateral and trilateral agreements on labor migration with Azerbaijan, Mongolia, Tajikistan, and Uzbekistan.

2. Problem statement

The Law of the Republic of Kazakhstan "On Migration of the Population" as of July 22, 2011 defines labor migration as a temporary movement of individuals from other states to the Republic of Kazakhstan and from the Republic of Kazakhstan, and also within the country for the performance of labor activity. Moreover, according to this law, foreigners who arrived in the Republic of Kazakhstan in the order of labor migration, not related to the change of citizenship, must have a permanent place of residence outside the Republic of Kazakhstan, unless interstate agreements establish a different procedure. Therefore, the legislation of Kazakhstan excludes foreign citizens and stateless persons from the number of labor migrants who have received the right of permanent residence in the Republic of Kazakhstan (for a foreign citizen - a residence permit, for a stateless person - a certificate of a stateless person). In addition, the provisions of national legislation in the field of labor migration do not apply to foreign citizens and stateless persons: 1) who are on military service in parts located on the territory of the Republic of Kazakhstan; 2) members of diplomatic missions and international organizations; 3) those who are in school or work practice; 4) carrying out professional activities in registered religious associations; 5) representatives of accredited foreign mass media; 6) arriving in the Republic of Kazakhstan for the purpose of providing charity and humanitarian assistance, as tourists and for

conducting business meetings; 7) members of crews of sea and river vessels, air, railway and motor transport.

In general, the legislation of Kazakhstan reflects the main exceptions to the subject of regulation of labor migration, specified in Article 3 of the Convention "On the Protection of the Rights of All Migrant Workers and Members of Their Families", and includes in comparison with it several additional categories - military personnel, representatives of accredited media, religious missionaries. At the same time, there is no provision in the national legislation that excludes from the subject of regulation of labor migration "workers employed in a stationary coastal installation who have not been issued a residence permit and participation in paid activities in the State of employment".

In the above-mentioned 1990 Convention, migrant workers are defined as persons who will engage in, are engaging in, or engaged in paid activity in a State they are not citizens of. In accordance with ILO Convention No. 143, the term "migrant worker" means "a person who migrates or migrated from one country to another, for the purpose of obtaining any work other than employed one, and includes any person who has lawfully entered into a Country as a migrant worker". When comparing the above definitions with the formulation of the concept of labor migration contained in the legislation of Kazakhstan, it can be noted that international approaches cover both permanent and temporary labor migrants, and the International Convention on the protection of the rights of all migrant workers and members of their families - and the so-called business Immigrants. In this sense, the provision of the Law of the Republic of Kazakhstan "On Population Migration" is closer to the concept of "migrant worker" under ILO Convention No. 143 of 1975, although the term "migrant worker" is used in the national law. It should also be noted that the Law dated December 20, 1991 "On the Citizenship of the Republic of Kazakhstan" provides for the possibility of an accelerated procedure for acquiring the citizenship of Kazakhstan for persons who have certain professions and who meet certain qualification requirements. The list of such professions and requirements is established by the Presidential Decree as of June 6, 2005. It includes a number of professions in the field of art, as well as the profession of an architect, biologist, doctor, geologist, geophysicist, pilot and navigator, chemist, teacher and other professions. However, in the strict legal sense, persons who have acquired the right to permanent residence in Kazakhstan, in accordance with national legislation cannot be referred to as labor migrants.

Table 01. External migration. Balance. Regions of RoK. IIq 2015 (people)

External migration. Balance. Regions of RoK. IIq 2015 (people)									
	Total			Urban			Rural areas		
	2015/II	2014/II	2011/II	2015/II	2014/II	2011/II	2015/II	2014/II	2011/II
Kazakhstan	-3 634	-2 339	4 429	-5 403	-3 534	-793	1769	1 195	5 222
Akmola	-201	-528	-106	-268	-354	-321	67	-174	215
Aktobe	-148	34	-37	-158	25	-20	10	9	-17
Almaty (region)	809	373	1 002	-59	-28	-28	868	401	1 030
Atyrau	112	151	184	59	105	132	53	46	52
East Kazakhstan	-1 377	-1 108	132	-1 208	-988	-857	-169	-120	989
Almaty	-334	-70	496	-334	-70	496			
Astana	134	435	220	134	435	220			
Zhambyl	-76	-20	25	-225	-287	-241	149	267	266
West Kazakhstan	-305	-178	-92	-243	-145	-51	-62	-33	-41
Karagandy	-1 370	-1 036	-551	-1 344	-936	-535	-26	-100	-16
Kostanay	-894	-726	-668	-591	-358	-186	-303	-368	-482
Kyzylorda	-32	15	22	-14	14	21	-18	1	1
Mangystau	1 350	1 212	2 175	6	30	300	1 344	1 182	1 875
Pavlodar	-1 051	-973	-486	-937	-852	-554	-114	-121	68
North Kazakhstan	-702	-905	-719	-387	-415	-378	-315	-490	-341
South Kazakhstan	451	985	2 832	166	290	1 209	285	695	1 623

