



**International Migration and Multicultural Policies Section**

**UNESCO Series of Country Reports on the Ratification of the UN Convention on  
Migrants**

**The Protection of the Rights of Migrants Workers in the Countries of  
Central and Eastern Europe and the CIS and Perspectives of Joining  
the 1990 UN Convention**

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1 July 2004

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## **Preface**

This report is based on the analysis of the situation of individual countries of Eastern Europe and the CIS. Its main goal is to answer the question: why most of these states, did not accede to the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The research study was based on the analysis of eleven countries' policies in the field of labour migration, as well as relevant legislation and law-enforcement practices. Some 15 experts were interviewed in each of these countries. The interviews' data was used to examine the following issues: the level of awareness of both authorities and migrants on the 1990 UN Convention; if the process has been launched on matching the national legislation with the Convention's requirements; the assistance a country needs in order to launch the process of access to the UN Convention (and for countries that have acceded to the UN Convention – the problems they face in the area of protection of the rights of migrant workers); and finally, the reasons for non-alignment of their countries to the UN Convention.

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\* Till January, 2004 - CIS Research Center on Forced Migration

## **CONTENTS**

### **Preface**

### **Acknowledgements**

### **Executive summary**

### **Armenia**

State regulation of labour migration in Armenia

### **Azerbaijan**

Legal aspects of labour migration in Azerbaijan

### **Czech Republic**

The status of migrant workers in the Czech Republic in the light of 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

### **Estonia**

Estonia: problems linked with joining the UN Convention 1990

### **Hungary**

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the needs of the Hungarian labour market

### **Kazakhstan**

Rights of migrant workers and perspectives of the joining to the UN Convention concerning their protection of 1990 in the Republic of Kazakhstan

### **Kyrgyzstan**

Kyrgyzstan in the process of joining the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

**Moldova**

The Republic of Moldova: the protection of migrant workers in the context of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

**Russia**

Protection of the rights of migrant workers in Russia and prospects for joining the 1990 UN Convention

**Ukraine**

Legal status of the Ukrainian migrant workers and protection of their rights and freedoms

**Uzbekistan**

Labour migration in Uzbekistan and the protection of migrants' rights

## Executive Summary

Labour migration, which is an important component of globalization and development, is at the same time a serious challenge for human rights, the principles of social justice and an adequate level of living standards. Most groups of migrant workers find themselves in a vulnerable and marginal situation, because the legal space of labour migration is very limited, while the existing demand for migrants' labour is not supported with adequate measures in the sphere of migration management. It leads to a situation when there are jobs for migrant workers in the recipient countries, but no legal possibilities for employment. The inefficiency of state management of migration becomes apparent in the growth of illegal and criminal displacements and illegal employment of migrants. State usually respond by strengthening the police measures against illegal migration. This exclusive circle leads to the mass marginalization of migrants and the violation of their fundamental rights.

Central and Eastern Europe including the countries of the CIS and the Baltic (CEE) have become a large region of international labour migration from the beginning of the 21<sup>st</sup> century. According to the estimates this type of migration only in the CIS involves around 10 million people annually, including internal labour migration<sup>1</sup>. According to the IOM, the number of illegal migrants from the third countries, who are resident in the CEE, comprised 3-4 million people. According to OSCE by the end of 1990s, around 175 thousand women annually move illegally from the region to the OSCE countries with the purpose of labour and sexual exploitation<sup>2</sup>.

Western vector of labour migration is the prevailing one in Europe. Labour emigration from the countries of Central Europe is directed to the West. In their turn, the western countries accept migrant workers from the western part of the CIS – Moldova, Belarus, Ukraine and Russia. Labour flows in the CIS are mainly oriented to Russia, however the Central-European and Mediterranean countries are the equal partners for Ukraine and Moldova. The peculiarity of the Transcaucasian countries is a more distinct orientation to Russia, USA and the Western-European countries. Russia remains the main direction of labour flows also from the countries of the Central-Asian region, though the Eastern-Asian vector also has a high importance for these countries – trips to China, South Korea, as well as

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<sup>1</sup> Estimates of the Independent Research Council for Migration in the countries of the CIS and the Baltic. *Trends in the sphere of migration in the countries of Eastern Europe and Central Asia. Review of 2001-2002*. IOM, 2002, p.17.

<sup>2</sup> Bureau for investigation and research. State Department of the United States, *Smuggling women and children in the world: estimation of the dimensions*. Quoted from: *The problem of smuggling people: OSCE tasks*. OSCE Survey conference, September 1999. Information document of the Bureau of Democratic Institutions and Human Rights, 1999/3. P.8.

Turkey and the Arab Emirates. Russians often leave to China and Turkey, but the sphere of their interests comprises almost all the countries of Europe and USA. It can be stated that migrant workers from CEE have settled all around the world.

Labour migration from the region creates: "brain drain" (mainly to Western Europe and USA, and within the CIS – to Russia), "shuttle" trading (mainly with China, Turkey, Poland, etc.), individual building services (unskilled workers and specialists), household services (governesses, housemaids, gardeners, etc.), wide range of show- and sex-business (including trafficking people), tourism sphere, work at agricultural plantations, etc.

The majority of migrant workers do not have any legal basis for their activities and, being faced with the violation of their rights, have to rely only upon themselves in solving their problems.

The 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the Resolution 45/158 of the General Assembly of December 18<sup>th</sup>, 1990, is the most universal legal document in this sphere. The Convention was ratified by 21 states and entered into force on July 1<sup>st</sup>, 2003. It was signed only by two countries of CEE – Azerbaijan and Tajikistan. In some countries of the region the question of the rights of migrants and joining the UN Convention is actively discussed in the competent bodies (Kyrgyzstan): however in most countries this question was not even raised.

The preamble of the Convention consists of a number of important provisions regarding the responsibilities of states towards legal and illegal migrants, which stand out through the whole document and have a special importance for the region because of high dimensions of illegal migration there. These provisions are the following:

- *the principle of ensuring the basic human rights to all migrant workers without any distinction of their status;*
- *the principle of equality of treatment of migrant workers and members of their families, who have a legal<sup>3</sup> status, with the nationals of a state, concerning labour activities, which must stimulate migrants and employers to respect and observe laws and procedures of a state;*
- *the necessity to prevent illegal movements and trafficking of migrant workers, assuring at the same time the protection of their fundamental human rights.*

With regard to joining the UN Convention, the situation in different countries of CEE significantly varies. The main difference takes place within the group of countries, which are preparing to join the EU, from one side, and the CIS countries from the other. As shown in

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<sup>3</sup> In the translator opinion, the Russian translation has a wrong interpretation of the term "regular" status as "permanent", while the matter concerns not the permanent but a legal status of migrant workers (in English this status is mentioned as *regular* or *documented migrants*). The fact that the translation of the Convention to the UN official language appeared to be linguistically imperfect is of course not the main factor of its non-ratification, however it indicates the lack of the international attention to this document.



the surveys concerning the first group of countries – Hungary, Czech Republic and Estonia, presented in this report, these countries dovetail their joining to the 1990 UN Convention, as well as to the ILO conventions, with the general decision of the EU. An intensive work is carried out in these countries in the sphere of legal ensuring of the protection of the rights of migrant workers, and on the systematization and adjustment of legislation with the EU requirements. These activities are presently the priority ones for this group of countries. Though these countries are not intending to join the 1990 UN Convention, they are quickly approaching the condition where almost all the requirements of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will be guaranteed, and in some cases (for example in Estonia) be surpassed. As regards signing the Convention, it is clear that these countries will go in a general stream of the EU.

A different situation can be reported in the CIS countries, which are not prepared to implement the Convention's requirements neither at the legislative, nor at the practical level. Mass violation of the rights of migrant workers is typical in these countries. It also equally regards the states, which joined the UN Convention (Azerbaijan, Tajikistan).

A number of factors aggravates the situation with the violation of the rights of migrants in the CIS region and prevents from implementing the 1990 UN Convention's principles and, consequently, from its ratification. Among them:

- ◆ Imperfect migration legislation. Most western countries had a possibility to experience various concepts and policy directions, to systematize legislation and elaborate the most balanced forms of regulating migration; the countries of CEE are actively repairing an omission under the guidance of the EU, while the CIS countries are in the process of searching for such forms.
- ◆ The inefficiency of state institutions, which carry out migration policy, the inefficiency of legal systems and of the mechanism of control over the implementation of legislation, mass corruption, which are the biggest weakness of the system of legal protection of migrant workers, block up its activities and constrict the possibilities of employment even in those cases when laws allow it (for example, in Armenia, Russia and other countries).
- ◆ Extreme poverty and unemployment in some countries and regions (for example, in Tajikistan and Uzbekistan) compel migrants to agree for any, even enslaving labour conditions in order to maintain a family.
- ◆ Huge dimensions of "shadow" economy, which creates the demand for the cheap illegal labour force.
- ◆ The weakness of the civil society and the absence of experience in the protection of the rights of migrants, the indulgence of authorities and society to the exploitation and violations of human rights.

Official instruments of managing migration in the CIS countries are rather weak, what enables various kinds of semi-legal and criminal business, which provides services for organizing migration, including illegal migration, trafficking people, etc., to prosper. Criminal structures often control all the chain of migration stages, starting from recruitment to the delivery of a migrant to an employer in a recipient country, and carry out also the function of protection of migrants, for example, from the competing racket and bandits. Many experts emphasize that the main reason of migrants' unprotectedness is connected with the illegal status of their activities in a recipient country.

Nevertheless, the problem of the rights of migrants is in that or another context raised in the CIS. In 1994 these countries signed the Agreement on cooperation in the sphere of labour migration and social protection of migrant workers. The Agreement defines the mechanisms of employment and taxation of incomes, envisages the protection of migrants' rights concerning social insurance, pension maintenance, health, protection of the rights of members of migrant's family, etc. Starting from the beginning of 1990s the countries of the region signed a number of bilateral interstate agreements on the social protection and labour activities of migrants.

At the same time the documents, adopted by the CIS states in the sphere of labour migration, are targeted more at the national security, control over economics, fight against illegal migration and international criminality, than at the idea of human rights, which lays the foundation of the UN Convention. For instance, in 1997 the CIS states signed the Agreement "On the interaction of the CIS member-states in fighting against illegal migration". Some of the countries of the region also adopt interstate agreements on dual citizenship, readmission, non-visa regimes, legal acts and agreements on preventing the trafficking of people, or discuss the possibility of adopting such documents.

However, experts of all CIS countries note that legal acts, adopted at the level of the CIS, practically do not work, because, first, they are not covered financially and, second, no efforts are undertaken to unify the legislation in the sphere of labour migration. Bilateral agreements appear to be more efficient.

Almost all the countries of the region are member-states of the IOM, which plays a significant role in the formation of a national migration policy. Since the middle of the 1990s the governments of many countries with the support of the IOM have been working on the introduction of a unified system of migration management within the framework of the Programme on capacity building in the sphere of the regulation of migration, including the labour migration.

The factors which prevent the countries of the region from joining the UN Convention and from the popularization of its ideas and norms are very serious and influential at present.

They are often deeply integrated in the existing economic and political regimes and the acting social institutes. Among the main obstacles, it can be emphasized:

- ☛ **Economic reasons** (the lack of resources for ensuring the implementation of the Convention's requirements, high demand for a cheap labour, stimulated by a wide expansion of "shadow" economic practices and corruption);
- ☛ **Legal reasons** (difficulties in reforming national legislation);
- ☛ **Institutional reasons** (the absence of necessary institutes for a qualitative implementation of the Convention's norms, expansion of "shadow" practices and institutions, bad coordination of activities between agencies and states);
- ☛ **Moral and ethical reasons** (a low level of tolerance in society towards migrants, low sense of justice of citizens);
- ☛ **Political reasons** (abuse of migration issues for political purposes).

Expert surveys revealed another obstacle. Politicians of many countries do not want their countries to be among the first ones to ratify the Convention, and prefer to see the consequences of this step on the example of other states. That is why the efforts of the international community must pursue the purpose of breaking this vicious circle by means of promoting the cooperation of countries in this sphere, popularizing the positive experience and practice of the countries, which ratified the Convention, etc.

All the reasons "work" together and require a complex approach in order to solve the problem with the participation of many public institutions, non-governmental and international organisations, business, scientists, etc. The formulation of national plans (or programmes) on the promotion of the protection of migrant workers and joining the international conventions may be required.

The conducted research revealed a very low level of awareness of public bodies about the 1990 UN Convention, as well as about migrants. Even the decision-makers in the relevant sphere are in most cases unfamiliar with the UN Convention, and some do not know about its existence. It poses a problem of awareness-raising not only for public officers, but also for the wide public about the international norms and instruments of the protection of the rights of migrant workers through special training programmes. Of high importance are also the activities on increasing legal literacy of migrants, raising awareness about the possibilities of the protection of their rights, as well as on providing general information about the legislation of countries in the sphere of migration, labour, etc. The relevant information networks in CEE are rather underdeveloped.

The development of legal practices is essential in the sphere of labour migration, including the expansion of legal possibilities for migration, from one side, and the elimination of illegal elements, from the other. The "shadow" mechanisms have almost penetrated the

official system of managing migration processes and employment and resulted in such a phenomenon as corruption. For this reason the questions of joining the Convention must be considered in respect not only to humanitarian issues, but taking into account the economic ones. Now many experts from the countries of the region note that such consequences are not studied and still remain unclear.

Almost in all countries of the region there are political and public authorities that understand the importance of the Convention and the necessity of joining it, which declare that joining the Convention is necessary or desirable for a state. These powers should be involved in the promotion of the Convention and the protection of migrants; the aspects of human rights, improving the international image of a country, serve as incentives here, while the institution of labour unions, which is almost not involved in the protection of the rights of migrant workers, can be also engaged.

The candidate countries for joining the EU have closely approached the Convention's requirements from the legal and institutional point and will probably join the 1990 UN Convention, if such a decision is adopted by the EU. However, even in these countries a clear understanding of the advantages of joining lacks.

Concerning the CIS countries, a significant preparatory work is required in order to put the priority to the problems of the protection of migrants' rights and the promotion of legal and safe migration, and then not only to join the Convention but also to create conditions for the real implementation of its norms. Carrying out such a work is possible only with reliance upon the partnership of social powers, including interested (or not yet interested) public bodies, civil and rights-protection movements, business community, scientific resources, international organisations. The role of international organisations, in particular of the UN system, may become the key one in the consolidation of all stakeholders.

Summaries for countries are presented below.

**AZERBAIJAN.** This country could be defined as the country of mass labour emigration. It is estimated that around 25% of adults work outside the country, mainly in Russia and Turkey. Since the middle 1990s labour immigrants came into the country to work mainly in oil companies. These immigrants came mainly from Turkey and Iran, which are around 60 thousand people, but only 5 thousand passed the registration<sup>4</sup>.

Azerbaijan joined the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However this step can be characterized

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<sup>4</sup> According to the IOM Resource Migration Centre in Bakou.

more as a declaration of intend, because it is not supported with real actions, targeted at the improvement of migrants' situation. As the survey showed, the majority of official decision-makers in the sphere of migration are either not aware of the Convention and that it is signed by Azerbaijan, or consider that Azerbaijan is not yet ready to implement its requirements. Despite that the Government of Azerbaijan undertakes active efforts on the formation of a legal basis for labour migration (in 1999 the law "On labour migration" was adopted), the protection of the rights of migrants is not included in the list of priority activities.

The main reason that prevents from effective implementation of the Convention's principles is the *weakness of institutional structure*, which is responsible for the realization of migration policy, the scantiness of official channels of labour migration. The Government undertakes efforts on providing security and protection of the rights of Azerbaijan migrants, who leave to work abroad, however the corruption and ineffective migration management nullifies all the efforts on the protection of migrants' rights.

A noticeable role in the formation of Azerbaijan's migration policy was played by the International Organisation for Migration (IOM), in which Azerbaijan became a member-state in June 2001. Within the framework of the IOM programme in Bakou an Information Centre was opened with a "hot line" on migration.

**ARMENIA.** As Azerbaijan, Armenia is mainly a donor country of labour migrants. Each third household is involved in labour migration<sup>5</sup>. More than half of the migrants work in Russia; among other recipient countries are USA, Germany and other European countries.

Armenia introduced the main international provisions concerning human rights in the national legislation, signed a number of regional documents within the CIS, adopted a set of laws, which regulate also the matters of labour migration (for example, the law "On employment", the law "On the organisation of labour migration" is under preparation).

The weakest point is the realisation of legal procedures. Experts point to the absence of mechanisms of the realisation of existing laws: "*none of the formally adopted laws does really work*". The gaps in the legislation are reflected at the level of social protection of migrants and represent a serious obstacle for joining the UN Convention and the realisation of its principles.

The level of *awareness* of migrants about their rights and responsibilities is very low. There are cases of fraud of migrant workers even in Armenia – at the stage of providing them with intermediary services in employment. The main part of migrant workers prefers not to

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<sup>5</sup> Arutyunyan L.A. Labour migration of the Armenian population: means of poverty prevention. Labour migration in the CIS: social and economic effects. Under editorship of Zh. Zayonchkovskaya. // CIS Research Center on Forced Migration. Independent Research Council on Migration in the CIS and Baltic States. Institute of economic forecasting of the Russian Academy of Sciences. – Moscow, 2003. – P.96.

legalize their activities in recipient countries. As a result the informal mechanisms of organizing labour migration are involved, including the mechanism of *illegal* ("black") mediation.

Experts note that Armenia's joining the UN and ILO conventions on migrant workers can be connected with the integration of the state in the European Union, and if such a requirement appears as a condition, then joining will take place in the nearest future. However experts express some anxiety because of the lack of knowledge on and the abruptness of consequences of joining these conventions for the economy of the state.

**HUNGARY.** In the beginning of the 1990s Hungary was mainly a transit country, while now it is becoming a recipient country<sup>6</sup>. The number of working foreigners is estimated by experts as 100 thousand people (mainly from Romania, Ukraine, Slovakia, Yugoslavia, and China), of which 38.6 thousand had work permissions (by the beginning of 2002). The same number of Hungarians leaves to work in other countries, most of them – to Germany and Austria. Labour migration has a distinct ethnic character (more than 80% of migrant workers are ethnic Hungarians from the neighbouring states), because the knowledge of the Hungarian language is necessary for working, which is a serious problem. Labour migration on the whole is not significant yet and does not influence much on the development of the country and its economy.

Despite the developed legal base for labour migration, there are still gaps that admit the discrimination of migrants. Problems are caused also by the bureaucratic obstacles for the legalization of migrants and their activities. For example, the rule of obtaining the visa for work, only in a country of departure generates problems and makes migrants get involved in the "shadow" activities.

Experts (except those from the Ministry of Foreign Affairs) are not aware of the 1990 UN Convention. The Convention is not translated to Hungarian, which significantly constrains the distribution of information about it.

Officials do not consider the protection of the rights of migrant workers as a serious problem for the country, arguing that Hungary is not interested in attracting migrants. The protection of the Hungarians abroad – as an argument for signing the Convention – is rarely considered by experts as necessary. Experts also note that the Hungarian national legislation and the EU norms provide standards for migrants that are higher than those of the UN Convention, which lessens its topicality for the state. Even labour unions do not express their interest in joining the UN Convention, because they think it can worsen the conditions of

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<sup>6</sup> Hablicsek László - Tóth Pál Péter (2000): A nemzetközi vándorlás szerepe a magyarországi népesség számának megőrzésében 1999-2050 között. The Role of International Migration in Maintaining the Size of the Hungarian Population between 1999-2050. Demographic Research Institute, 2002.

national workers on the labour market. Thus, the majority of experts consider that there are no real powers in the country which could lobby the joining to the UN Convention. Moreover, the special bodies mentioned in the Convention, whose establishment is necessary for migrants and inspections, are not supported by financial capacities of the state.

An important argument against the ratification is that the UN Convention is not included in the list of the required documents for joining the EU, which are of the absolute priority for Hungary, being busy at present with the harmonization of its legislation with the EU standards.

**KAZAKHSTAN** is simultaneously a recipient and a sending country. The official number of foreign workers in 2002 was 11.7 thousand people. Labour migration mainly has an illegal and semi-legal character and, according to estimates, comprises 200-500 thousand people. Up to 10% of households have at their disposal a worker, who leaves for earnings mainly to Russia, Turkey and China<sup>7</sup>.

Despite that Kazakhstan ratified all main international documents in the sphere of human rights and adopted a set of national laws, mass violations of rights are reported among non-registered migrants. Migrants are exposed to severe exploitation; work conditions, labour protection, security norms and social guarantees are not provided.

The question of joining the 1990 UN Convention was discussed in the Government in 2003. The representatives of various bodies came to a conclusion that in the future Kazakhstan's joining to the Convention is possible, especially within the terms of the process of harmonization of legislation within EurAsEC, however the topical priority is the protection of labour markets and own workers.

The main reasons for non-joining the 1990 Convention are: economic (the low level of socioeconomic development, the lack of financial resources for realizing the Convention's requirements); social (deficit of needed specialists, unpreparedness of public opinion); political and legal (the complexity of reforming the legislation, the absence of political will, the low level of institutional development).

**KYRGYZSTAN.** Labour migration, both legal and illegal, is at present the most important factor of the economic development of the country and the employment of its citizens. Export of labour force in Kyrgyzstan is prevailing over import. Main flows of labour emigrants are directed to Russia and Kazakhstan. More than 300 thousand Kyrgyz migrants are employed in Russia and 50-100 thousand migrants – in Kazakhstan<sup>8</sup>. In the first case these

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<sup>7</sup> Sadvovskaya E.Y. Labour migration and its role in adaptation to economic crisis in Kazakhstan. Alma-Ata, 2001.

<sup>8</sup> According to the embassies of the Kyrgyz Republic in Russia and Kazakhstan.

are "shuttle" traders, hired market-traders and builders at construction sites, in the second – workers on Kazakh tobacco plantations, traders on Alma-Ata markets, vegetable-growers. Labour migration to other countries (mainly Korea, Cyprus, Lebanon, Kuwait, UAE and Syria) is rather varied: show business, public services, housekeeping, unskilled workers on agricultural plantations, and builders. The majority of employed migrants from Kyrgyzstan uses unofficial channels of departure and are resident in recipient countries illegally.

Legislative base for labour migration is still shaping. Besides multilateral and bilateral agreements within the CIS, Kyrgyzstan practices concluding agreements with Russian regions on the mutual employment.

Kyrgyzstan has an active position with regard to joining the main international agreements and conventions in the sphere of migration and the rights of migrants. They have already ratified the ILO Convention on Migration for Employment, which was adopted in 1939 and modified in 1949. In 1996 the Republic became an IOM member-state.

The Government of Kyrgyzstan expressed its wiliness for joining the 1990 UN Convention. According to the IOM recommendation, the Government elaborated a draft law on joining the Convention (Decree #677 from October 4<sup>th</sup>, 2002), this draft law is under consideration in the Parliament. Deputies do not haste to sign the document; however they consider that joining the Convention envisages a set of obligations, which the state is yet incapable to perform.

The Government is dealing with the protection of the rights of migrants working abroad: through the dissemination of positive experience in migration management (of South Korea), the establishment of special working groups for conducting missions in Russian regions in order to study the situation with Kyrgyz migrants; the possibility of opening additional consulates on these territories for the protection of migrants' rights is under consideration. The work on the creation of a legal base for the protection of migrants' rights is being carried out. However, despite the political will, economic capacities are very scarce and the legal base is insufficient to guarantee the implementation of the Convention's requirements.

**MOLDOVA.** A shattering fall of living standards of people in Moldova at the beginning of 1990s stimulated a mass labour emigration, involving not less than 500 thousand people<sup>9</sup>. Migrant workers annually send home amounts of money which are comparable to the

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<sup>9</sup> V. Mosneaga



state budget revenue. The main countries for emigration are Russia, South European countries and Israel. The majority of the Moldavian migrant workers are employed abroad illegally.

The protection of migrant workers is a topical problem for the Moldavian state, which is carrying out a certain work in this direction. The Department for Migration elaborated a Concept of migration policy. The law "On migration" was adopted in 2002. Moldova joined the following international documents: the European Convention on the Legal Status of Migrant Workers and the European Convention on Social Security. An agreement on the cooperation of the Republic of Moldova with the International Organisation for Migration was signed in 2002. Though Moldova did not sign the 1990 UN Convention, as a donor country it could be interested in it. The main reasons of non-joining the Convention are unaffordable costs for providing migrants with jobs, housing, medical insurance, social and legal protection, etc. Besides, there is no clear understanding of concrete benefits for the country in case of joining the Convention.

An active position of Moldova as a donor country in international migration is evident. The country is trying to create civilized migration channels and provide safe emigration and information to its citizens.

The Government initiated the negotiation process on concluding bilateral agreements with recipient countries in the sphere of labour migration (with Portugal, Italy, Spain and Greece). At the same time Moldova actively cooperates with the CIS countries. In 2002 under the Department for Migration the Agency for employment of Moldavian citizens abroad was established, which created a database of people, who wish to leave the country for earnings. The Department for Migration started to publish an information bulletin «Tu si migratia». Awareness raising work on the risks of illegal labour activities abroad is carried out. In

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particular it concerns the problems of women migration and trafficking with people with the purpose of labour and sexual exploitation.

**RUSSIA.** Russia is a large recipient country for migrant workers and at the same time a major donor. In 2002 around 50 thousand migrants departed from the country with the purpose of temporary employment through official channels, 359.5 thousand foreign workers acquired work permission in Russia. According to estimates, the number of migrant workers on the territory of Russia comprises 3-4 million people (mainly from the CIS countries, China, Vietnam); 1.5-2 million Russians leave for working in other countries (Europe, USA, China).

Migrants' labour is gradually accreting with the "shadow" economy. At least 2/3 of migrant employment belongs to the "gray" zone (less than 20% of migrant workers have a written contract with an employer; 74% noted that they receive their salary in so-called "black cash"<sup>10</sup>). Violations of migrants' labour rights (extremely long working day, the full or partly absence of salary, exhausting work, limitation of the right to dismissal) are of mass character. Also such forms of rights' violations as constraining the freedom of movement, physical and psychological harassment, debt servitude (12%), seizure of documents (20%), sex-exploitation (22% of female migrants).

Russia as the assignee of the USSR joined the most of the UN universal international documents on human rights, however did not ratify any of the UN and ILO conventions on the rights of migrant workers. A special expert group was working in the Government in 2002 on assessing the possibilities of joining these conventions. The final "verdict" was the decision "on the unreasonableness of joining these documents at the present time". This decision was much affected by the fact that only several countries ratified it, among which are mainly donor countries.

The principal role among the reasons of Russia's non-joining the UN Convention belongs to the *economic factors*, which, according to most experts, prevent from ensuring the main requirement of the Convention – the principle of equality in treatment of migrant workers, who are legally resident and employed in a country, with the nationals of a state.

There are also serious *legislative gaps*. The national migration legislation has serious gaps in the sphere of protection of the rights of migrants, especially concerning the realization of the principle of equal treatment, freedom of movement, the principle of rejoining of families, etc. The development of a legal base of migration within the CIS and CEE is continuing, but the *interstate cooperation* is still insufficiently.

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<sup>10</sup> According to the selective survey in three regions of Russia.

There are also serious *institutional problems* preventing from the implementation of the Convention's principles. According to an expert, labour migration in Russia "is an orphan, whom none of the institutions wants to adopt". As a result the level of awareness about these questions is very low (many specialists are not aware of the contents or the existence of the 1990 Convention). At present there is no institution in Russia, *which could address the Government with a ratification initiative*.

Russia is still not ready to accept the responsibility both for the protection of the rights of its own nationals when they leave to work abroad, and for those countries, which are the sources of migration flows.

**UZBEKISTAN** is an overpopulated country for which the export of labour force is an important means of employment. The number of people leaving to work in other countries is estimated in 100-500 thousand per year (70% go to Russia). A significant flow of migrants is directed to Kazakhstan to work on tobacco plantations.

The rights of people to look for employment abroad are regulated by the law "On employment" and the Decree of the Cabinet of Ministers "On the regulation of import and export of labour force". However, the legislative base is insufficient.

The country undertakes active efforts in order to organize the export of labour force under contracts, on the basis of quotas given by partner countries. Following relevant agreements, South Korea imports 1-1.7 thousand workers from Uzbekistan annually. In 2003 quotas were also provided by Malaysia, Japan, and Saudi Arabia. Similar agreements are under preparation with Russia and Kazakhstan.

Most of the labour migration from Uzbekistan is carried out through illegal channels, mainly through tourist companies, which do not have official permissions and licenses for such activities, or through private mediation. As a result, the nationals of Uzbekistan are not only involved in the illegal labour migration, but often get deceived and fall in the power of their employers.

Centralized tendencies are very influential in the Republic, public intermediary services on employment are not legally approved, which constrain the initiative of the private sector in the organisation of migration services and at the same time does not promote safe migration, because official (state controlled) channels of departure are bounded.

Like many other CIS countries Uzbekistan did not join the 1990 UN Convention; half of the interviewed public officials either did not know about its existence, or even knowing about it, did not have a certain understanding of its contents. The following reasons, preventing Uzbekistan from joining it, were mentioned: the complexity of implementation of Convention's requirements in the conditions of a transit economy and the scarcity of financial resources; the difficulties of harmonization of the national legislation with the Convention's

provisions; fears of the possibility of lingering lawsuits on concrete cases of violations of the rights of migrant workers.

However, some experts suppose that joining the UN Convention presently, when the formation of the national legislation is not completed, could at once ensure its harmonization with the Convention's principles.

**UKRAINE.** It is mainly a donor country. According to the MFA, more than 2 million citizens work abroad, while the number of officially employed was only 20.6 thousand people (2002). The most attractive countries are Russia and Poland, rarely Germany and Czech Republic. The Ukrainian workers are active mainly as low-qualified personnel (building, services, agriculture, taking care of children and aged people, entertainment sphere). Men work more often in Portugal, Spain and Russia. Women leave mainly to South Europe (Italy, Greece, Turkey) and Japan for employment in a private sphere and entertainment industry.

The prevailing part of the Ukrainian migrant workers are not protected from deception and blackmail from employers, when they are resident abroad, suffer from the permanent sense of danger, and face the deficit of juridical help in the protection of their rights.

Ukraine concluded bilateral agreements on employment with many countries. Besides, the important guarantees of rights and freedoms of migrant workers are contained also in the agreements on social protection, which Ukraine concluded with more than 10 countries.

Following the programmes of legalization of migrants in Greece and Portugal, the majority of the Ukrainians, illegally residents in these countries, were given the possibility to legalize their status and duly arrange their relations with their employer. It increased significantly the possibilities of providing a legal help in case of necessity, including the assistance from diplomatic representations abroad.

The question of the ratification of the 1990 UN Convention was considered by the Ukrainian Cabinet of Ministers in 2000. It resulted in a conclusion of the prematureness of the ratification of this document by several reasons, among which it was mentioned that those EU countries, to which the main flows of migrant workers from Ukraine are directed, are not interested in the ratification. Moreover, according to the Government's opinion, participation in the Convention is connected with the difficulties of ensuring the rights of migrant workers, who arrive in Ukraine mainly from the developing countries, determined by the scantiness of financial resources for their social protection.

In 2003 upon the order of the Cabinet of Ministers, which supported a relevant proposal of the Ombudsman of the Supreme Council, the work on Ukraine's joining the 1977 European Convention on the Legal Status of Migrant Workers was started. According to experts, this document to a greater extent corresponds to the conditions and possibilities of Ukraine at the moment. Joining the European Convention will promote the increase of the

level of the protection of the Ukrainians, who are employed in the member-states of this Convention, to which a significant part of the Ukrainian migrant workers go.

**CZECH REPUBLIC.** Czech labour market has limited capacities for foreigners, however in the "secondary" sector there is a high demand for labour force. There are 157 thousand foreign workers and their families in Czech Republic, who have a visa with a validity period for more than 90 days and a residence and work permits. The majority of migrant workers arrive from Slovakia, Ukraine, Russia, Poland, Moldova, Belarus and Bulgaria. The legislation concerning the hiring of foreigners is not flexible enough. Processing all the documents necessary for obtaining a residence and work permit, is time- and money-consuming and requires abilities for self-guidance in a new environment. It requires at least six months in order to sign a labour contract with a foreigner. Therefore, employers are interested in the illegal hiring. Around 30% of foreigners are reported to be illegal workers.

Czech legislation in the sphere of labour migration is characterized with a thorough and detailed elaborateness in comparison with other CEE countries. It corresponds to the requirements of the UN Convention with respect of the protection of migrants' rights. There is no discrimination for foreigners regarding labour remuneration, which is confirmed both by checks performed towards employers and by the polls of foreigners; the majority of other Convention's rights is also guaranteed. At the same time there are several discrepancies with the UN Convention's requirements. For example, comparing with Czech citizens, foreigners do not have analogous access to medical insurance; they can not use all social facilities, their fees to social funds are not repayable. The access of foreigners to some goods and services is also complicated. The right to join associations and labour unions is violated.

The 1990 UN Convention was discussed by the Ministry of Labour and Social Affairs together with the MFA in the beginning of the 1990s. Joining the Convention was not possible at that time, because the country's legal system did not correspond to the norms of the Convention. At present, when the legal system corresponds to the UN Convention requirements, there are no political motivation for its ratification. The priority for Czech Republic is the harmonization of its legislation with the EU norms. Moreover, the fact that the Convention was signed by a small number of states appears to be a constraining factor. There are fears concerning future difficulties connected with signing the Convention.

**ESTONIA** is characterized for its problem of citizenship, which is not yet solved (8.9% of the population are foreigners, mainly Russians; 4.8% are apatrides). According to the final decisions and recommendation of the European Commission for human rights the elimination of statelessness is regarded as the most topical problems in the connection with

the country's adhesion to the EU. A huge work was done in Estonia on the regulation of the labour market in accordance with the international standards and new living conditions. The rights of migrant workers are regulated by the law on foreigners. The annual quota for work permissions comprises 0.05% of the population. A foreigner, who has a legal basis for residence and work in Estonia, has the same rights as the Estonian citizens, which is prescribed in a several laws based on the principle and ideology of equal treatment.

The Estonian national legislation guarantees the protection of almost all of the rights of migrant workers on the level of the Convention; therefore there are no serious arguments for joining the UN Convention. Besides, Estonia tries to keep step with the European Community. The EU countries have not joined the 1990 UN Convention, which is a constraining argument for Estonia.