Analyses Ranking.kz based on the data of CS MNE RoK

Since 2001, the demand for foreign labor in Kazakhstan is estimated on the basis of the quota for its involvement, which is established on an annual basis by the Government of the Republic of Kazakhstan. The procedure for approving quotas is based on the provisions of the Law on Employment of the Population as of January 23, 2001 and is regulated in more detail by government regulations. The size of the annual quota is established on the basis of proposals of local executive bodies, formed through the collection of information and analysis of the domestic labor market and the collection of applications of employers. Since 2004, the concerned central executive bodies (sectoral ministries and departments) are also entitled to submit proposals to the **Ministry of Health and Social Development** regarding quotas for attracting foreign labor. Employers participate in the definition of quotas by applying to local executive bodies for the attraction of foreign labor in the next year. The quota is defined as a share of the total workforce, namely in percentage of the economically active population of the republic according to the data for the previous year.

The labor migration quota system was introduced in Kazakhstan to protect the domestic labor market. Initially, the goal was to limit the involvement of foreign workers to foreign workers in high- and middle-skilled jobs (management personnel, specialists with higher and secondary specialized education, skilled workers). In recent years, the requirements for quoting foreign labor force applied in the country have undergone significant changes. Since 2015, quotas do not apply to citizens of the countries participating in the EEU, so they claim vacant jobs equally with citizens of the Republic of Kazakhstan and they are not allowed any quotas. This was done with the aim of forming a single market for goods, services, capital and labor.

The general legislative requirements for attracting foreign labor are established, as has been noted above, by the Law of the Republic of Kazakhstan "On employment". In more detail, they are regulated by rules approved by special resolutions of the Government of the Republic of Kazakhstan. Permission to attract foreign labor is issued to the employer in Kazakhstan for the following categories of foreign workers:

- 1) The first category is the management team of the organization;
- 2) The second category is specialists with higher and secondary vocational education with documents confirmed in the established procedure;
- 3) The third category is qualified workers;
- 4) The fourth category is workers engaged in seasonal agricultural work in accordance with agreements on cooperation in the field of labor migration and social protection of migrant workers.

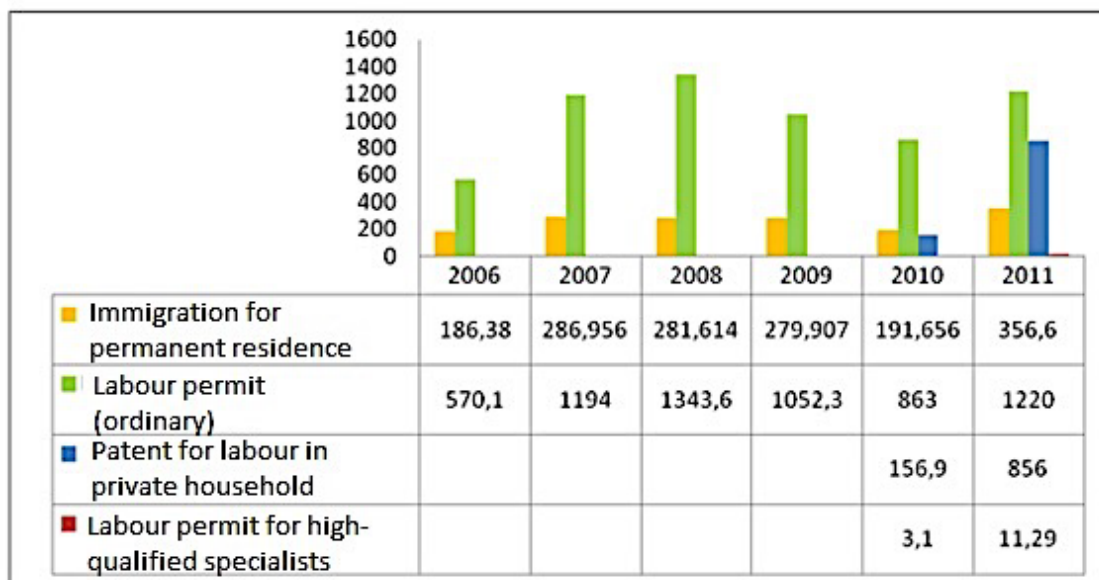


Figure 02. Immigration and temporary labor migration in Kazakhstan, thousand people.

Obtaining a permit to employ foreign labor requires the employer to consistently pass through the following main stages:

- 1) search for proposals on the domestic labor market with the mandatory use of prescribed forms and compliance with the deadlines for their implementation;
- 2) obtaining permission for a certain number of foreign workers for the categories and qualifications indicated therein;
- 3) certification by the state body that issued the permit, of a roll-call list of foreign workers involved.