In their report of 30<sup>th</sup> April 1998, the Ministry of Social Affairs and the Confederation of employers and labour unions came to a conclusion that the ratification of the 1990 UN Convention is considered inexpedient; however, the norms of the Convention must be taken into account in the elaboration and modification of the legislation.

## **STATE REGULATION OF LABOUR MIGRATION IN ARMENIA**

### **Introduction**

The situation in Armenia is characterized, firstly, by a large number of people involved in the process of labour migration and, secondly, by an excess of labour emigration over labour immigration. According to survey findings, every third household in Armenia has a labour migrant.<sup>11</sup>

Thus, Armenia as a country supplying labour migrants is faced with problems related to the protection of its citizens' rights in the receiving countries.

Armenia has been a member of the IOM and ILO since 1993. Armenia's accession to the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the ILO Conventions on labour migrants will inevitably take place in the near future within the framework of the country's integration into the Council of Europe. However, experts express certain anxiety about unpredictability of the consequences of the country's accession to the conventions for the national economy.

Today Armenian citizens' employment abroad helps reduce unemployment in Armenia and promotes the inflow of money transfers into the republic, contributing thus in some measure to easing contradictions related to economic instability and poverty. At the same time, the imperfection of national legislation, the lack of flexibility and the slowness of the legislative and executive apparatus can create excessive bureaucratic obstacles to the activity of labour migrants and reduce its efficiency without introducing anything positive in it.

### **An analysis of legislation in the field of labour migration**

#### *The international aspect of the legislation*

In 1995, Armenia signed an Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Labour Migrants with the CIS countries. The purpose of this document is formulated in its Article 1, namely: "The Agreement regulates the main lines of the Parties' cooperation in the field of the labour activity and social protection of persons and

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<sup>11</sup> *Trudovaya migratsia v SNG: sotsialniye i ekonomicheskiye efekty* (Labour Migration in the CIS: Social and Economic Effects) Center for Studying the Problems of Forced Migration in the CIS, Moscow 2003, p. 95.

members of their families permanently residing in the territory of one of the states Parties hereto and carry on their labour activity ... in the territory of another state .... This Agreement does not extend to: refugees and forced migrants, members of the liberal professions ...; it extends to persons coming specially for the purpose of earning a profit.” The Agreement provides for mechanisms of migrants’ job placement, in particular, the signing of a labour agreement (contract) in the country of employment, taxation of migrants’ income (double taxation is not permitted, the country of employment having priority in tax collection), mechanisms of exchange of information between the Parties, protection of migrants’ basic social rights with respect to social insurance, provision of pensions, public health services, protection of the rights of migrants’ family members, etc.

In the 1990s, Armenia signed a number of bilateral interstate agreements on the social protection and labour activity of migrants with Georgia (1993), Russia (1994), Ukraine (1995), and Belarus (1998), and also the Agreement with Russia “On the Regulation of Voluntary Resettlement of Migrants” (1997) and the Agreement “On Interaction Among the CIS Member Countries in Combating Irregular Migration” (1997).

In addition, work to prepare the following interstate agreements is under way in Armenia:

1. a visa-free entry-exit regime with the countries with which Armenia has an exchange of large flows of migrants;
2. establishing free trade border zones—with Georgia;
3. the resettlement and return of citizens of the Republic of Armenia—with countries where our citizens reside (in particular, with Denmark, Switzerland, and Poland);
4. the responsibility of organizations and private individuals engaged in trafficking with persons and labour migration—with a number of European countries (in particular, with Denmark, the Czech Republic, and Ukraine);
5. organization of labour migration and protection of the rights of labour migrants—with countries having mutual interests with Armenia;
6. double citizenship—with countries where citizens of Armenia reside.

#### *The domestic aspect of the legislation*

The adoption of the Constitution of the Republic of Armenia in July 1995 incorporated international principles concerning human rights into the country’s domestic legislation. A number of legislative acts concerning migrants—“On the Language” (April 1993), “On the Legal Status of Foreign Citizens in the Republic of Armenia” (June 1994), “On Citizenship” (November 1995), and “On Consular Services” (1997)—were also adopted. The laws “On Refugees” and “On Migration” are in the process of drafting.



By its Resolution No.54 of 29 November 2000, the Government adopted the document “On the State Procedure for Settling the Problems of Migration of the RA Population.” In keeping with this document, the following basic principles of regulation by the state of migration processes were adopted:

- exclusion of any discrimination (racial, sexual, religious, political, etc.) in issues related to the protection of the rights and interests of labour migrants;
- ensuring of the individual’s right to freedom of movement within the republic and freedom of choosing the place of residence;
- ensuring of the implementation of laws and other acts and of the assumed international obligations aimed at regulating migration processes;
- ensuring of combining the efforts of governing bodies of all levels and public organizations in solving problems related to migration;
- coordination of interests on the basis of the principle of equality with countries with which Armenia has a migratory exchange of population;
- establishing of equal rights and duties for the population of Armenia and persons seeking asylum in the territory the RA.

In keeping with the said Resolution, the Law “On the Organization of Labour Migration” is to be adopted.

### **Institutions**

At the institutional level, the following organizations are engaged in the regulation of labour migration in Armenia:

- Ministry of Labour, Social Security, Migration and Refugees* (instituted in 1995), responsible for the regulation of migration processes in the country.
- Executive Committee on Questions of Migration*, composed of deputy heads of the departments concerned; it mainly carries on the analysis of proposals put forward by working groups and experts in the field of migration.
- Commission on Trafficking*, composed of representatives of the ministries and departments concerned; its aim is the drafting of concrete proposals for improving criminal legislation in the sphere of trafficking with persons.

In addition, functioning under the RA Government is the “Labour Migration” working group, dealing with a wide range of problems related to legislation and programs in the field of labour migration.

Since 1995, the Government, with the IOM’s support, has been working on the introduction of a unified system of regulating migration under a special jointly drafted

Program for Increasing the Ability to Regulate Migration, which determines priorities in the Government's activity in the field of migration, including labour migration.

The Government has drawn up a plan for setting up a Labour Migration Laboratory after the "Labour Migration" group took part in the IOM's working conference on policy and practical activities in the field of labour migration. This group has drafted a law on legalizing labour migration, which has been submitted to the National Assembly for consideration. The draft law singles out four subjects carrying out the process of legal labour migration. These are:

- citizen of the Republic of Armenia who is a labour migrant;
- authorized Armenian governmental agency;
- Armenian enterprise;
- foreign employer or intermediary agency.

The draft law pretends a close cooperation between governmental agencies and private entrepreneurs sponsoring and organizing trips of labour migrants. The state ensures the protection of labour migrants' social rights within the framework of international agreements with the receiving side. A private enterprise exercises control over the number of migrants and the licensing of their activity and submits reports to the Government.

The Government also has a draft plan for setting up a Fund for Assistance to Labour Migrants, which will provide social insurance for labour migrants. In keeping with the draft plan, the supervision of the Fund is to be exercised by the Ministry of Foreign Affairs, the Ministry of Finance, and the "Labour Migration" group, and most likely with the participation of the Ministry of Internal Affairs.

### **Effectiveness of legislation in the field of labour migration**

The above entitles us to state that the Government of Armenia is aware of the problem of external labour migration and is making efforts to settle it through the use of international experience. However, despite all the international agreements and draft national laws and of domestic and intergovernmental institutes for regulation and organization of the processes related to labour migration, the opinions of experts, just as the opinions of labour migrants (which are similar), boil down to practically one and the same thing: *not a single formally adopted law actually operates and, moreover, is capable of practically regulating the process of labour migration.*

Respondents unanimously noted the inadaptability of the legislative sphere to constantly changing conditions, the lack of mechanisms for implementing the existing laws, and the inefficiency and tardiness of the cumbersome government machinery in solving the essential problems of migrants. Laws and programs submitted to the Government and the National Assembly for consideration remain “pigeonholed” for years (for example, the “Law on Migration”).

#### Organization of the activity of labour migrants

In analyzing information obtained through the interviewing of labour migrants, we have arrived at a conclusion that there already exist well-established *informal* mechanisms for organizing labour migrants’ activity.

The organization of labour migrants’ activity is carried out mainly with the help and support of two mechanisms not controlled by the state—the mechanism of *intermediation* and the mechanism of *illegal service*.

*Intermediaries* are private individuals or organizations (companies) whose functions include the search for migrant labourers and the organization of bringing them into a receiving country.

*Illegal service representatives* are individuals or organizations receiving illegal incomes from rendering certain services to labour migrants. The existence of illegal service representatives is characteristic both in the receiving country and in the sending country (in this case, the Republic of Armenia). They can be subdivided into three main groups:

—members of the civil service who by the nature of their offices come into contact with migrants such as *customs and militia officers, airport employees, and notary officers*, for whom bribes received from migrants are an informal source of income;

—*persons helping migrants obtain official temporary domicile registration or a residence permit*—so-called “guarantors,” in whose apartments migrants are temporarily registered (this by no means implies their residing there), or sham spouses registering marriages with migrants for a certain sum of money;

—*criminal structures* engaged in racketeering and similar activities.

The state takes minimal part in the organization of labour migrants’ activity. Actual control and regulation by the state of the processes of labour migration is through

mechanisms that are not directly related to legislation in this field. Not infrequently, these mechanisms are contradictory and have no clear interpretation. One vivid example of this is the problem of licensing the activity of intermediaries.

The law “On Employment” provides for activity of nongovernmental bodies in rendering employment services to the population, including outside the Republic of Armenia, provided that their activity is licensed in conformity with the country’s legislation. However, the law on “the Rules for Engaging in the Types of Activity Subject to Licensing” passed in the first reading; the above type of activity is not mentioned at all.

On one hand, control by the state over the sphere being examined is necessary for the purpose of revealing cases of trafficking with persons, fraud, and other abuses related to migrants’ activity. On the other hand, the lack of a flexible approach to such activity results in an increase in the number of illegal and uncontrollable organizations engaged in the job placement of migrants. Experts have noted that an organization or a company fully complying with current legislation is practically impossible to find.

The functions of intermediaries should include the provision of housing for migrants, the settlement of problems related to their registration in keeping with the legislation of the receiving country, and making sure that migrants should have contracts on their labour remuneration and social protection. And it is rather difficult for intermediaries to provide full documentation on guarantees to migrants in receiving countries. Thus, there are no effective filters in legislation, making it possible to separate illegal companies engaged in contracting labour migrants, thus giving priority to organizations acting in good faith. Besides, there are no actually working mechanisms for implementing interstate agreements concerning control over the activity of intermediaries in receiving countries.

#### *Degree of protection of labour migrants*

The lack of really effective legislation affects the degree of migrants’ social protection. Cases of cheating labour migrants, beginning from the stage of rendering them intermediary services, are frequently encountered. In the sphere of job placement abroad, migrants’ rights with respect to providing elementary social guarantees for them, in particular, those related to working conditions (quite often causing substantial harm to their health), the length of the working day (more than 10 hours on an average), labour remuneration, the provision of medical services, housing, etc., are not protected.

The main cause of the lack of migrants’ protection is related to the *illegality* of their activity and the temporary character of their stay in a receiving country. Legalization of a

migrant's activity in a receiving country comes up against numerous bureaucratic obstacles, the imperfection of laws and the expensiveness of making out documents, which is why a majority of labour migrants prefer not to legalize their activity in receiving countries.

In addition, the level of migrants' *knowledge* of their rights and duties is quite low. Formally, a migrant can apply to the Armenian embassy or consulate in the receiving country for help; however, such a course of action is not typical of Armenian labour migrants. None of the interviewed migrants could name any legitimate organization engaged in ensuring the protection of their interests. However, the mechanism of *illegal services* is more effective in a situation of irrelevant legislation and the difficulties that the legalization of migrants' activity involves. Payment by a migrant for illegal service is a kind of tax that he has to pay for the imperfection of legislation both in the sending and in the receiving country. Bribes to representatives of governmental agencies and payments made to illegal guarantors make it possible for migrants to avoid numerous complications related to the processes of border crossing, obtaining a residence permit, and legalizing their activity. One of the functions of criminal structures, including racketeer gangs, is a function similar to that of trade unions, for example, the protection of a migrant from arbitrary actions of his employer or from oppression by competitors.

### **Conclusion**

The declarative character of Armenian legislation in the field of labour migration that has been found out is rather ambivalent. On one hand, a number of urgent problems related to the organization of labour migrants' activity and the protection of their rights in receiving countries remain unresolved, which provokes the creation of illegal and uncontrollable mechanisms actually regulating migrants' activity. On the other hand, hasty adoption of laws and the toughening of control over their fulfilment in a situation of imperfection of mechanisms governing the activity of the legislative and executive branches are fraught with unpredictable negative consequences. Such consequences may include, for example, the curtailing of the population's migratory activity in some particular spheres of the economy, which will entail a decrease in the amount of transfers made into the republic, an increase in the unemployment rate and, as a result, an aggravation of social contradictions within society.

In the existing conditions, where the mechanisms of state regulation of migratory processes are not yet well-established, Armenia is not ready to accede to international Conventions on labour migration, including the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, since this may introduce

additional bureaucratic difficulties in labour migrants' activity. One of the possible proposals in the field of national legislation may be the development of mechanisms of *interim measures* alongside monitoring and the development of mechanisms for implementing feedback between those whom the law touches and those who are involved in its drafting and application.

## **LEGAL ASPECTS OF LABOUR MIGRATION IN AZERBAIJAN**

### **The scope of labour migration and its causes**

After the disintegration of the USSR, the labour migration of the population of Azerbaijan assumed a large-scale character. Having cut across absolutely all strata of society, it had a substantial effect on the development of socio-economic and political processes in the country.

Azerbaijan is predominantly a country of labour emigration. According to approximate data, not less than 25% of its adult citizens are outside the country in search of means of subsistence. By reasons for departure, labour migrants from Azerbaijan may be divided into three categories:

1. Migrants leaving the country for economic reasons. This is the main group of labour migrants. A special category among them is composed of women engaging in prostitution in the countries of the Muslim East (Turkey, the United Arab Emirates, Syria, Iran, and Pakistan, and, in the last few years, in the countries of Western Europe).

2. Political refugees leaving the country because of their membership in opposition parties. They also very often become labour migrants.

3. Transit labour migrants. For a long time, this last category was not paid due attention in Azerbaijan, but, as it turned out, Azerbaijan is often used by migrants from Afghanistan, Iran, Iraq, Pakistan, Bangladesh, Somalia, and India as a transit state on their way to Russia, Turkey and the countries of Western Europe.

In addition, in Azerbaijan, a country that has a huge army of refugees and unemployed, there have also appeared labour immigrants, who work in various Azerbaijani companies; their total number is about 60 thousand people<sup>12</sup> The presence of a large number of foreign workers stirs up considerable discontent among the local population.

### **Migration legislation**

The Azerbaijani authorities' response to migration processes was not always adequate. It often depended and still depends on the ups and downs of politics. In the first half of the 1990s, everyone's attention in the republic was riveted on a huge army of refugees who,

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<sup>12</sup> According to the IOM Migration Resource Center in Baku.

fleeing from the Armenian-Azerbaijani war for Karabakh, kept moving across the territory of Azerbaijan. In that period, a large number of statutory acts on regulation of forced migration were adopted such as the laws on “the Status of Refugees and Forced Resettles,” “the Social Protection of Forced Resettles and Persons Equated with Them,” etc. Besides, Azerbaijan acceded to many international acts such as the 1951 Convention Relating to the Status of Refugees and its additional Protocol of 1967, the Geneva Convention of 1949, etc. In addition, numerous resolutions and other legal acts aimed at improving the living conditions of refugees and forced resettles were adopted.

However, the ever increasing number of people leaving the country to seek for jobs and, at the same time, an inflow into the country of immigrants in search of work has compelled the Azerbaijani authorities to give more attention to the problems of labour migration. In 1997, in connection with an influx into the country of a large number of foreign citizens aiming to take jobs at oil and other companies after the signing of the so-called “oil contracts” in 1994, the Government passed the law on “Special Documents for Foreigners and Stateless Persons.” It was also then that the Regulations concerning “the Recruiting and Utilization of Foreign Labour in Azerbaijan” were adopted. Since the inflow of citizens from other countries kept growing and by far not all of them were going to leave the territory of Azerbaijan, the law on “Immigration” was adopted in December 1998, according to which foreign citizens can now lawfully obtain residence permits to stay in Azerbaijan. Special priority is given to foreigners who have relatives in Azerbaijan or who have married Azerbaijani citizens.

It was only after the situation of the foreign labour force was settled that the Government began to give more attention to labour migrants from among Azerbaijani citizens. A major role in changing the government’s policy was played by the International Organization for Migration (IOM), which had been active in Azerbaijan since 1995 and which had since 1997 been implementing a Capacity Building on Migration Management Program in the republic. Within the framework of this Program, the IOM renders technical assistance in improving migration procedures and management of the border control regime at the Baku airport, carries on the training of the staff of the employees of the border and migration services, and provides assistance in setting up a training center for the staff of these services.

In April 1997, the IOM and the Government of Azerbaijan set up a joint Commission for drawing up a unified guiding program of Azerbaijan for migration. Represented in the Commission are the principal governmental agencies concerned with migration of the population.