Currently, Kazakhstan's legislation requires employers to comply with the preferential principle regarding the employment of national personnel, and provide, when seeking permission to hire foreign workers, evidence that suitable candidates for available vacancies were not found on the domestic labor market. The fulfillment of the requirements for the preliminary search for proposals on the domestic labor market is regulated by the law and provides for the mandatory use of all three of the following actions:

- 1) registration and placement of information on vacancies in the republican database on the website of the Ministry of Health and Social Development with mandatory interviews with all the applicants;
- 2) search for relevant proposals in a regional database (local executive authority issuing the permit);
- 3) publication of announcements about available vacancies in republican and local periodicals.

For the above ways of testing the domestic labor market, the terms of their conduct are also determined by law in relation to the date of submission of the application for authorization (publication of announcements in printed publications - in the period from 1 to 3 months, search by regional base of local executive body - no more than a month).

The search requirements on the domestic labor market are not applied in case of attracting foreigners to work as heads of structural subdivisions of foreign banking, insurance organizations and agricultural workers in accordance with agreements on cooperation in the field of labor migration and social protection of migrant workers.

Permits to attract foreign labor in Kazakhstan are provided to employers by local executive bodies of regions, as well as cities of Almaty and Astana within the limits of distributed regional quotas. In order to obtain a permit, the employer must file an extensive package of documents in accordance with established rules, including:

- 1) an application in the state or Russian language indicating the number, category of foreign labor involved in certain occupations and qualifications;
- 2) the qualification requirements established for each position in accordance with certain regulatory documents of the Ministry of Labor and Social Protection of the Population;
- 3) the rationale for the knowledge of the foreign language and international standards by the employee, the experience of working abroad, if they are included in the qualification requirements of the hired employee;
- 4) a certificate of availability of proposals for vacant posts from the regional database;
- 5) originals of republican and local periodicals with announcements of available vacancies indicating the qualification requirements for the post in the state and Russian languages;
- 6) results of the search in the republican database of the labor market;
- 7) information on the fulfillment of special conditions of previously issued permits (if any);
- 8) a motivated refusal of an employer to Kazakhstani citizens for a vacant position, if any, during the search for proposals on the domestic labor market;
- 9) substantiation of the number of foreign labor requested.

Having obtained permission to employ foreign workers, the employer enters into labor contracts with foreign workers, obtains necessary documents from them confirming the availability of education and relevant work experience, and guarantees that migrant workers would be going back to their place of permanent residence after the expiration of the permits (migrants receive a copy of the employer's agreement with the bank and a receipt for making appropriate contributions to the account for the return). Further, the employer forms a list of employed migrant workers and indicates the following data in it: surname, first name, patronymic; date and year of birth; citizenship; country of permanent residence; country of departure, specialty and education, name of profession and position in accordance with the normative documents applied in the Republic of Kazakhstan.

This list must be certified by the local executive body, and only after the time of its certification the permission to attract foreign labor force comes into effect. In case of termination of an employment contract with a foreign employee before the expiration of the permit period, the employer may employ foreign labor for the same category and qualification on the basis of the changed list of foreign labor employed, certified by the authorized body. The procedure for issuing permits to hire foreign workers is

also accompanied by an assessment of the qualifications of the migrant workers employed by the employer on the basis of the application of the points system (by education, the relevant work experience, the availability of demand for this specialty (profession) in the labor market).

Modern international standards relating to migrant workers include provisions on recognition of their professional qualifications acquired outside the country of employment. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families indicates that participating States should endeavor to ensure the recognition of the professional qualifications of migrant workers received outside their territories. According to Article 14 of ILO Convention No. 143, each member of the International Labor Organization can, "after consultation with representative organizations, regulate the conditions for recognizing professional qualifications acquired outside his/her territory, including certificates and diplomas". The 1994 CIS Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers includes special provisions concerning the mutual recognition of diplomas and other documents on education and professional qualifications and work experience by participating states. With regard to diplomas, they are recognized without the need for a legalization procedure. The provisions on mutual recognition of education documents without the need for their legalization are also included in bilateral and tripartite agreements on labor migration issues concluded with Azerbaijan, Uzbekistan, and among the member countries of the EEU.