One of the aspects of the Commission’s activity is related to drafting acts of law in the field of migration. In October 1998, the law on “Citizenship” was adopted, which made it possible for more than 200 thousand ethnic Azerbaijanis—refugees from Armenia—to obtain citizenship and made it easier for them to leave the country in search of work. Finally, on 28



October 1999, the Law on “Labour Migration,” regulating numerous legal aspects of this process, was adopted. In the same year, the laws on “Exit from and Entry into the Country,” “Passports” and “Domicile and Residence Registration” were also adopted and substantial changes concerning foreign citizens’ rights and their activity in the republic were included in the code of civil procedure. Altogether, more than 50 statutory acts dealing with migration of the population, including labour migration, have been adopted in Azerbaijan.

After this, Azerbaijan joined an Agreement on Cooperation in “Combating Irregular Migration” within the framework of the CIS. In December 2000, the 2000 United Nations Convention against *Transnational Organized Crime* and its additional Protocols against *Trafficking with Persons, Especially Women and Children*, and against the *Smuggling of Migrants* were signed. Finally, in June 2001, Azerbaijan became a member of the IOM, which had a beneficial effect on the development of migration legislation in the country.

*Azerbaijan has adopted the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.* However, as interviews have shown, most of the officials involved in the settlement of migration-related problems in the republic are not aware of this.

Moreover, they believe that Azerbaijan is not yet ready to meet the requirements of the Convention.

One major reason for this is the absence of a corresponding institutional body responsible for formulating and implementing a migration policy. Today in Azerbaijan the following governmental bodies deal with the questions of migration of the population: the Ministry of Labour and Social Protection of the Population, the State Committee for the Affairs of Refugees and Forced Resettlers, the State Committee for the Affairs of Azerbaijanis Living Abroad, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of National Security, and the Ministries of Public Health and Education. Each of these governmental departments has a special section dealing with questions of migration, including labour migration. However, these departments are very poorly coordinated with one another. Not infrequently, staff members of these ministries and committees proceed in their decision-making from their intradepartmental legal documents and not from the provisions of the laws. Thus, on 27 December 2002, the President signed the law on “Government Policy in Respect of Azerbaijanis Living Abroad” which says nothing about the protection of Azerbaijanis’ rights in foreign countries. Therefore, it is not accidental that during interviews with Parliament and Cabinet Officials dealing with the questions of migration of the population about the UN Convention of 1990, it took them some time to recall what kind of convention it was, what it was about and whether Azerbaijan was a signatory to it.

### *Protection of migrants' rights and regulation of labour activity*

Notwithstanding the efforts made by the Government, the problem of protecting the rights of labour migrants remains thorny. Thus, only about 5 thousand labour migrants from other countries (from a total number of some 60 thousand) have been registered by government bodies. The rest of them are unregistered and, therefore, do not pay taxes. Very often these citizens come from Turkey and Iran to Azerbaijan in search of work. They normally launch their own enterprises and are registered as legal entities. As a rule, they prefer to settle all their problems on their own by means of a traditional bribe to representatives of the executive branch.

Transit migrants pose even greater problems. If they do not succeed in leaving for the West or Russia, they prefer not to return to their homeland but rather settle in Azerbaijan, even having not obtained any status. This even led to a political scandal: on 20 October, 2000, the Ministry of Foreign Affairs of Azerbaijan sent a warning note to Iran, requesting it to take measures to restrict the ever increasing flow of foreign citizens from Iran and Afghanistan to Azerbaijan. The draft law on "the Rules for Transit through the Territory of Azerbaijan by Foreigners and Stateless Persons," submitted to Parliament, is now in the discussion stage. For the time being, it is the local UNHCR office that deals in practice with all questions related to transit migrants and refugees from other countries.

Refugees from other countries coming to Azerbaijan, after they are registered at the UNHCR office, are issued with an appropriate document confirming the fact. After which the question of the possibility of granting them the status of a refugee is considered. However, the republic's law enforcement bodies proceed from their intradepartmental instructions. As a result, there have been quite a few cases of unlawful acts and deportations of refugees who came to Azerbaijan. As a rule, such actions are of an openly political character and have to do with requests made by the authorities of the countries of departure. Thus, from May 2000, Chechen refugees began to be deported from Azerbaijan at Russia's request. Even those of them who already had the status of a refugee were subjected to compulsory deportation. Facts of unlawful acts were also confirmed in respect of Afghani refugees who arrived in 2001: after the end of warfare and overthrow of the Taliban regime Azerbaijan even launched a new flight Baku-Kabul to ensure prompt repatriation of Afghani migrants.

The fate of refugees from Iraq is no less illustrative. Before the outbreak of the war, by February 2003, up to 300 Iraq refugees, most of them Kurds, came to Azerbaijan. Through interviews with them it was found out that they got to Azerbaijan by way of Iran, from where they illegally penetrated into Azerbaijan through the agency of traffickers. The Iraq refugees paid 700 dollars each for crossing the border and another 300 to 400 dollars each for bringing them to Baku. A total of 110 Iraqi refugees from among those who came to the country by the

beginning of 2003 were registered at UNHCR and 43 of them even managed to obtain the status of refugees. However, after the outbreak of hostilities in Iraq the republic's law enforcement bodies launched a campaign for forcible deportation of Iraqi citizens from Azerbaijan. To avoid this, many of the Iraqi refugees prefer not be registered anywhere, hoping to get to Western Europe through the territories of Georgia or Russia with traffickers' assistance.

In 2000, for the purpose of legal settlement of labour migration of the Azerbaijani population and the labour activity of foreign citizens in the country, the Cabinet of Ministers adopted three acts all at once: "Rules for Issuing a Special Permit (License) for Intermediary Activity of Citizens of Azerbaijan in Foreign Countries," "Rules for Issuing a Special Permit (License) for the Recruiting and Utilization of Specialized Labour Force," and "Rules for Issuing a Personal Permit for Engaging by a Foreigner in Remunerated Labour Activity in the Territory of Azerbaijan and a Sample of the Said Personal Permit." In 2001, on the initiative of the Ministry of Labour and Social Protection of the Population, the Government adopted the regulations "Concerning the Rules for Issuing Permits for Individual Labour Activity to Immigrant Workers." All these documents regulate the activity of companies engaged in sending labour migrants from Azerbaijan abroad and drawing foreign labour migrants into Azerbaijan.

In keeping with the Rules, all organizations wishing to use foreign labour force in the republic's territory are to apply to the Ministry of Labour and Social Protection of the Population for a special permit (license). In doing this, organizations should substantiate the need for inviting a foreign specialist. If it is found out that there is a similar specialist in the country, preference will be given to a citizen of Azerbaijan.

An individual work permit is issued for a period of one year. During this time, the organization should train a specialist from among local personnel. If it turns out to be unable to do this, the contract with a foreign worker may be prolonged for another four years. The activity of foreign workers is regulated on the basis of the labour legislation of Azerbaijan and, accordingly, they have the same rights and duties as Azerbaijani citizens. As of March 2003, more than 100 foreign companies already obtained licenses giving them the right to draw foreign labour force into Azerbaijan.

This procedure mainly extends to migrant workers who have arrived from countries other than the CIS countries. These latter, considering the absence of a visa regime among the Commonwealth member countries, see no reason for registration, which, on top of everything else, involves bureaucratic red tape and giving bribes to officials. Quite a few Turkish and Iranian firms and organizations also prefer not to register foreign specialists, taking advantage of the imperfection of tax and migration legislation in Azerbaijan.

The problem of regulating the labour activity of Azerbaijanis abroad is for the present far from being solved. There exist special Regulations on “Rendering Assistance in Labour Activity to Citizens of Azerbaijan in Foreign Countries,” according to which recruiter firms should buy licenses from the Ministry of Labour and Social Protection of the Population and submit contracts with foreign employer or intermediary companies to the ministry for approval. Only then does a company obtain the right to engage for 5 years in sending Azerbaijanis abroad to work there. The contracts should stipulate the rights of workers and the obligations of employers. In addition, they should also specify the conditions of social protection of Azerbaijani citizens, namely, the minimum wage, the contract term, the provision of medical insurance, the weekly hours of work, etc. The ministry has the right not to register a contract if any of these conditions are not fulfilled. In addition, the ministry may decline an application if the status of the employer is doubtful or the working conditions pose a threat to the health of the worker being employed.

Every migrant worker from Azerbaijan should be in possession of a copy of a contract before leaving the country. After the departure of Azerbaijan citizens abroad, the sending company is obliged to keep the ministry informed about their living and working conditions. Certainly, all these restrictions concern only legal entities engaging in citizens’ job placement abroad. If the republic’s citizens find a job on an individual basis (through a classified ad, the Internet, etc.), no one will curtail their constitutional right to leave the country. In this case, however, they will be left without the protection of the state and will have to rely only on themselves in solving problems that may face them.

As a result, people leave the country to work abroad through three channels. In the first place, under the auspices of the Ministry of Labour and Social Protection of the Population, this has its own migration service that has already helped more than 200 Azerbaijani physicians to find jobs in Saudi Arabia. Between June 2002 and April 2003, a total of 1,020 people applied to the ministry, requesting to find jobs abroad for them. In most cases, they are professional people (doctors, programmers, oilmen, etc.) finding jobs for who according to their professional qualifications is rather problematic. For this reason, the ministry has decided to intensify the process of looking for jobs abroad and, accordingly, encourages in every way the efforts of private companies in this area (this is a second channel). The first license was issued to Baku Travel Agency in July 2001. Today, seven companies have licenses and engage in the organization of labour migration from Azerbaijan. The range of searching for countries providing jobs is very wide, but they, as a rule, are not the CIS countries but rather Germany and the Netherlands, which are highly popular among Azerbaijanis, and also Greece, Spain, New Zealand, Australia, and Canada. Foreign employers prefer to deal with private migration companies and not with governmental agencies.

The companies are faced with numerous problems, which, accordingly, cause problems for Azerbaijani migrants. Besides, this type of job placement abroad has not yet won popularity in Azerbaijan because of mass corruption and bribery, and also numerous facts of cheating on the part of both companies and employers. Cases where companies, having collected substantial sums of money, vanished into thin air together with the money were not rare.

That is why an overwhelming majority of Azerbaijani citizens prefer to seek employment abroad on their own. As a rule, Azerbaijanis prefer to look for work in Russia and Turkey. Those who wish to find jobs in the Western countries get there with the help of traffickers. Here again it is Turkey (in the first place) and Russia that are used as transit countries. However, the number of those who use the territories of Germany, Ukraine, Poland and Georgia as transit countries keeps growing. As interviews with labour migrants show, the intermediary services of traffickers are quite expensive: their assistance in getting to North America (the United States and Canada) and finding a job there costs from 3,200 to 8,000 dollars. If migrants wish to get to the countries of Western and Central Europe, they have to pay from 1,200 to 2,700 dollars to traffickers. And although there have been quite a few cases where traffickers or companies cheated migrants, this nonetheless did not discourage the latter, and they tried to find other traffickers or other companies, hoping that this time they would be lucky. Too little awareness among the Azerbaijani population about their rights and opportunities, and also their disbelief in the possibility of getting help from the state in case problems arise play their role. Unfortunately, in a number of cases this disbelief is not ungrounded. Thus, Azerbaijanis working in Russia believe that there is no sense in seeking support from the Azerbaijani embassy in Moscow and, if they are faced with some problems, they prefer to turn to criminal gangs for help.

Nevertheless, the Government and the IOM have decided to pay attention to the fact of little awareness among the Azerbaijani population about migration-related questions. On one hand, the Migration Service gives substantial attention to publicizing the possibilities of the state in protecting migrants' rights. Thus, Azerbaijani migrants coming to another country should register with the embassy of their country within one month. Upon their registration, they should make a monthly payment of 20 dollars. In exchange for this, the state assumes responsibility for solving problems that may arise (problem with medical insurance, taxes, etc.). When returning to their homeland, migrants are exempted from duties on the goods they bought. However, quite a few migrants know that in actual fact they will all the same have to pay a bribe to customs officers when going through the Azerbaijani customs. Therefore they prefer not apply to the embassy and not to register there. It is cheaper for them to bring money into the country and buy everything they need in Azerbaijan.

The work of the IOM office in Baku is better organized. The Migration Information Center established by the IOM in Baku on 27 August, 2002, has opened a “hot line,” and now any citizen of the republic can turn to it for help. The Center also publishes numerous brochures on the migration policy of the countries where Azerbaijani citizens are the most eager to go. In addition, it provides information about problems with which the latter, in particular women, may be faced. In the provinces, staff members of the Center disseminate this information through local NGOs and NGOs’ resource centers. Between August 2002, and March 2003, a total of 1,197 citizens of the republic applied to the Center for advice. Prevalent among them were males (823 persons or 69%), married, well educated and unemployed, mostly between the ages of 25 and 40. A total of 962 persons (80%) indicated economic difficulties, 125 persons (10%)—a desire to study abroad, 50 persons (4%)—family reunion, and 60 persons (6%)—persecutions because of nationality as the reason for their migration. Potential migrants mainly wished to obtain information about five countries—Canada, Germany, Australia, the Netherlands, and the United States. Following next were Belgium, Norway, New Zealand, Russia, Switzerland, Sweden, Spain, Turkey, the Czech Republic, and Great Britain.

The IOM Center’s information fully coincides with the data obtained through interviews with other organizations. What is the most encouraging about all these interviews is that only 1% of migrants are leaving or wish to leave Azerbaijan in order to change their permanent place of residence. In other words, even having spent many years abroad and having found jobs there, Azerbaijanis are eager to return to their homeland.

### *Summary*

The Azerbaijani Government gives substantial attention to the regulation of labour migration, both labour emigration, encompassing about 25% of the country’s adult population, and labour immigration, counting some 60 thousand people. Azerbaijan aims to harmonize its migration legislation with international standards. It has acceded to the *1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*; however, a lot of work is still to be done to ensure that the country is ready to fulfil the requirements of the Convention.

**THE STATUS OF MIGRANT WORKERS IN THE CZECH REPUBLIC IN THE  
LIGHT OF 1990 UN CONVENTION ON THE PROTECTION OF THE RIGHTS OF  
ALL MIGRANT WORKERS AND MEMBERS  
OF THEIR FAMILIES**

INTRODUCTION

The geographical position of the Czech Republic (CR) and peculiarities of its political, economical and social development are the main factors influencing the labour migration flows, both as a transit and as a destination country. Regulation of these flows requires joint efforts of non-governmental (NGOs), governmental and research agencies. Their common goal is to establish an environment favourable to the co-existence of the Czech society, which is currently very closed to foreign elements, with the incoming ethnic groups. However, that requires developing flexible, comprehensive and foreigner-friendly legal frameworks and a sufficient amount of impartial and reliable information.

This report examines the status of migrant workers in the light of 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To achieve this goal, fourteen interviews were carried out with immigrants and employers, who employ foreigners. The interviews also included governmental and non-governmental officials.

The group of migrants mentioned in the above UN Convention includes legally residing migrant workers (and members of their families), whether full-time employed or carrying independent business. Under the terminology of the Act on Residence of Aliens on the Territory of the Czech Republic<sup>13</sup> (hereinafter as the Alien Act), these are foreigners with a visa valid for over 90 days who have received the authorization to stay with a view to employment, enterprise or reunion with a family member. This group numbers 157 thousand aliens<sup>14</sup>, which comes to approximately 2 % of the total domestic population<sup>15</sup>. Thus, this paper does not cover foreign national who reside permanently in CR, asylum-seekers or persons who have applied for temporary protection or exceptional permission to remain in the country.

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<sup>13</sup> Act No. 326/1999 as amended

<sup>14</sup> Source: Directorate of Alien and Border Police, Ministry of Interior of the CR

<sup>15</sup> The current number of foreign immigrants (including documented and undocumented) in the Czech Republic is estimated to be between 400,000 and 500,000 (excluding, however tourists, asylum seekers and transit migrants)(Drbohlav, 2003).

The large bulk of migrants from the group under review come from Central and Eastern Europe (Slovakia, Ukraine, Russia, Poland, Moldova, Belarus, and Bulgaria) and the top ten of most numerous nationalities is complemented by the nationals of Vietnam, Germany and China.

## RIGHTS OF FOREIGNERS ON LABOUR MARKET AND IN THEIR FIELDS OF THEIR ACTIVITIES

### Reasons for non-alignment to the 1990 UN Convention

CR has not acceded yet to the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ministry of Labour and Social Issues in co-operation with the Ministry of Foreign Affairs of CR discussed the Convention at the beginning of the 1990s. It was not possible to accede to the UN Convention at that time as the Czech legal system of the nineties did not comply with the applicable standards stipulated by the Convention due to the non-existence of a comprehensive long-term policy concerning migration of foreign nationals.

As interviews showed, at present just a small number of governmental and non-governmental officials are aware of the existence of the 1990 UN Convention.

During the 90s, the sphere of immigrant rights' protection has widen noticeably and now complies with the UN Convention requests, however there is no political motivation for joining the above Convention.

One of the arguments against the 1990 UN Convention ratification is for example, the fact that only a small number of Western countries have ratified the Convention. Hereafter the officials are still afraid of the subsequent difficulties connected with the adherence to the Convention's provisions. Besides, as it will be examined below, a number of the Convention requirements are not observed in the Czech Republic.

Rules regulating the entry of aliens in the territory, regimes of stay and termination of stay

To enter the territory of the Czech Republic with the purpose of employment or conducting business an alien must apply for a special visa with the validity period not exceeding 90 days (so called 'tourist visa') to a Czech mission abroad. In accordance with the Czech law, a migrant who has arrived in the country with this type of visa does not have the right to apply to the Alien Frontier Police Service (hereinafter referred to as the Alien Police)



to change the type of the visa. The procedure of getting permission for a longer stay is much more complicated<sup>16</sup>.

The Alien Act precisely defines the particulars of receiving a visa, and a foreigner may find information about them at Czech embassies or at local civil service offices, for example. Czech government and non-government organizations provide funds for the publications of leaflets with information on the sojourn legalization procedure. Such leaflets are distributed through the Czech missions in Ukraine, Moldova, Georgia and Romania. Such leaflet may contain for example, information on the projects organized by the International Organization for Migration in Prague. In spite of this fact, polled foreigners mention their acquaintances and employment agents as the source of information. This is especially typical for low-skilled labourers from Eastern-European countries. Such information may not always be correct and, employment agencies may intentionally distort the information.

Foreigners may perform all the necessary steps to get the Czech visa in their respective countries, but only if a Czech employer contacted them on the territory of their state or if they use the services of an employment agent. In all other instances a foreigner must travel to the Czech Republic with the 90-day visa and contact the employer who will take care of getting the employment authorization for this foreigner. With this authorization the foreigner must leave the country and apply for the corresponding visa with any Czech mission abroad. In some missions the application acceptance procedure may take up to two months to perform all the necessary check-ups (some say that there is a possibility to shorten this period of time), and the visa issuance takes up to three months.

If a foreigner has decided to carry out business in the Czech Republic, then good knowledge of the Czech laws is necessary in order to get the visa for the time period exceeding 90 days. First it is necessary to submit an application to the competent Chamber of Commerce (according to the registered place of dwelling). With this application the foreigner must present documents specified by the Trade Licensing Act<sup>17</sup>, which are provided by five different institutions. After receiving the authorization from the Chamber of Commerce (it is not a business license yet) it is necessary to leave the country and apply to a Czech mission for a business visa valid for longer than 90 days. The application for the over-90 day stay visa must be accompanied by evidence of funds necessary to stay (app. USD 4,000) and other documents, which the foreigner had had to already obtain during the processing of his business license application. The visa getting process takes approximately three months from the date of the application submission to a Czech foreign mission. After his or her arrival the alien is allowed to start his/her business only after registering with the Commercial Court

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<sup>16</sup> Upon an international treaty with Slovakia, the whole residence regime is much simpler for Slovak nationals.

<sup>17</sup> Act No. 455/1991 as amended

(registration takes about 1 month). Czech nationals are not bound to register with the Commercial Court. The above information suggests that the legalization of one's stay in the Czech Republic is very consuming in terms of the alien's time, financial means and, above all, his or her good understanding of the Czech environment. That is why even with the use of the information leaflets, assistance of a person who is well versed in the Czech law or who already underwent the procedure is of vital importance. A number of foreigners do not manage to complete all the required steps, and therefore they stay in the Czech Republic illegally. However, in this case they are highly vulnerable and exploited by both the employer and by the so-called clients from their own ethnic group. Foreigners demonstrated their willingness to legalize their status in the country's territory before the adoption of the amendment to the Asylum Act which allowed them to start working immediately after submission of an application for asylum (in 2001 a total of 18,093 people applied for asylum in the Czech Republic, while after the amendment adoption in 2002 only 8,482 applied. Ukrainian citizens constituted the most significant group followed by citizens of Moldova).

The validity of the visa allowing the stay over 90 days is extended maximum for 365 days. Should the planned duration of the stay extends, the visa may be repeatedly prolonged at the Alien Police local office. Information about the documents necessary for the visa prolongation is contained in the Aliens' Act and is available only in Czech and English in the Alien Police offices. Besides, multilingual information service and telephone information line were also established. Nevertheless foreigners keep breaking this procedure. For example, the real duration of stay does not correspond to the official stay, or the required financial means necessary for the issuance of the visa have only been borrowed. Lack of time is another reason why not all additional documents can be presented on time. According to the UN Convention, Article (Art.) 50, in the case the visa cannot be extended, the migrant worker should be provided with a period of time for settling their personal and professional affairs. In the Czech Republic, foreigners are deprived of this opportunity: in case of failure to present all the necessary documents within the time period for the issuance of missing documents, the foreigner is subject to administrative responsibility.

The Alien Act stipulates several possibilities of how a foreigner can apply for a change in the purpose of the stay during the validity of the over-90 day visa without leaving the country. These are such cases when a foreigner lives in the Czech Republic with his family and has decided to start working, or vice versa – if he/she works here and has decided to look after children.

Employment and business undertakings of foreigners

*Employment of foreigners*

All foreigners who want to be employed by a Czech or foreign company must ask the Employment Bureau for “work permit“. Until recently there have been no specific provisions with the EU members on migration. The new Amendment No. 217/2002 Coll. fills this gap, but it will come to effect after the Czech Republic joins the EU.

Nevertheless, in the CR there is a high demand for low-skilled labour force in the mechanical engineering, food and textile industries as well as agriculture. The employer has an opportunity to employ a foreigner only for a job which has remained unclaimed by a Czech national for a certain period of time. Therefore a foreigner may only choose from a limited number of jobs, which is partially contrary to the Art. 52 of the UN Convention, which determines the migrant worker’s right to freely choose his or her remunerated activity. Discussions with employers suggested that they would like to employ foreigners much more often. They are satisfied with the foreigners’ quality of work, willingness to execute the assigned tasks and the low sickness rate. However, according to the current legislation on the protection of the Czech labour market, an employment contract with a foreigner may only be signed at least six months after the need for a staff member was identified. This is a long period as companies must react to the requirements of the market in a much more flexible way.

According to Art. 51 of the UN Convention, a foreigner has the right to change jobs during his or her period of stay determined by the over-90 day visa. However, in terms of time, the subsequent employment must immediately follow the previous one. After the employment termination the employer is bound to notify the Employment Bureau, which in its turn forwards this fact to the Alien Police. If the Alien Police are not notified, the foreigner’s over-90 day stay visa is suspended without prior notice.

Employment contracts with migrant workers are signed for a definite period of time, with a maximum validity of one year. The alien is paid monthly wages by the employer, from which income tax, social and medical insurance are deducted. In accordance with investigations<sup>18</sup> the net income of the employed aliens from the Central and Eastern European countries is only slightly lower than the average income in CR, but the difference is not substantial. Likewise, inspections carried out by Employment Bureaus did not find any discrimination of foreigners in terms of remuneration. However, it is very complicated to control remuneration payments. The base wage of Czech nationals is not different from that of foreigners employed for the same position, but additional payments depending on the quality of work may vary. Nevertheless the polled foreigners did not feel discrimination with respect to wages. Some companies add dwelling and transportation allowances to the

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<sup>18</sup> HORÁKOVÁ, M., ČERŇANSKÁ, D. (2001): Alien Employment in CR, Labour and Social Issues Research Institute, Prague, The study was focused only on immigrants from Central and Eastern Europe.

foreigners' wages. In one of the inspected companies, there were Czech nationals who expressed their discontent for not getting the same allowances as foreigners.

In accordance with Arts. 32 and 47 of the UN Convention, labour migrants are allowed to send their earnings and savings to his or her country of origin by means of non-cash transfer.

In accordance with the Art. 25 of the Convention, the Employment Bureau carries out inspections focused on the law observation. During the year 2002 a total of 1,382 inspections were carried out on the premits of employers hiring foreigners in the whole of CR. More than half of the inspections (56 %) were organized within the framework of planned controlling activities, 27 % were initiated by the Alien Police, and 17% were initiated by public or other institutions. The foreigners themselves were checked in their respective employment places, only in co-ordination with the Alien Police, whose representatives were present in 506 cases. A total of 5,145 foreigners were checked during these inspections, and illegal employment was revealed in 1,488 cases. Evidencing of illegal employment of foreigners is very complicated because the inspected employers have contracts with multiple employment agents who supply foreigners to employers. Therefore it is difficult to find the actual supplier. Employers are fined if the use of self-employment for their main business activities is revealed.

Arts. 26 and 40 of the UN Convention refer to the right of the migrant workers to become members or founders of trade unions. According to the current legislation, foreigners have the right to become members of trade unions, but the interviews revealed that migrant workers do not use this possibility. The reason is the organization's negative attitude towards the aliens' employment, as they represent competition for Czech nationals – in terms of both finding jobs and lower remuneration requirements. Foreigners cannot become founding members of trade unions. A trade union organization may only be founded by Czech nationals.

During the 1990's, the Czech Republic signed 12 bilateral treaties<sup>19</sup> on mutual agreement of nationals. Such treaties are concluded with neighbouring countries, and also with other countries whose nationals are widely represented in the CR. The nationals of the parties – participants of the treaties receive benefits in terms of education and vocational training.

### **Business undertakings of foreigners**

With respect to business undertakings, each alien has the same right as a Czech national. Aliens complain about a more complicated access to financial resources from banks. Also the governmental support of business undertakings (e.g. credit interest allowance) does not relate to aliens. However, this fact was changed in the new legislation.

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<sup>19</sup> See the website of the Ministry of Labour and Social Issues of the CR:  
<http://www.mpsv.cz/scripts/clanek.asp?lg=1&id=552>

There are also examples of aliens who hold a business license and who participate in the business operations of a Czech employer. For instance, a company involved in cleaning service business, hires several aliens holding business license to execute the cleaning services. In this case the employers avoid certain administrative obligations and payment of social and medical insurance. 10% of the alien's wage is withheld and sent to the local Tax inspection. Thus a tax payment order is maintained.

#### Medical insurance and social security of aliens

##### *Social security*

Social security (8% of income) consists of three components: medical insurance (sick benefit), contribution to the governmental unemployment police (unemployment benefit) and social insurance (retirement and disability insurance). It is the employer who pays this insurance on behalf of a permanently employed alien. An alien-businessman pays the insurance himself/herself; medical insurance is voluntary.

Therefore aliens with an over-90 day stay visa are entitled to receive sick benefit.

If a bilateral international treaty on social security<sup>20</sup> is signed, records of service are taken into account. Pension entitlement is established after 25 years of insurance and the payments are transferred to foreign countries without restrictions. However, in the case of nationals of non-signatory states, the years worked in the Czech Republic are not registered, although these persons must pay for social security for the whole period of their residence in CR, and thus the money paid to the system is not returned. This is contrary to Art. 27 of the UN Convention which stipulates that in case the alien is not granted a benefit, the contributed means should be reimbursed. Aliens with a simple visa with the validity period not exceeding 90 days are not entitled to enjoy social security benefits at all.

A problem also arises in terms of the unemployment benefit due to the fact that an alien with an over-90 day stay visa must not be unemployed on the territory of CR, as the purpose of his or her residence is employment or business undertakings. The visa is annulled with the termination of such activity and the alien must leave the country. An alien is entitled to the benefit only under the condition of active job search and in co-operation with the Employment Bureau. This condition cannot be satisfied if an alien left the country. The contributions the alien made to the state during his or her residence are not reimbursed. This fact is contrary to Art. 54 of the UN Convention which defines the migrant worker's right for an unemployment benefit, retraining and assistance in his or her search for employment.

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<sup>20</sup> So far the CR has signed bilateral treaties on social security with twenty-six countries, See the website of the Ministry of Labour and Social Issues for the CR:  
<http://www.mpsv.cz/scripts/clanek.asp?lg=1&id=537>

### *Medical insurance*

Under international treaties all aliens in CR are entitled to receive emergency medical treatment which corresponds to the Art. 28 of the Convention. Aliens may be insured by public medical insurance (like the Czech nationals) or contractual (commercial) medical insurance. Aliens with a residence for the purpose of employment participate in public medical insurance, where the insurance amount depends on the income level. However, this right does not apply to other aliens holding the visa with the validity exceeding 90 days. Such aliens must be insured in one of specified insurance companies. These payments are higher than in the public insurance, independent of income and, moreover, the insurance company is not obliged to sign the insurance contract with ill aliens. For a large number of aliens this type of insurance is too expensive. The questioned aliens did not use the insurance service for themselves or their children.

### Fundamental rights of aliens

The protection of fundamental rights and freedoms is based on international treaties signed by CR. According to the annual Report on Human Rights in the Czech Republic, the rights are not infringed in the area of criminal law. In this respect the Czech Republic complies with Arts. 9 - 22 of the UN Convention which concern the areas of individual protection, fair trial, effective means of legal protection as well as other areas.

In spite of this fact, the questioned aliens admit they distrust that law machinery would protect their interest. They fear scornful attitude from their part. In the migrant workers' opinion, the chances for legal solution of their problems are small.

### **Political, religious and cultural rights of aliens**

Aliens with an over-90-day stay visa are not allowed to vote in local election or be elected in a local referendum (permanent residence is needed in these cases). The UN Convention (Arts. 41, 42) is liberal in terms political rights, and the decision is left to the respective state.

The aliens' freedoms of speech and press are not restricted in any way in the Czech Republic. In accordance with Art. 31 of the Convention, an alien is entitled to keep his or her own cultural identity and maintain contact with his or her country of origin. A different situation occurs in terms of forming associations (societies, trade unions), in which the founding members are required to be Czech nationals, but the aliens can be their members without restrictions. This fact is contrary to Art. 40 of the Convention. But in the Czech Republic certain associations mostly perform activities on the maintenance of cultural ties.

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## Education

Education is equally accessible to both aliens and Czech nationals. Elementary schools must accept children even if their parents reside in the CR illegally. However, the aliens questioned claimed that the legality of their residence was checked when signing their children up to schools. There is also equal access to pre-school education. The precondition of free study at secondary schools and universities is a good command of the Czech language. There are free of charge language courses for aliens with an over-90 day stay visa. In the area of education, CR's conditions fully comply with the UN Convention 1990, Art. 30.

## Access to goods and services

The legal provision in the area of goods and services is identical for Czech nationals and aliens with the exception of real property acquisitions by aliens. Purchasing of goods on credit, taking credits and lease are the areas where the Czech citizenship is a must. However, an individual approach is required here, as in principle these services can be available to aliens with the visa validity longer than the payout period. For example, a questioned alien was not allowed to hire-purchase a TV set in spite of the fact that his visa validity was longer than the payout period.

Housing is one of the most essential needs of aliens. Aliens are not allowed to acquire real estate; however, this prohibition may be eluded by establishing a legal entity, which is allowed to acquire real estate. The real estate market in CR is non-functional. A major part of the population lives in flats with controllable rent; aliens, however, have no access to such flats. One of the options for aliens is tenement housing for market prices. The rent rate in Prague and other cities is extremely high; therefore aliens are forced to live in unsuitable conditions. Czech nationals illegally rent flats they do not own (e.g. flats owned by the municipality). Therefore they do not confirm the accommodation of aliens for the purposes of the residence visa. Due to this fact, the alien is forced to obtain the confirmation somewhere else. So it happens that the number of aliens registered at one address exceeds the number of persons who can physically dwell there.

According to Article 43d of the UN Convention, aliens should have equal rights to housing as Czech nationals, including access to social housing schemes, which is not enabled by the current Czech legislation.

## CONCLUSION

In the labour migration sphere, the Czech labour market is restrictive towards aliens. An alien may only be employed if the position was not claimed by a Czech citizen. Aliens elude this condition by obtaining a business license, which does not depend on the labour market situation. Issuance of all the documents required for the obtaining of the over-90 day stay visa is consuming in terms of time, financial means and migrant's good understanding of the

Czech environment. The employers need aliens for a much shorter period of time than enabled by the legislation. Thus due to the above inconsistencies some labour migrants become illegal.

As the analysis reveals, the Czech Republic is not fully ready to ratify the UN Convention on the Rights of Migrant Workers and Members of Their Families, as the country does not observe some of its main clauses. In comparison with Czech nationals, aliens do not have equal access to medical insurance; they are not entitled to enjoy all social security benefits, even the fee-money is not reimbursed. The access of aliens to some services and goods is also complicated. Aliens are not allowed to establish associations, societies and trade unions.

### **Interviews:**

- Immigrants:  
Irina (Ukraine), Oleg (Ukraine), Aliona with two children (Moldavia),  
Natalie with her husband and three children (Ukraine), Olga (Russia),
  
- Employers:  
Rubena a. s., Náchod, 10 foreign employees (mostly Poles)  
Mitas a. s. Praha, approximately 400 foreign employees (mostly Rumanians)  
TEPNA a.s. Náchod, 97 foreign employees (Ukrainians, Poles)
  
- Competent officials:  
M. Meduna, M. Tichý, Ministry of Labour and Social Affairs of the Czech Republic;  
A. Hladíková, Ministry of Interior of the Czech republic;  
M. Michal, Ministry of Foreign Affairs of the Czech Republic (OSN section);  
A. Baršová, State Council for Human Rights of the Czech Republic;  
M. Říhová, Project Manager, IOM Prague;  
P. Boučková, Counselling Centre for Citizenship, Civil and Human rights, Prague;



## **ESTONIA: PROBLEMS LINKED WITH JOINING THE UN CONVENTION 1990**

### **Introduction:**

In order to understand correctly the Estonian government attitude towards the ratification of the UN Convention 1990 On the Rights of All Migrant Workers and the Members of Their Families, it is necessary to take into account the below aspects of the Estonian development.