3. Research Question

An even more difficult issue in this case is the confirmation of the professional qualifications obtained in the course of work, especially with regard to low-skilled workers. It is noteworthy that the mechanism for authorizing the attraction of foreign labor to Kazakhstan is extremely complex and very bureaucratic and very long in time. As one example, it is better to cite Article 36 of the Law of the Republic of Kazakhstan "On Migration of the Population," according to which foreign workers who come onto the territory of the Republic of Kazakhstan for employment can obtain a visa only in Almaty. Moreover, there is a practice of nostrification of the diploma about the graduation of a higher educational institution for workers of the first and second category. In practice, the problem often arises in the fact that not all specialists from these categories graduate from higher education institutions, and recognition by state bodies of the Republic of Kazakhstan of certificates of completion of special refresher courses does not always end successfully. The second problem is the liquidation of the institution itself and, as a consequence, the refusal to recognize its diploma. This is often the case when attracting labor migrants from the Federal Republic of Germany, where many citizens were educated in the former German Democratic Republic. Thus, based on the analysis of the current situation, it seems to us most expedient to abolish the mandatory procedure for verifying and approving documents that certify that employees receive special knowledge. Due to this, the legislator will not only facilitate the mechanism of attracting a qualified workforce, but also relieve employers of the need to confirm the specialization of hired workers.

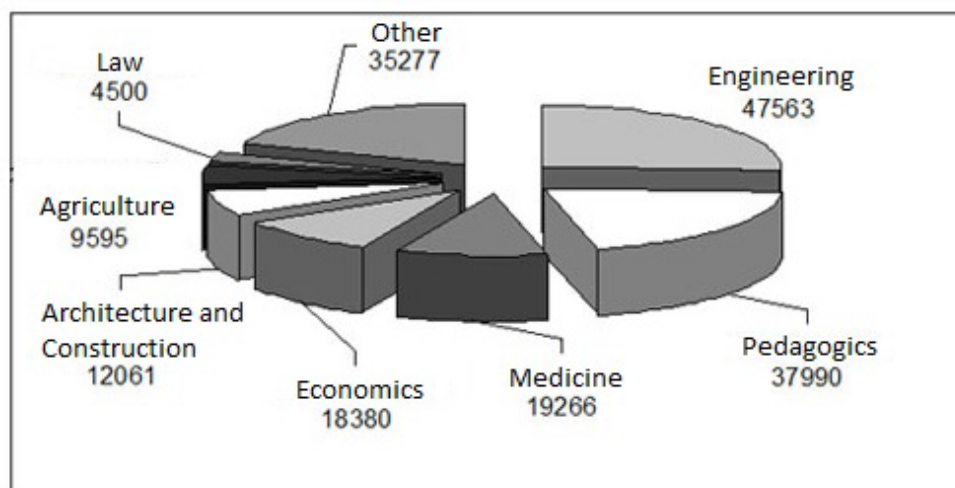


Figure 03. Labor migrants with higher education in the field of education, 2004-2015, person

Another distinguishing feature of the permissive system of migrant workers in Kazakhstan is the possibility of encumbrance of special permits issued to the employer. These conditions are specified in the permit and refer to the training, retraining and upgrading of skills of local workers at the expense of the employer in the specialties for which foreign labor is attracted, preserving existing jobs, and creating additional jobs for Kazakh citizens. In fact, this kind of special conditions can be established by the government issuing authority on a discretionary basis. Their failure is one of the grounds for refusing the employer to issue further permits to hire foreign workers.

In connection with a large number of permits and bureaucratic processes, the problem of illegal migration is increasing. According to the law of the Republic of Kazakhstan "On migration of the population", illegal immigrants are foreigners or stateless persons who have entered and are staying in the Republic of Kazakhstan by violating the legislation regulating the entry, exit, stay, and transit through the territory of the Republic.

Prevention of illegal migration, including illegal labor migration, begins on the border of Kazakhstan. A foreign citizen who wants to work must first of all legally cross the border in the established checkpoint, otherwise he/she will be criminally liable for violating the regime of transition of the state border of the Republic of Kazakhstan. In addition, he/she is obliged to produce documents proving his/her identity and authorizing him/her to enter the republic legally and to indicate the actual purposes of entry and stay.

Within five days after crossing the state border of the Republic of Kazakhstan, a foreign citizen or stateless person must register with the migration police unit of the Ministry of Internal Affairs at the place of residence in Kazakhstan. However, most violations of the law by foreign citizens and stateless persons are not due to illegal border crossing or lack of registration, but due to their illegal employment. As a rule, in violation of labor laws of Kazakhstan on attracting foreign labor, immigrants begin to work at enterprises and individual entrepreneurs who do not have permission to attract foreign labor.

Article 7 of the Law of the Republic of Kazakhstan "On Migration of the Population" stipulates that foreigners and stateless persons who entered the Republic of Kazakhstan and carry out their work without the appropriate permission of the authorized body, unless interstate agreements establish a

different procedure, are to be deported from Kazakhstan by internal affairs bodies in accordance with the legislation of the Republic of Kazakhstan. A positive moment in the fight against illegal labor immigration can be considered as amendments to the law on toughening the criminal liability of employers for illegal employment. In the Republic of Kazakhstan, the unlicensed acquisition of foreign labor and the employment of foreigners temporarily staying in the Republic of Kazakhstan are prohibited without appropriate permits. An administrative responsibility has been established for violation of this requirement. Foreign citizens who arrived in Kazakhstan according to the invitation of relatives and friends, that is, with private purposes, as well as those who came to study, as tourists or with business purposes, cannot work in the territory of the republic, engage in activities not related to the purpose of entry specified in Visa, except for cases provided for by legislative acts of the Republic of Kazakhstan.

Human trafficking is another serious problem of illegal labor migration. Many labor migrants, arriving in Kazakhstan, fall into the hands of traffickers who use their labor for free, while they are deprived of their passports, put in a dependent position and subjected to humiliation and exploitation. The actual number of victims is much higher than that detected and reflected in the statistics of the Ministry of Internal Affairs.

As noted in the analytical paper prepared by the mission of the International Organization for Migration in Kazakhstan, the state recognized the existence of this problem in the country and took legislative measures to combat human trafficking. On January 1, 2015, the new Criminal Code of the Republic of Kazakhstan came into force, according to which the liability for this wrongful act was toughened.

However, the legal basis for regulating migration processes, with the exception of changes in criminal legislation regarding the punishment for illegal migration (trafficking of migrants, illegal employment of foreign labor) remains insufficiently developed.

4. Purpose of the study

Thus, we recommend that, on the basis of the situation analysis of the labor market and consultations with employers' and workers' associations, local authorities, Kazakhstan's medium- and long-term needs in attracting migrant labor to different categories of workers and various sectors (highly qualified workers, low-skilled workers, seasonal workers, Agriculture, etc.) were determined. When assessing the needs, it is also important to take into account the sectors of the economy in which there is an active involvement of migrant labor without issuing permits for foreign labor, for example, home-based labor, and construction.

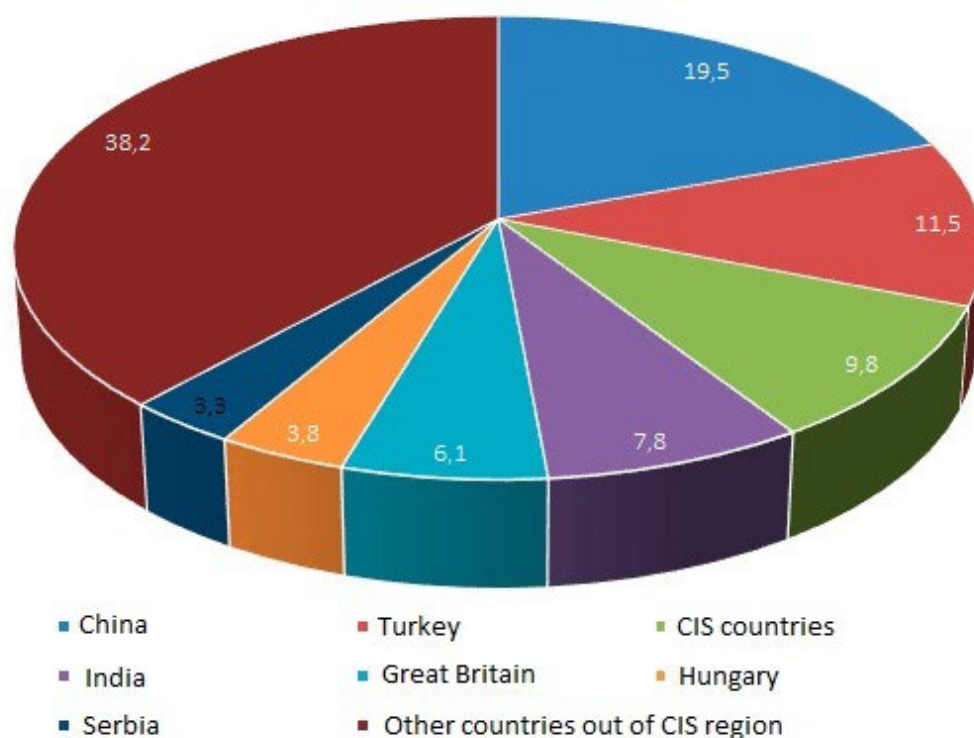


Figure 04. Distribution of legally registered foreign labor in Kazakhstan by countries of origin of migrants, 2012,%

As a final result, a list of sectors and specialties (occupations) with a high demand for labor inflow from outside should be identified, hiring of migrant workers in scarce specialties (professions) should be simplified without the need to search for vacancies, as well as the process of issuing permits and the abolition of quotas in the most demanded sectors of the economy.