Estonian position is based on the attitude to its demographic development compared to developed European countries. To date local population has not yet reached its pre-war numbers and despite its high immigration scope, Estonia is among countries with rapidly decreasing population which is characterized by the highest speed of population ageing in the world.

Among other European countries Estonia is notable for its longest history of large-scale to encounter some impacts of this process stronger than in other countries. Estonia has become the place for immigration waves from the East, presented mainly by labour migration (with the exception of army displacement and Soviet administration), like other European countries after the Second World war. However in Estonia these immigration waves started a decade earlier than in general in the European countries with similar demographic development. Also, the immigration volumes were relatively much higher, because Estonia was not an independent country and couldn't control migration flows. As a result, ethnic Estonians form only 71.3% of the country's population (at the beginning of 2001).

Newly arrived Estonian population is very diverse. In accordance with self-identification, there are more than 140 ethnic groups, which speak more than 80 languages and their cultural background differs from local. This is a great variety for such a small country with a native population of approximately 1 million.

Among Estonian resident population only 80.8% are Estonian citizens, 6.9% are foreign citizens, the overwhelming majority of whom intend to stay in Estonia, all others are stateless<sup>21</sup>. On 15 April 2003 the European Union Commission on the Human Rights voiced its concern about the still high number of stateless persons and the low speed of

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<sup>21</sup> For 01.03.2002

naturalization.<sup>22</sup> That is why this task is of priority for the Government. At the same time during 1990's, emigration from Estonia exceeded immigration. Thus, within a period of five years from 1995 to 1999, 7,585 people entered Estonia and 25,681 exited the country. The negative net-migration numbered to 18,096 people.<sup>23</sup>

Second important condition that determines Estonia's attitude towards ratification of the Convention 1990 is that Estonia is in the process of preparation to joining the European Union. Government's efforts are focused on the fulfilment of the Copenhagen economic criteria necessary for joining the EU.

The priority task in the labour market is to bring national legislation, which regulates the market in general and labour migration in particular, to conformity with the norms of the European Community. Besides, it is necessary to fill in gaps and to remedy distortions in the human rights sphere, inherited by Estonia from the Soviet regime. Estonia joined the Convention on the Protection of Human Rights and Main Freedoms (April 1996) and the UN Convention on the Refugee Status and Protocols to it (July 1997).

### **Labour Market Regulation**

Lately, main efforts relating to the labour market have been focused on the increase of the employment level and on the decrease of the unemployment level. In this respect, in 2002 some positive changes occurred: employment increased up to 61.7% (in 2001 – 61.1%), and the unemployment level dropped to 10.3% (in 2001 – 12.6%). Training for young people and those who didn't work for a long period of time, modifications of the vocational education system, science and industry perfection are provided for. Estonia has planned measures for fighting unemployment within the higher risk groups, including long-term unemployed people, young people, disabled people and rural women.

In the area of unemployment Estonia signed in 2001 'The Joint Assessment of Employment Priorities in Estonia' (JAP), which identified a number of measures whereby employment policy can be reinforced to address labour market problems. The main identified priorities are:

- Expansion of existing job placement programmes

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<sup>22</sup> CCPR/c/79/Add. 59, para 12.

<sup>23</sup> Statistical Yearbook of Estonia. 2001

- Providing functioning of the Public Employment Service including the resources and structures needed to allow it to manage active programmes effectively and to engage more actively with the unemployed.
- Continued implementation of measures to grade gender discrimination in the labour market.

The main risk groups in the Estonian labour market comprise the young, the long-term unemployed, the disabled, labour force aged over 45. The young form 18% of the unemployed and the unemployment rate among them is considerably higher than in other age groups. In 2001, the unemployment rate of the young was 22.2%. In line with the decline in total unemployment rate the youth unemployment declined as well, amounting to 17.6% in 2002. In Estonia, the women's employment rate is higher than the European average – 57.3% and 54.9% accordingly.

Besides the young people, those aged 50-54 find themselves in the most difficult situation. The number of people in this group has been increasing rapidly over the last three years. These are people who haven't yet attained the retirement age and lack the right to get an early pension. For them it is difficult to find a new job as the employers prefer to hire younger people. Many men and women aged 50 and more have given up job-seeking and have therefore become inactive working population.

The nature of unemployment in Estonia is mainly structural. Though the rate of unemployment in Estonia is higher than the European Union average, Estonia lacks qualified labour force.

To implement the Employment Action Plan, the Ministry of Social Affairs compiled a programme 'Increasing employment, preventing long-term unemployment and exclusion of risk groups from working life'. In this programme concrete actions are foreseen for implementing employment policy. The programme aims at the expansion of active labour market policy that comprises improving of labour market services, applying specific programmes for integrating risk groups into the labour market as well as increasing the administrative competency of labour market institutions.

In 2002-2003 the following *actions* were performed on the protection of workers' rights:

☛ On January 2002 the Unemployment Insurance Act came into force and the Unemployment Insurance Fund started paying the first insurance benefits on January 2003.

☛ On July 2002, the Government approved the Employment Action Plan in the Republic of Estonia for 2003' that gives an overview of the labour market situation and bottlenecks, list of measures on implementation of the labour market development policy which are necessary for the improvement of the situation.

☛ The Government regulation “the amount of labour market support provided to an unemployed for starting business” pursuant to which the amount given to an unemployed to establish a business was increased from EEK 10,000 to EEK 20,000 entered into force on November 2002.

☛ For implementing the Employment Action Plan the State Programme “Increasing employment, preventing long-term unemployment and exclusion of people in the risk groups from working life” was developed.

☛ To integrate the long-term unemployed into the labour market, within the framework of the Employment Action Plan at the end of 2000 – beginning of 2001, the project “Supporting the Employment of the Long-term Unemployed through Training and Grants to the Employer” was launched in all employment offices.

☛ On the basis of the Labour Market Services Act, a new service of vocational counselling was developed. Today this service functions in all employment offices in Estonia.

☛ The project ‘Arranging business training and allocating increased labour market support to the unemployed has been launched.

☛ At the beginning of 2003, the project “Enhancing Employment Opportunities for People with Disabilities” and the pilot project “Support to the Youth employment” have been launched.

☛ In accordance with the Center for Political Studies PRAXIS, assessment, participation in employment programmes increases the probability to be employed to 7%. However, only ¼ of the unemployed participated in re-training courses and only 332 persons from risk groups (disabled, mothers with children under age 6 and labour force over 45 years old) got employed in 2001.

Policy aiming at the labour market development is being worked out and carried out by the consolidated forces of the Employers’ Confederation, Trade Unions Association and the Government. At the same time much attention is paid to the internal regional policy, which is based on the EU regional policy principles. Regional programmes are targeted at combating a continued polarization of the national economy and preventing associated macroeconomic

problems. In accordance with the strategy of the regional development, the balanced development should be achieved in 2003. One of the balanced development criteria is the unemployment level (measured in accordance with the ILO methodology), which should not exceed the average unemployment level throughout Estonia by more than 35%.

In 2001, the Government approved the Employment Programme in Ida-Virumaa district, one of the regions with the highest unemployment rate (18.9%). The Ministry of Economic Affairs, the Ministry of Education and the Ministry of Social Affairs participated in the preparation of the program.

The majority of the problems relating to labour migrants are linked with Ida-Viru district, as their highest concentration was in this very place. The employment process of the newly arrived population should be viewed within the limits of structural development of the transitional economy and taking into account the unemployment level among migrants. At present this level amounts to approximately 16.6% while the country's average figure is 9.9%, which is comparable to the average unemployment level among immigrants in Europe.

Estonian main concerns in the employment sphere lie within the area of elimination of gender discrimination, as the surveys showed differences in payment for the same job between men and women. In the light of the latter, Estonia ratified the ILO Convention No.100 regarding equal value of male and female labour. Also a new draft legislation regulating gender equality matters was developed. A governmental meeting on 13 May 2003 decided to prepare the basis for a broader concept on the labour market discrimination matters and to undertake measures to ratify ILO Convention No. 111 on Discrimination in Employment in accordance with a large variety of characteristics: on the basis of race, sex, religion, geographic or social origin. It will create conditions for providing equality of opportunities at work and during employment.

### **Legislation**

In Estonia the main rights of immigrant workers are regulated by the Aliens Act (July 1993) to which latest amendments were made on November and December 2002. The term 'migrant worker' is not used in the Law; instead the Law refers to foreign citizens and stateless persons residing in Estonia. In accordance with the Law, a foreigner is a person who is not an Estonian citizen.

The Aliens Act sets the passport regime for foreign citizens. A foreigner without a passport or a similar document can receive a Foreigner's passport if this person has a residence permit in Estonia. The residence permit can be temporary, issued for the period of up to 5 years, or permanent. A permanent residence permit can be issued for a foreigner who has lived in Estonia with the temporary residence permit for the past five years and who has the valid residence permit, dwelling space in Estonia and legal income to provide for himself in Estonia, if otherwise is not stated in the Law.

A foreigner has the right for employment in Estonia if he/she:

- 1) has a permanent residence permit;
- 2) is in prison in Estonia;
- 3) has the residence permit for employment purpose, on the conditions stipulated in this document;
- 4) has a work permit received on the basis of a labour contract;

A foreigner who has legal grounds for staying in Estonia and is employed for a period of time not exceeding six months per year, has the right to get employment in Estonia without obtaining work permit in the following cases:

- 1) Employment as a teacher or lecturer in an educational institution, licensed for carrying out educational activities in Estonia, at the invitation of an educational institution;
- 2) Artistic and research activities if he/she has corresponding professional education or experience in these types of activities;
- 3) Employment as a member of management of a juridical person registered in Estonia to carry out governing or supervision functions;
- 4) Direct investment, founding of a foreign company's affiliate in Estonia, or a representative office or carrying out managerial functions in a company registered in Estonia and belonging to the international group of companies;
- 5) Employment as a sportsman, trainer, referee or sports official, in order to carry out professional activities at the invitation of the corresponding sports federation;
- 6) Employment as a specialist, counsellor, advisor, or equipment fitter if he/she has corresponding professional education;
- 7) Activities within the limits of international cooperation programmes, including activities with participation of state or local governmental bodies;

- 8) Participation in seasonal works, including the production of primary agricultural products;
- 9) Employment as a household helper;
- 10) Employment for professional education, with a probation aim;
- 11) Employment as maintenance staff in a diplomatic representative office of a foreign state with the permission of the Ministry of Foreign Affairs.

Residence permit for employment purpose is not valid if it does not contain conditions on which the foreigner is allowed to get employment in Estonia. As a minimal requirement it should state the employer's name, name of the place of employment and position. Besides, foreigner's salary should be enough to provide for his/her stay in Estonia; a foreigner must have an insurance agreement to guarantee compensation for the expenses linked with medical treatment resulting from an illness or injury, if occurred during the residence permit validity period.

Residence permit for the business undertakings purpose can be issued for a foreigner who possesses the company's control packet of shares or who is the only owner under the condition that the company or own enterprise is included into the Estonian commercial register, and in accordance with the State interests, if the suggested enterprise is necessary for the development of the Estonian economy, and the residence of this foreigner in Estonia is of great importance for this enterprise.

Residence permit for the business undertakings purpose can be issued for a foreigner who possesses a capital of at least 1 million EEK, under the control of this foreigner and invested into the business undertakings in Estonia, in the presence of a business-plan with the description of type and size of the proposed business activities, containing information on the number and required qualification of the personnel necessary for such activities. The capital invested by a foreigner in Estonia with the aim to get permission for the activity as a sole owner should be not less than EEK 250, 000.

A foreigner with no legal grounds for staying in Estonia has no right to get employment. Yearly employment permissions are issued in accordance with the quote which is 0.05% from the number of Estonian resident population, if the Law does not state otherwise.

In accordance with the information of the Citizenship and Migration Board in 2003 migrants were issued 2,644 work permits in Estonia, and out of them the majority was formed by Russian citizens and stateless persons, 142 Ukrainian citizens and 147 Finland citizens. By

2004, there are 6,800 labour migrants with valid work permits, out of whom 2,115 people have a resident permit. Temporary permits valid for up to six months since May until the end of 2003 were received by 351 people, of them 70 people were from Poland, 48 from Finland, 33 from Latvia, 27 from Russia, 27 from Ukraine, 24 people from Hungary, 18 from Great Britain, 14 from Lithuania, 13 from Germany, 2 from the United States and 1 person from SAR.

### **Migrants' Rights**

All foreigners with the residence permit for employment purpose or work permit in Estonia are guaranteed the same rights and freedoms as Estonian citizens in accordance with the international law norms. The workers' rights are regulated by the Employment Contracts Act, Health Insurance Act, State Allowances Act, Collective Agreements Act, Wages Act, Working and Rest Time Act, Occupational Health and Safety Act, Social Protection of the Unemployed Act, Unemployment Insurance Act etc. which all represent the principles of equal treatment. All residents with permanent residence permits have equal rights than the Estonian citizens; some minor restrictions exist in the rights for those who have a residence permit for a determined period of time.

In accordance with the "Employment Contract Act" it is illegal to prefer or limit workers' or employers' rights on the basis of gender, colour, race, native language, social status, previous work experience, religion, political or other views, attitude to the military service. The draft "Employments Contracts Act" is being prepared, which forbids direct and indirect discrimination.

In accordance with the "State Allowances Act", a person who worked in Estonia for 15 years has the right to receive pension, based on the length of service, regardless of the residence permit type or presence of the Estonian citizenship, but under the condition that this person remains a resident of Estonia.

As for the social benefits, the right of their acquisition on the Estonian territory is not extended to other countries' citizens, unless this matter is regulated by bilateral or multilateral agreements. Estonia has ratified bilateral agreements with Latvia, Lithuania, Finland, Ukraine and Russia, similar to the agreement between the European Union countries. The agreements are in accordance with the ILO Convention No.86, part VIII, article 21.



In the area of health insurance, each worker having an employment contract has to pay health insurance tax and if the tax is paid, the employee is medically insured irrespective of his/her type of residence.

Child allowances are paid to all residents with permanent residence permits or in accordance with the bilateral agreements which are in compliance with the ILO Convention No.86, part VIII, article 21.

Equal treatment is provided in respect to the main aspects of labour conditions (working hours, salary, employment injury, etc.) and also labour migrants have the secured right to transfer their salaries to the country of their permanent residence. Trade union membership is not restricted. In Estonia a working migrant can be a shop deputy at any level.

Citizens of foreign states and stateless persons have the same right for legal protection on the Estonian territory as Estonian citizens unless otherwise provided by international agreements entered into force by Estonia. In accordance with the Constitution, juridical persons have the right to apply to courts in case their rights and freedoms are violated.

Central Association of Trade Unions declares that migrant workers are provided with accurate information on matters relating to the employment and living conditions in the place of destination, administrative formalities and cases when benefits can be provided.

Employers are required to monitor that the work permits of foreign employees are issued correctly. Otherwise, employers are required to dismiss the foreigner and to inform the authorized state agency thereof. Control over the foreigners' employment is carried out by the State Labour Inspection. If the employer hired a foreigner without the work permit, an inspector has the right to impose a fine on the employer.

Foreigners must submit to State authorities authorized by the Republic's Government, the following information: changes in permanent residence, premature ending of the employment contract, change in marital status, expulsion from an educational institution or interruption of studies. On the other hand, foreigners legally residing in Estonia have the right to contest in court the decision to refuse to extend or prematurely terminate their residence or work permit, or decision for expulsion.

## **Conclusions**


Efforts of the Estonian government on the eve of joining the European Union were concentrated on the fulfilment of the requirements necessary for this joining. Special attention was paid to the problem of statelessness liquidation in accordance with the concluding remarks of the European Commission for Human Rights. Joining the UN Convention 1990 on the Rights of All Migrant Workers and the Members of Their Families is not on the list of the priority tasks at the present stage of the country's development.

National Estonian legislation guarantees protection of practically all the rights of labour migrants on the conventional level; that is why there are no serious arguments in favour of joining the UN Convention. Besides, Estonia seeks to act in the same stream as the European Community. EU countries have not yet joined the UN Convention 1990, and this is also a restrictive argument for Estonia.

Nandor Zettish  
Irina Molodikova

***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>24</sup> and the Needs of the Hungarian Labour Market***

On July 1<sup>st</sup>, 2003, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force, after the threshold of ratifying states was reached in March 2003. Unfortunately, not many countries have signed and ratified it<sup>25</sup>. And there are no developed countries<sup>26</sup> among them, though the first are the main recipients of migrants. The increasing smuggling and trafficking of people, which became one of the most profitable businesses together with drug traffic, is the underside of severe restrictive and prohibitive measures, adopted by most developed countries for fighting against illegal migration.

The goal of this survey was to find out which obstacles there are in Hungary that prevent from the signing and ratification of the 1990 UN Convention ing into account the analysis of migration processes (including labour migration), legislative conditions, and opinions of Hungarian experts. An experts' poll was conducted using the method of "deep" interview, questions were sent in advance. Experts answered only those questions, in which they considered themselves competent. The list of organizations, where the experts were selected, and the list of questions are available in appendixes 1 and 2.