In accordance with article 9 of the International Covenant on Economic, Social and Cultural Rights, ratified by the Republic of Kazakhstan, the participating States recognize the right of everyone to social security, including social insurance. ILO Conventions No. 93 and No. 143 declare equality of rights in the field of social insurance between migrant workers and citizens. For migrant workers, the following aspects of this right are extremely important:

- 1) getting the right to benefits equal with local workers;
- 2) observance of the rights obtained upon leaving the country, including the export of allowances;
- 3) benefit from the accumulation of rights obtained in different countries.

ILO Convention No. 143 states that migrant workers with unresolved status should enjoy "with regard to themselves and their families the treatment of rights arising from their past work", including those relating to social security and other benefits. The International Labor Organization has also adopted a number of other conventions on the social security of workers aimed at recognizing the equal rights of foreigners with citizens in respect of payments for: 1) medical care; 2) diseases; 3) pregnancy and child care; 4) disability; 5) pension payments; 6) related to the loss of a bread-winner; 7) occupational diseases and accidents at work; 8) unemployment; 9) family benefits.

ILO Convention No. 157 also establishes provisions for the preservation of rights of migrant workers in case of departure from the country and the export of migrant workers of their disability benefits, old age, the loss of a bread-winner, pensions in the event of an industrial injury, and death benefits.

The 1994 CIS Agreement and bilateral agreements on labor migration with the former union republics are based on the fact that the issues of social insurance for migrant workers, other than pensions, must be resolved in accordance with the national law of the State of employment. With regard to pensions, a number of these agreements contain a reference to the 1992 Agreement on the Guarantees of the Rights of Citizens of CIS Member States in the Field of Pensions. However, this agreement does not contain special provisions concerning labor migrants.

In Kazakhstan, the issue of the right of migrant workers to social insurance relates primarily to pension systems, compulsory social insurance, as well as compensation for harm resulting from an accident at work.

Within the framework of the compulsory social insurance system, the State Social Insurance Fund makes payments in the following cases: 1) disability; 2) loss of breadwinner; 3) loss of work; 4) loss of income due to pregnancy and childbirth; 5) loss of income in connection with the adoption of a newborn child (children); 6) loss of income in connection with the care of a child before reaching the age of one year.

Compulsory social insurance is provided to employees who are citizens or foreigners and who have the right to permanent residence in Kazakhstan, payments for which are carried out by their employers.

An analysis of the current legislation showed that labor migrants do not have the right to compulsory social insurance, since they are not recognized as permanently residing in Kazakhstan. We recommend amending the current legislation as soon as possible and providing all migrant workers without exception with the right to compulsory social insurance.

The Labor Code of the Republic of Kazakhstan establishes the employer's liability for compensation for harm caused to the life and health of the employee in the performance of his/her labor duties, including as a result of accidents at work. This requirement also applies to migrant workers. A prerequisite for compensation for harm is the investigation of accidents at work and the drawing up of the results of an act on the basis of which the employee can exercise the right to compensation for damage. The applicable provisions of the labor law also do not contain any exceptions to the relevant right of an employee in terms of citizenship or temporary stay on the territory of the Republic of Kazakhstan.

To ensure compliance with the requirements for compensation for harm caused to the life and health of an employee in the performance of his/her labor duties, Kazakhstan provides for a system of compulsory insurance of civil liability of the employer. The provisions of the Law "On compulsory insurance of civil liability of the employer for causing harm to the life and health of the employee in the performance of his/her labor (official) duties" as of February 7, 2005 apply to all employees, including labor migrants. In the presence of insurance payments, the employer is obliged to compensate the employee for the difference between the sum insured and the actual amount of damage; In the absence of an agreement on compulsory insurance of civil liability, harm caused to life and (or) health of workers is fully compensated by the employer. In general, the contract of compulsory liability insurance is

concluded by the employer for a period of twelve months. With regard to labor migrants with whom labor contracts are usually concluded for a period of less than one year, it is envisaged that the contract of compulsory insurance of the employer can be concluded and for a shorter period.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as ILO Convention No. 143, stipulate the need for measures to promote the reunification of families of migrant workers. In this regard, it should be noted that the legislation of Kazakhstan provides for family immigration as a type of migration. As members of the immigrant's family, the spouse, their parents and dependent children are recognized as well as minor brothers and sisters who do not have parents or guardians obliged to keep them at the place of their former residence. Thus, the composition of the immigrant's family in national legislation is somewhat broader than in the above conventions, and includes under certain circumstances, underage brothers and sisters. The right to family reunification of migrant workers is not defined at the legislative level; nevertheless, the legal regulation and practice of issuing permits to enter the country for foreigners do not establish significant restrictions for the realization of this right. The law "On Migration of the Population" restricts this right to the possibility of refusing entry to family members of migrant workers in the event of failure to provide confirmation of the availability of funds necessary for their stay and departure from the Republic of Kazakhstan. To fulfill this requirement, it is necessary to confirm the availability of the following:

- 1) in the amount not less than the cost of an economy class air ticket to the nearest airport of the state he/she resides in permanently;
- 2) from the CIS countries in the amount not less than the cost of a ticket for a railway (docked car) or road transport to the nearest station of the state he/she resides in permanently;
- 3) at least twice the monthly calculated index for each day of stay.