#### General information

The population of Hungary according to the 2001 census comprises 10.3 million people, including: 6.9 million of economically active population (15-64 years of age), of whom 3.4 million had work experience. In the group of elders 17.8% of the population also worked. According to ILO definition, around 230 thousand people are actively searching for a job. A relatively high share of unemployed people of employable age indicates that there are certain reserves of labour force. As a result of the recession, the labour market is facing stagnation. 86.6% of a total number of employed are workers for hire, 10% are businessmen or individual entrepreneurs, 4% are members of cooperatives or do not have permanent jobs.

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<sup>24</sup> Special thanks to Mr Laszlo Zsoter, Mr Attila Melegh and Ms Judit Toth.

<sup>25</sup> The following countries have ratified the Convention as of June 2003: Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda, Uruguay.

<sup>26</sup> No Western migrant-receiving country has ratified the Convention, even though the majority of migrant workers (nearly 100 million out of a total of 175) live in Europe and North America (UNESCO Information Kit –<http://www.unesco.org/most/migration>).

A number of the unemployed has been constantly decreasing and in 2001 came to 5.7% (in comparison with 6.4% in 2000). Unemployment in Hungary is even lower than in the EU countries, where it amounts to 8.2%.

Migration balance during the 1990s had a positive value, fluctuating between 10 and 25 thousand people per year. Even though in the beginning of 1990s Hungary was mainly a transit country, presently, as migration specialists have noted, it is becoming a recipient country<sup>27</sup>. A general number of foreigners, who have a residence permit or immigration permit, comprised 11,6429 people in 2001, including 25.3% of those who had a short-term residence permit; 46.6% had a long-term residence permit and 9.3% had an immigration permit. Among applicants for a short-term (temporary) residence permit (up to one year) 80.5% were foreigners from neighbouring countries, where Hungarian minorities live (57.5 % Romanians, 11.8 % Ukrainians, 4.7% Slovaks, 2.3% former Yugoslavs). 54,234 people applied for a long-term residence permit (from two years with further prolongation). 75.3% of them were also Europeans (including Romanians – 36.7%, Ukrainians – 9.3%, former Yugoslavs – 4.6%, Slovaks – 4.4%, Germans – 4.3%) with a significant number of Chinese – 8.5%.

Among those, who applied for immigration permit, more than 80% of emigrants moved from neighbouring countries (Romania – 56.1%, Ukraine – 14.6%, Yugoslavia – 9.3%, Slovakia – 3%). According to some experts' calculation, around 56.1% of foreigners, who arrived in 1990-1997, obtained citizenship. Most of them are also the ethnic Hungarians from neighbouring countries<sup>28</sup>.

According to forecasts of specialists from the Hungarian Institute of Demography, the Hungarian population in the conditions of existing demographic tendencies may decrease from 10.3 million in 2002 to 8.0 million by 2050. Baseline variant of scenario, presented by authors, showed that in the conditions of the sustainable development scenario (total fertility rate growth from 1.3 to 1.9, life expectancy of men from 66.8 to 81.8 and of women from 75.3 to 88.6 years) migration balance could be maintained at the level of 13.5 thousand people per year. There is a demand for 40 thousand migrants annually, if there is no improvement in demographic indicators<sup>29</sup>.

### **Immigration into Hungary**

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<sup>27</sup> Melegh A. (2003) Globalization, Ethnicity and Migration. Discourse, Institutions and Data in Hungary. Revised version of the paper presented at the International Seminar. April 25<sup>th</sup>, 2003, Novosibirsk, Academgorodok. Institute of Economics and Industrial Engineering.

<sup>28</sup> Habcsek László - Tóth Pál Péter (2000): A nemzetközi vándorlás szerepe a magyarországi népesség számának megőrzésében 1999-2050 között. The Role of International Migration in Maintaining the Size of the Hungarian Population between 1999-2050. Demographic Research Institute, 2002.

<sup>29</sup> See ref. 5.

**Labour migration in Hungary**<sup>30</sup>. Until 1989 Hungary as other socialist countries was not open for free labour migration. Nevertheless, after opening the borders the flow of immigrants to Europe from Hungary and other socialist countries was not significant.

Foreign entrepreneurs and foreign workers came to the Hungarian labour market in 1990. The number of foreign holders of work permit in Hungary comprised 38,623 people, as of December 2001, although the total number of foreign workers is estimated as 100,000 people (including those who do not need work permit: workers of foreign companies and foreign owners of such companies)<sup>31</sup>. According to the estimates of experts from the Hungarian Ministry of Employment and Labour almost the same number of the Hungarians leaves to work for other countries. The majority of them settle in Germany and Austria.

In 2001 the Employment Center of Hungary issued 47.3 thousand individual permits, while in 1997 their number was only 24.2 thousand. The majority of those, who got a work permit, arrived from neighbouring countries: Romania (57%), Ukraine (16.1 %), Slovakia (6.3%), and Yugoslavia (3.1%).

On the basis of the 2001 Act LXII on "Hungarians Living in Neighbouring Countries"<sup>32</sup> only 134 work permits were issued, of which 110 in Romania, 11 in Slovakia, 6 in the Ukraine, 2 in Croatia and 2 in Slovenia. The majority of migrant workers are the ethnic Hungarians or Hungarian-speaking people.

The share of migrant workers from the EU countries, who got work permit, is only about 6.3% (2,638 people), and for the last years it remained unchanged. Migrants from the EU countries were involved mainly in building industry and production of construction materials (52%), trade and restaurant services (16.7%), sport and cultural activities (14.4%); and to a smaller extent in education sphere (2.7%), public health (2.7%), and agriculture (5.8%).

The National Employment Center collects and differentiates information on migrant workers' qualifications. According to the Center, almost half of migrant workers who got a work permit, have only a primary education. These are mainly migrants from the Ukraine and Romania. At the same time most migrant workers from the EU countries have higher education (70-80%). It is important to mention that the ratio of skilled blue collar workers from 1997 to 2001 decreased from 73% to 47.8%. The same tendency is among the white collar.

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<sup>30</sup> Main source of this chapter: Zoter L.(2002), SOPEMI Report Hungary, Development in International Migration to Hungary.  
Melegh A. (2003) Globalization, Ethnicity and Migration. Discourses, Institutions and Data in Hungary. Revised version of the paper at the International Seminar Regional Specificity of Immigration in Russia and in Europe. April 25<sup>th</sup>, 2003, Novosibirsk, Academgorodok. Institute of Economics and Industrial Engineering.

<sup>31</sup> Decree #8/1999 of the Ministry of Social and Family Affairs.

<sup>32</sup> Zoter L.(2002), SOPEMI Report Hungary, Development in International Migration to Hungary.

**Refugees and asylum seekers**<sup>33</sup>. Hungary is not the country of destination for asylum seekers. Only several waves of refugees' inflow can be reported (mainly the ethnic Hungarians), who arrived in the country during the two Yugoslavian wars and after the end of Ceausescu's regime in Romania. From 1988 to 2002, 178,874 people applied for asylum. But the number of refugees and asylum seekers significantly varied for the last decade, approaching 60,000 in the early 1990s (during the end of Ceausescu's regime), while in 2002 there were only 6,412 people. The share of illegal migrants grows annually. While in 1991-1997 the percentage of illegally arrived asylum seekers varied from 4% to 18% of their total number, in 2002 it reached 89.3%. The Ministry of Internal Affairs paid about 117,324,953 HUF (about 0,6 million USD) to facilitate the integration of refugees and asylum seekers. According to the Decree #8/1999 (XI.10) of the Ministry of Social and Family Affairs, the majority of those, who got the status of asylum seekers or received a temporary status, do not need a work permit.

In 2002 the Migration Service expelled 2,710 people, of whom 30% were Romanians, 15% - Moldavians and 10% - Yugoslavs, other – Chinese and Ukrainians. Most part of expulsions resulted from the violations of rules of arrival and departure. Only Ukrainians were expelled mainly because of illegal employment.

Illegal labour migration<sup>34</sup>. According to experts' estimates, the illegal labour market makes up a significant part of economy and is approximately equal to the legal one (from 50,000 to 100,000 people). The sum of a labour fine ranges from 250 to 5,000 USD (Zsoter L.,2002), however the official process of applying for employment sometimes can last up to 6 months and suits neither employers, nor migrants<sup>35</sup>.

#### Emigration from Hungary

There is only fragmentary information concerning emigration from Hungary. This information can be obtained in embassies in recipient countries (for example, in Germany information can be obtained about those who disavowed the Hungarian citizenship in favor of the German one, or about a number of issued non-tourist visas). There is statistical data in Hungary concerning those who work in Hungarian companies in Germany. However, illegal migration, as well as work abroad, is, as a rule, not included in statistical registration.

According to Hablicsek L. - Tóth P. (2000), the number of people, who emigrate from Hungary for a long-term or indefinite period, is around 3 thousand people per year. Thus

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<sup>33</sup> Main source of this chapter: Ministry of the Interior, Office of Immigration and Nationality: <http://www.bmbah.hu/migracio.htm>

<sup>34</sup> Statutory provisions concerning legal employment - motivated migration ensure exemption to numerous groups of employees from under the obligation of obtaining a work permit. For this reason the National Employment Office's statistics does not contain full number of foreign employees.

<sup>35</sup> Zsoter L.(2002), SOPEMI Report Hungary, Development in International Migration to Hungary.

it can be presumed that the number of those, who departed for a long-term period for the previous ten years, was about 30-40 thousand people. However, other specialists give higher values. For example, according to Melegh's<sup>36</sup> estimates based on statistical sources of Germany, immigration to this country from Hungary since 1990 was fluctuating considerably from year to year and for the period of 10 years amounted to 53 thousand people. Data on 18 countries of Europe<sup>37</sup> allows to approximately estimating the number of Hungarian emigrants to 84 thousand people, which does not contradict with experts' estimates (100 thousand people working abroad).

According to a sociologic survey<sup>38</sup>, only 8% of Hungarians express their wish to emigrate forever, while 35% are willing to work abroad for a period from several weeks to several months. Those, who are ready to leave for several years, make up 20%. Hungarians have a large Diaspora: 28% of respondents indicated that they have relatives and friends abroad. This network helps them searching for jobs. Among the most attractive countries are neighbouring Germany and Austria, followed by other EU countries and USA. CEE countries are not attractive for Hungarians, because most of them have a lower or similar level of living standards<sup>39</sup>.

### **Hungarian legislative norms concerning migrant workers**<sup>17</sup>

There are not many legal documents that regulate migrant workers' conduct on the Hungarian labour market. The Labour Code does not contain any special provisions on the protection of migrant workers and members of their families. It mentions that migrant workers can participate in the Hungarian Trade Union activities and create their own representative organization or a Trade Union. At the same time, in the Code there is no mentioning of unemployment benefits to be paid in case of losing job positions by migrant workers in spite of the obligation for migrant workers to pay all social security taxes in Hungary, including deductions to unemployment fund. According to the Hungarian legislation, every company-employer (except diplomatic corps) and every employee has to pay social insurance fee and tax to the unemployment fund. But in case of discharge a migrant worker is not able to take advantage of unemployment benefit and has to leave the country, because of the invalidity of a labour permit for other kinds of jobs.

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<sup>36</sup> Melegh A. (2000), Migration Between Hungary and Germany in 1990s. (Manuscript) demographic Research Institute, HCSO, Budapest.

<sup>37</sup> Austria, Belgium, Denmark, Finland, Greece, Netherlands, Ireland, Liechtenstein, Great Britain, Germany, Norway, Italy, Portugal, Romania, Spain, Sweden, Switzerland, Slovenia.

<sup>38</sup> Migration Potential of Central and Eastern Europe (1998), IOM, Geneva.

<sup>39</sup> Molodikova I., Nagy Z. (2002) Hungary in the Context of European Economic Migration. Migracijske i etnicke teme, n/4, p.403-421, Zagreb.

<sup>17</sup> The titles of legal acts are taken from Zoter L.(2002) SOPEMY Report Hungary. Development of International Migration to Hungary.

**The 1991 Act IV on the Promotion of employment and benefits for the unemployed** regulates the procedure of the entering of foreigners into the Hungarian labour market. In order to obtain a labour permit an employer has to submit an application with all necessary papers to a local labour center and to wait for 30 days until a Hungarian national of the same qualification is found. If it does not happen, a local labour center starts the process of the permit preparation. An employment permit is issued for maximum a year and is valid for particular employer, activity, position and duration. Unemployed migrant workers can not benefit themselves of either the unemployment benefit system, or other funds, or retraining.

**The Decree #8/1999 (XI.10) of the Ministry of Social and Family Affairs** also regulates the employment of foreigners. It mentions that permission is necessary neither for foreign private companies, not for foreign representations and farmers, who hold special certificates allowing them to sell their own production.

**Section 19 of the 1997 Act LXXX on persons entitled to social security benefits (in Hungarian – TBJ)** further develops the legal norms concerning the rights of immigrants in the social sphere. It states that a migrant is not automatically provided an access to the social security system if a foreign company employs a migrant. A migrant can only be provided with an ambulance, if there are bilateral agreements in force between Hungary and a migrant's country of origin. Migrants working in border-close areas (from neighbouring countries) can take advantage of social funds in both states. If a Hungarian employer hired a migrant officially, then the Hungarian social system becomes effective towards the latter.

**The 1997 ACT CLIV** also regulates the issues of obtaining the health care and ambulance service.

Practically all people, who have the status of refugees or asylum-seekers, can be employed on the Hungarian labour market and can take advantage of unemployment benefit; permission is valid up to 1 year and is issued together with a certificate for residence in Hungary.

**The 1997 Act CXXXIX on Asylum** (entered into effect on March 1998) regulates the implementation of the above. It was amended with respect to the "**migration law package**".

In order to join the EU Hungary has to modify its laws in accordance with the "Aquis communautaire". In order to eliminate illegal migration and increase control, in 2001 the Hungarian Government adopted the "migration law package". It included three main Acts. The 2001 Act XXXIX on the Entry and Stay of Foreign Nationals entered into effect on January 1<sup>st</sup>, 2002. It introduced other types of visa regimes, transformed the systems of residence permits and the liquidation of immigration permits, and introduced a settlement permit, which can be abolished. All these amendments made it more difficult for non-EU countries' nationals to enter the Hungarian labour market.

Some exceptions were added to **the 2001 Act XXXII on the Hungarian Citizenship** and in **the 2001 Act LXII on Hungarians Living in Neighbouring Countries**. The first Act



provides some privileges with regard to naturalization to foreigners who were born and grew up in Hungary. The second Act provides some privileges to the ethnic Hungarians from neighbouring countries, in order to comply with Hungary's responsibilities before the Hungarians living abroad, and to promote the preservation and development of their manifold relations with Hungary.

It provides the ethnic Hungarians with some advantages in travel (art.8), culture and science (art.4), education (art.4.9.10), scholarships (art.6), employment (on a limited basis) (art.8,15,16), social security provision and health services in Hungary (art.7). Holders of a Hungarian nationality card or of a Hungarian close-relation card can enter the Hungarian labour market without labour permit, if such an employment lasts less than 3 months.

**The only document (1996 Act LXXV on Labour inspection)** established an institution of labour inspectors, in order to investigate working conditions and impose labour fines and other sanctions for the revealed violations. But the number of labour inspectors is not sufficient. There are 400 persons for the entire Hungary and it is very difficult to prove violations, besides, there are many options for employers to avoid fines through existing law-gaps.

Hungary has signed neither the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, nor the IOM Conventions C49 and C147 concerning the protection of labour migrants. Neither had it signed the Convention on the Legal Status of Migrant Workers of the Council of Europe. However, it had signed the European Social Charter, which regulates such rights as the right to work, medical assistance, participation in trade unions, the right to strike. Articles 18-19 ensure trainings for migrant workers and members of their families and the equal status for the social protection. But Hungary did not sign them because they are not obligatory.

### **Results of expert interviews concerning the reasons of the non-joining of Hungary to the UN Convention**

The analysis of the country's demographic indicators revealed the problem of the population decrease and the necessity of its maintenance from outside. The number of issued work permits shows that there is a certain lack of labour force in industries, which require low-qualified human resources. Moreover, the ethnic variety of migration flows becomes distinct for the reason that the most part of the arrived are the ethnic Hungarians. Ethnic migration processes were also reflected in the legislation.

It should be noted that experts answered not all the questions (except those, which regard the Convention). They selected those questions, in which they felt themselves competent. A rare unanimity took place with regard to several questions. The most informed

on the problems of migrant workers were experts of the Ministry of Employment and the Office of the Prime Minister.

First of all it shall be emphasized that, according to the survey, experts are practically not aware of the 1990 Convention. It is not translated to Hungarian and even less known than ILO Conventions №137 and №49 (the latter is translated). Therefore before interviewing, the Convention and questions had to be disseminated. The 1990 Convention was known only in the Ministry of Foreign Affairs. The unavailability of the Convention's text in Hungarian prevents from disseminating the information about it.

According to some experts' opinion (from the Ministry of Foreign Affairs and the Ministry of Employment) the 1990 Convention ensures less protection and rights of migrant workers than the national Hungarian or the EU standards, which Hungary is approaching now. Therefore the UN standards in this sphere are not topical for Hungary. The main arguments were that "the Convention is neither useful nor appropriate and the main obstacles for Hungary to sign it are contained in the provisions of the Convention. That is why Hungary has no reasons for the ratification Hungarian laws and regulations are applicable to all workers and there is no need to ratify the Convention".