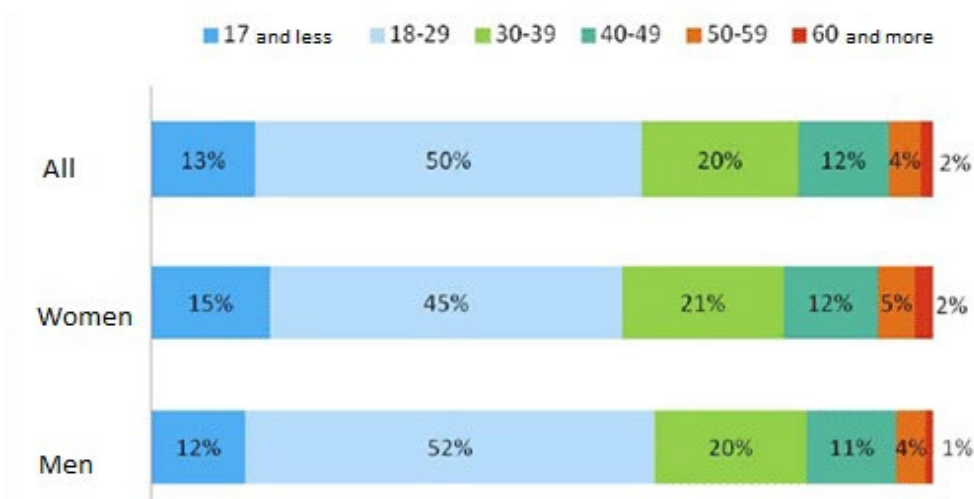


Figure 05. Information on foreign citizens residing on the territory of the Republic of Kazakhstan in terms of gender and age (as of August 29, 2013)

Paragraph 1 of article 12 of the International Covenant on Economic, Social and Cultural Rights ratified by the Republic of Kazakhstan reads: "The states participating in the present Covenant recognize

the right of everyone to the highest attainable standard of physical and mental health". The Main Commentary on the Highest Attainable Health of the UN Committee on Economic, Social and Cultural Rights states that States should respect the right to health by, inter alia, refraining from refusing or limiting equal access for all persons, including irregular migrants, to preventive, Medical and palliative health services, refusing to conduct discriminatory practices in public policy. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families stipulates that urgent medical assistance is available to all migrant workers and members of their families on an equal rights with citizens and cannot be denied due to any deviation, in respect of residence or employment (International Migration Report 2008. New York: United Nations Population Division, Department of Economic and Social Affairs, 2008).

In Kazakhstan's regional and bilateral agreements on labor migration, access to health care has not received the same widespread recognition. Thus, the 1994 Agreement on Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers includes the provision that health care for migrant workers is carried out at the employer's expense. Bilateral agreements with Kyrgyzstan stipulate the right of migrant workers to equal rights with citizens in respect of emergency medical care, whereas the provision of planned medical care is defined as the duty of the employer. In bilateral agreements on labor migration with other countries, the issues of providing medical assistance to migrant workers are not specified and do not indicate that they should be covered by the employer.

Within the framework of national legislation, foreigners, including migrant workers and members of their families, access to medical care are regulated by special rules approved by the Government. They extend their actions to both temporary and permanently resident foreign citizens and stateless persons in Kazakhstan, and do not provide for any restrictions on migrants with irregular status. Free medical care is provided at the place of stay and is not associated with the presence of a migrant's visa or registration. On a free basis, foreigners are provided with the provision of emergency medical care and medical assistance for diseases that are dangerous for others. Other medical services are provided to foreign citizens and stateless persons at their own expense, the means of their employers, the voluntary medical insurance system and other sources not prohibited by law Republic of Kazakhstan. We propose to amend the legislation, according to which to oblige all employers to insure the life and health of foreign workers.

Concerning the improvement of the institution of social partnership, we consider it crucial to determine the role of social capital in migration flows. According to the vision of Professor J. Coleman [Coleman J., 2010], the notion of "social capital" describes the nature of the social relationships of individuals. He assessed social capital as a potential for mutual trust and mutual assistance, rationally formed in interpersonal relations. Hence, the main function of social capital proper is to increase the effectiveness of public actions. It should be noted that the rationality of the acts is the interaction of accomplices in the relationship - labor migrants and the host community in the person of representatives of government bodies, power structures, employers, and residents of the region.

Representatives of symbolic interactionism focused on the fact that any stable cooperation is possible only on the basis of mutual recognition of common criteria, values and generally recognized measures by partners. This is especially important, so to understand some of the basic qualities of overcoming the unfavorable results of labor migration - the formation of a mechanism for institutionalizing the relationship between migrants and the host country. This mechanism has the

opportunity to advocate social partnership - the main institution that provides not so much social stability, but also an increase in the quality of human capital.

5. Research methods

The paper presented research methodology including analysis and synthesis, generalization and analogy. Also special and particular methods were used: comparative-legal, historical, method of prognosis in order to expose directions of legislation improvement in the area of judicial precedent and legal consuetude in the regulation of labor disputes. The concluding sections some suggestions which are connected with the improvement of current labor legislation and can be used in legislative activity of state bodies, in scientific work.

6. Conclusion

Migrant workers in Kazakhstan make a significant contribution to the development of their host countries and countries of origin - through the provision of services and competitiveness in destination countries, as well as financial injections in countries of origin. Migration helps in improving the quality of life of many migrants and their families. Many migrants, while doing the work, fill the niches in the national labor markets that local workers do not want or cannot master. Despite this, many migrant workers are being exploited and mistreated. Illegal migration is widespread. Protection of labor and decent working conditions for national personnel is an understandable political task.

Developing the right policies and legal regulations that are in balance with different interests and are effectively managing migration is a complex and difficult task, especially when it comes to the policy of admission of foreign labor.

The issues underlying the response policy in the countries of destination, with respect to the reception of foreign labor, employment and integration of migrant workers are related to the:

- 1) the identification, definition and forecast of labor shortages at the national level, for the performance of both qualified and unskilled work;
- 2) an analysis of the national labor market in order to understand whether labor migration can be a solution to some or all of the problems with the shortage of labor resources created by negative demographic trends, in particular the reduction in the proportion of the working population, and also the subsequent impact on the availability of social benefits for future generations;
- 3) involving key partners - employers and trade unions - in the formulation and implementation policy;
- 4) protection of workplaces and working conditions for local staff in the event that quotas for attracting foreign labor force increase;
- 5) the necessary measures to ensure equality of treatment and prevent the exploitation of migrant workers in the workplace and society as a whole;
- 6) the necessary measures to prevent or reduce irregular labor migration, which are important for ensuring legality and confidence in formal procedures for the admission of foreign labor.

Politicians and policy makers face in their activities sensitive or serious tasks to convince the public of the need to attract foreign labor. We recommend studying international practices in the field of

labor migration and considering the possibility of more targeted use of migration in order to meet the needs of the Kazakhstan labor market, first of all in qualified specialists and workers.

We also propose to consider the expediency and effectiveness of applying special conditions to employers attracting foreign labor, to pay for professional education and to train highly qualified local specialists and workers. Despite the fact that education and professional training of Kazakhstani citizens is an important priority, improvements in this area should be achieved through other means. In particular, for this purpose, the initial offer of vacancies in the local labor market is used to ensure the priority rights of Kazakhstani citizens for employment in scarce specialties (occupations).

In order to improve the legal status of foreign employees, we consider it necessary:

1) to continue the development of national legislation based on international standards established by the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Conventions No. 97 on Migrant Workers of 1949 and No. 143 on Migrant Workers (Supplementary provisions) as of 1975;

(2) to bring national legislation in line with the International Covenant on Economic, Social and Cultural Rights, ILO Convention No. 87 on Freedom of Association and the Protection of the Right to organize in relation to the right of migrant workers to form trade unions and participate in their activities.

3) to conduct an analysis of sanctions for violations and practices of their application in order to ensure more appropriate treatment of violators in the field of labor migration, depending on the nature of the violations (work without permission, non-compliance with migration legislation, exploitation and promotion of illegal migration, including human trafficking and organization of their illegal transportation across the border).

4) to minimize the restrictions on changing the place of work by labor migrants, especially in case of dismissal of workers in scarce specialties.

5) to create access to adequate housing, appropriate sanitary standards - employers of low-skilled workers should guarantee migrant workers access to adequate housing, adequate sanitary standards.

6) The treatment of illegal migrants - the UN Convention (1990) and the ILO Convention No. 143 contain provisions that are relevant to all migrant workers, to provide them with a basic level of protection, even when they immigrate or find employment through unofficial channels and cannot be legalized. This applies particularly to human rights, pay and working conditions, access to emergency medical care, access to education for children and rights in the event of detention or expulsion.

The proposed measures will allow regulating the needs of employers in foreign workers flexibly, and also successfully implementing the migration policy of the Republic of Kazakhstan. In addition, migration processes accelerate social and economic development and ensure the growth of the well-being of the population, which has been proved by experience of countries conducting an active migration policy.]

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