Almost all experts (with the exception of one) presume that Hungary is presently facing more vital problems. After May of the next year Hungary is joining the EU, and in this connection all documents are being brought into line with the EU standards. The UN Convention is not among the obligatory documents, which must be signed for joining the EU. Hungary presently considers the EU documents as priority ones with respect to documents of international intergovernmental organizations. Hungary has nothing against UN and ILO conventions, but does not join them now, because all efforts are concentrated in bringing national laws in correspondence with the EU requirements.

Only one of the experts (a lawyer) does not agree with such an opinion, believing that UN conventions should not be considered as more comprehensive in comparison with European conventions. He presumes that the Hungarian national legislation is not complete in comparison with the 1990 UN Convention and that the national Labour Code does not comprise the entire variety of labour relations. As far as Hungary has not signed some non-obligatory paragraphs, even those in the European Convention concerning migrant workers, the question of the UN Convention remains open. The expert reckons that for the Hungarians the signing of this Convention is important, arguing for the necessity of the protection of the rights of the Hungarians, who depart for studies and work in other countries, where they can be exposed to discrimination. The expert noted that on the whole there is a quite negative attitude towards the ratification of conventions concerning migrant workers, when they are discussed in ministries and in the Government. It regards especially the Ministry of Internal

Affairs. This can be determined by the lack of financial resources, necessary for ensuring the implementation of convention requirements.

Experts unanimously consider labour migration as an unimportant problem for the country. From their point of view, more topical are the problems of illegal migration and trafficking. According to the experts from the Ministry of Employment and Labour, one should not claim about the lack of labour force in the context of the whole country, but only with a reference to separate regions and industries<sup>40</sup>. There are intergovernmental agreements on labour force exchange between Hungary and all neighbouring states, which, according to the experts, is quite enough<sup>41</sup>.

Labour unions are not aware of the 1990 UN Convention. Basically, a representative of labour unions is not very anxious about migrant workers, because most of them are emigrants from neighbouring republics and represent the ethnic Hungarians. Most of them work in border regions and make daily trips. Other experts noted that labour unions are not interested in signing the Convention, because, from their point of view, it will stimulate the rivals of the local labour force. If equal conditions are observed, migrants are hired more willingly than, for instance, native Gypsies. There are no real powers in Hungary either among politicians, or among employers, or among labour unions, which could lobby the process of joining the UN Convention.

Basically, experts do not share the fear of many politicians of the EU countries concerning the inflow of cheap labour force in the country. According to the experts, the main obstacle for labour migration in Hungary is the Hungarian language, which seriously differs from other languages. For the acknowledgement of diplomas, retraining and job-searching the knowledge of the language is required. There are no integration programs, which enable migrants to learn the language. According to IOM representative, there are not enough opportunities for language training even for refugees.

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<sup>40</sup> For example, in the Eastern regions of Hungary (on the border with the Ukraine and Romania) the unemployment is much higher; at the same time in the western regions and in the northern provinces the situation is the opposite – the shortage of labour force there (on the border with Austria) is determined by activities of plenty of international companies and a higher mobility of the border population. Migrants often work in international companies and therefore do not need work permits.

<sup>41</sup> These agreements are based on quota system (or seasonal convention) for Hungary: **For Germany** quota of guest workers is 2000 person per year; seasonal workers (less than 3 months) is 4000-5000 persons per year; service workers is 7060; IT experts (up to 5 years permit, according to non-official statistic) 5000-6000 granted since August 2000; home nurses (since spring 2002 up to 3-5 years permit) –few applications. **For Austria** - according to apprenticeship agreement quota rises from 300 to 900 from 1999 to 2002; Trans-border communities' agreement (1999): Burgerland (Austria side) and Vas, Győr – Moson - Sopron and Zala (Hungarian side) allowed to work to 1300 persons. **For Slovakia** - quota increases from 400 to 1600 persons since 1999. **For Czech Republic** quota was of 400 persons per year. **For Switzerland** quota mainly for catering experts was 300 persons per year. **For Romania** – exchange program by 8000 seasonal workers per year. **For Luxemburg** -catering experts -since 1996 – 20 person per year. **For France** -since 2002 –the quota is 300 workers. **Ireland and Holland** have agreement but it does not work;

Experts are unanimous in the opinion that the number of illegal migrant workers in Hungary is so insignificant that they can not seriously affect the labour market. In the future, after joining the EU, their number must decrease, for the reason that salary in Hungary is lower than in the EU and the language is difficult. The achievement of equal economic indicators with the EU countries is planned only in 30 years. Just the inflow of a low number of the ethnic Hungarians is expected (around 1,000 people per year, who arrive in order to join their families).

Most experts admit that Hungary is not interested in the policy of attracting migrants. Economists presume that Hungary requires migrant workers, because the demographic situation is unfavourable and the population is growing old, but they find it difficult to say, which the required number is. However it is always mentioned that Hungary has a numerous Diaspora<sup>42</sup> in neighbouring countries, which helps it solving the problem of supplementary labour force, while the country is not ready to accept other migrants. The main argument here is that Hungarians from neighbouring countries do not need special protection because they have friends and relatives. This situation entirely suits the Hungarian Government. The ethnic Hungarians are treated with sympathy<sup>43</sup>, and it is considered that they deserve assistance. The law on the status of the ethnic Hungarians is directed at the protection of their rights. Experts from public organizations also confirm that almost all the Hungarians from neighbouring countries, who arrive for work, have either relatives or friends in Hungary, who help them in searching for a job more successfully than official authorities could do.

Anxiousness was expressed in one of interviews that migration threatens the security of the state, because migrant workers generate criminality. It is one of the reasons, for which Hungary does not stimulate labour migration, with the exception of the Hungarians from neighbouring countries who must be treated and have the same rights as Hungarian citizens. The question on how to perceive the ethnic Hungarians – as cheap labour force or as equal – has political and ethical aspects. State policy inclines to the second, while economic policy to the first.

Some experts from the Ministry of Employment and Labour reckon that the ethnic Hungarians should be given a possibility for free entry in the country, but be allowed to work under the same conditions as prescribed to all foreigners. The law on the status of the ethnic Hungarians is already modified in accordance with the EU rules. According to the experts, it is not necessary to close the border. Free movement between Hungary, Ukraine and Romania must be kept, but the conditions of entry to the labour market for migrants shall be the same as for the nationals of other countries. Experts-economists suppose that moral aspects of

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<sup>42</sup> Web site of the Governmental Office of Hungarian Minorities Abroad: <http://www.htmh.hu/report>.

<sup>43</sup> Tóth, J. (2002). Pulling the Wool over Hungarians' Eyes. REGIO.

accepting migrant workers shall be distinguished from the economic ones. If only moral aspects are considered, the country can go bankrupt.

The main direction of activities of the Ministry of Internal Affairs in the sphere of migration is the prevention of illegal migration. One of the experts mentioned that they are not aware of the 1990 UN Convention because it does not fall under their Ministry's competence but under the sphere of the Ministry of Employment and Labour. However, according to an expert from the President's Office, this is not so, because the reluctance and maybe even the fear of the Ministry of Internal Affairs with regard to taking part in the preparation to signing documents on migrant workers has hold up the process of signing the European Convention on the Legal Status of Migrant Workers, Chapter 1, Articles 9, 17 and 18, which are not obligatory for signing. It is not clear how the situation with migration changes after the country's adhesion to the EU. It is also unclear how migrant workers will conduct themselves, if visas<sup>44</sup> become chargeable.

Employers, public organizations and migrants, unlike official bodies, reckon that there are a lot of problems with migrants. It is not easy for them to get consultations, the term of waiting for work permit (2 months according to the law) in practice gets delayed up to 6 months because of the necessity to collect a large number of documents, which have to be submitted both by the employer and the migrant. This term for both employer and migrant is too long. Receiving a visa in a country of departure is also an inconvenient process. A complex bureaucratic procedure makes both employers and migrant workers turn to the sector of "shadow" economy.

### **Conclusions**

The main arguments, presented by the Hungarian experts for grounding the necessity of signing the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, are the following:

- 1) The number of migrant workers is insignificant (less than 1% of the population) and does not affect the development of the country. Basically, Hungary does not stimulate the migration flow in its policy and does not intend to increase the scale of existing migration, because the country has a permanent inflow of the ethnic Hungarians from neighbouring countries (more than 80% of migrant workers are the ethnic Hungarians from neighbouring countries); stimulating migration from other countries is not considered as necessary.
- 2) Experts do not expect the inflow of a large number of migrants from outside because of the difficulties of learning Hungarian language and the absence of special integration programs (including language training on preferential terms) for migrants.

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<sup>44</sup> Hungary set up a visa regime with Ukraine and Yugoslavia since October 2003 on a free basis.

3) Labour migration is mainly perceived by the experts within the terms of Hungarian-Hungarian relations. Only one of the experts considered the problem from the point of the protection of the rights of the Hungarians abroad – as an argument for signing the Convention. Others perceive (maybe unconsciously) migration as an "internal" business of the country in the system of the "former" empire.

4) With the exception of the policy concerning the ethnic Hungarians, Hungary does not have special migration policy, but adheres to the EU policy, which laws are of priority for the country in comparison with other international laws. As far as the UN Convention is not included in the list of obligatory documents to be signed for joining the EU, its signing is not forecasted by the experts in the nearest future.

5) According to the experts, the availability of intergovernmental agreements on labour migration enables Hungary to successfully solve the problems of labour migration without signing the UN Convention. The successful solution of the problem can be explained by the fact that most ethnic Hungarians have relatives and friends from the neighbouring countries and that there is a migration network between neighbouring countries and Hungary. Hungarian migrants successfully compete with the local Gipsy minority on the labour market.

6) The financial capacities of the country do not correspond to the UN Convention's requirements. At the same time there are neither organizations, nor parties, which are interested and which lobby the signing of the Convention.

In general, the experts' survey proved that the Hungarian experts mentioned almost all the same difficulties, which are usually referred to when arguing for the uselessness of signing the UN Convention, and which are mentioned in UNESCO information.

#### Appendix 1. List of Experts

Office of the Prime Minister – 1 expert; Ministry of Labour and Employment – 4 experts; Ministry of Foreign Affairs – 2 experts; Ministry of Internal Affairs – 1 expert -Alien Policy and Refugees; Ministry for Public Health and Family Affairs (International Division -1); Statistics Committee (Migration Division) –1 expert; Kopint Diatorg Economic Research Institute – 1 expert; Labour Research Institute –1 expert; International Labour Organization (ILO) – 1 expert; International Organization for Migration –1 expert; Autonomous Trade Union – 1 expert.

**Other stakeholders' opinion** was presented by representatives of NGO "Menedek", which deals with the problems of migrants and refugees with the support of the High Commissioner on Refugees (focus –group interview)– 5 persons. Interviews were conducted also with 2 employers – owners of private businesses companies and with 2 migrant workers (Ukraine).

## Appendix 2. Questionnaire for experts' interview

1. Why does not Hungary sign the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families?
2. What are the main obstacles for Hungary to sign it?
3. What are the main interests of Hungary with regard to international migration with a special focus on labour migration?
4. Does Hungary have some reasons for the ratification of the Convention to protect its own migrants abroad?
5. Is Hungary interested in providing migrant workers with equal rights in the country?
6. What should the international community do to promote the ratification in Hungary (for the EU case)?
7. How from your point of view will the expansion of the EU affect labour migration to Hungary from neighbouring non-EU member-states?
8. Which organizations in Hungary from your point of view might be interested in the promotion of the ratification of the Convention?
9. Who is responsible in Hungary for the protection of migrant workers? Which problems do you see in this field?
10. How do you see the integration of labourers coming from Hungarian minorities living in neighbouring countries?
11. What shall the international community do to promote the ratification in Hungary?

**Rights of migrant workers and perspectives of the joining to the UN Convention  
concerning their protection of 1990 in the Republic of Kazakhstan**

**Peculiarities of migration processes in Kazakhstan**

Transition to a market economy, reforms in legislation, and the opening of borders resulted in increasing migration exchange. Migration processes evolved spontaneously with the growth of transit and illegal migration because of the absence of adequate legal basis of their regulation.

Migration in Kazakhstan gathered momentum during the 1990s. The Republic lost 2 million. people, among whom 63-65% of employable age; about 45% of adults had higher or secondary professional education. Because of losses of a considerable number of highly qualified specialists and workers the Republic faces the lack of labour force, what promotes labour migration to Kazakhstan (9), especially from neighbouring Uzbekistan and Kyrgyzstan.

As a result of dynamic market reforms in Kazakhstan the highest standard of living and relatively high level of work remuneration among the CIS states were achieved in the first decade of the 21<sup>st</sup> century. The stabilization of economic situation in the country creates the conditions for increasing immigration.

In the beginning of the 21<sup>st</sup> century the main migration flows in the Republic were directed principally to Russia, Germany and, among Central Asian republics, Ukraine. The peak in emigration from Kazakhstan was reported in 1994, when the negative net-migration numbered 410 thousand people. By 2002, emigration decreased by 4 times, while the negative net-migration by 6.8 times and amounted to 60 thousand people. In 2002 two out of three migrants from Kazakhstan turned to the Russian Federation, while each fourth to Germany. One half of migrants (52.8%) were from Central Asia and 37.4% from Russia (4.9).

All three main types of labour migration take place in Kazakhstan: inward (inner or interregional) and outward (emigration and immigration), including transit; legal (licensed) and illegal (non-registered); with the purpose of permanent living and temporary residence (seasonal and fluctuating); and frontier (border-close). Types of employment of migrant workers also vary: for example, working for hire, including working for hire abroad, commercial ("shuttle") migrations, etc.

The main characteristics of external labour migration are the following: plurality of directions, especially for commercial purposes ("shuttle" migrations) – to Russia, China and Turkey. Specialists and qualified workers move mainly to Russia and outside the CIS borders. Labour migration of less qualified and non-qualified labour force is spontaneous, seasonal



and, as a rule, non-documented. Kazakhstan is a recipient of migrants from Kyrgyzstan, Tajikistan, Uzbekistan, and of a low number of migrants from Russia.

Transit migrant workers come principally from China, Afghanistan, Iran, Pakistan, and Sri-Lanka. Transit migration is often illegal and entails the violation of rules of entry, residence or departure from the country. (11) The problem of organized activities of trans-national groups on expatriation of migrants and in particular women is becoming more serious. As estimated by IOM Office in Kazakhstan, women trafficking in the Republic amounted to 5,000 people in 1999 (18).

### **Number of migrant workers**

External labour migration in Kazakhstan in its illegal (non-licensed) form is insignificant. It can be characterized mainly as non-registered and semi-legal. For this reason the number of migrant workers in Kazakhstan is difficult to be defined because of the absence of unified system of registration and control.

The number of licensed workers in 2002 amounted to 11,781 people, 1,711 (14.5%) of whom are from the CIS and 10,070 from other countries. The donor countries are the following: Turkey – 2,069 people (17.6 %), India – 1,674 people (14.2 %), Russia – 979 people (8.3%), Great Britain – 871 people (7.4%), Philippines, Romania, China and other countries. Immigrants worked principally in civil engineering, oil, gas and mining industries. (15)

The largest part of foreign labour force was resident in 2002 in two capitals – the former one, Alma-Ata (southern capital) – 963 people, and in the new one – Astana (northern capital) – 729 people, and also in Western-Kazakhstan district – 5,494 people, in Atyrausky district – 2,108 people, in Aktjubinsk district – 832 people. In organizations with foreign capital 225 thousand Kazakh nationals were employed. During 2002 licensees created 15.5 thousand jobs. (15)

Issues of labour force licensing are under the competence of the Ministry of Labour and Social Protection, to be more precise – the Division of Labour Migration and Foreign Labour Force Licensing, as well as of private intermediary companies, so-called private employment agencies. In 2003 through these agencies 2,058 Kazakhs were employed, as "industrial interns" in South Korea, 590 in Russia. Furthermore 6,440 migrant workers were employed in Kazakhstan, including 4,911 nationals of Kyrgyzstan. (21).

As far as there is no state statistics on working migrants, the estimate of a number of non-documented migrant workers was done within the framework of a sociologic research<sup>45</sup>.

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<sup>45</sup> The research was carried out within the terms of the project of Independent Research Council on Migration in the CIS and Baltic Countries with the support of the MacArthur Foundation and Ford Foundation in 2000.

The research revealed that around 10% of households consist of individuals, who move for earnings regularly or sometimes inside or outside the Republic. (9, 12)

Experts estimate labour immigration to Kazakhstan (taking into account seasonal workers) at 200-300 or even 500 thousand people. The application of various methods enables to presume that the number of migrant workers comprises 2-3% of total population, what correlates with the Russian estimations, which present the number of migrant workers as 4-4.5 million. (3) The peculiarity of Kazakhstan (as well as of Russia) is a vast length of borders and a widespread practice of entering the country without passing through border control stations.

Social and economic status of migrants depends on the category they refer to - either it is legal (licensed) or illegal (non-documented) category. Licensed workers in Kazakhstan are a highly paid category of labour force, even if they are the workers of mass professions, which have lower qualification in comparison with native workers. According to the Government's decrees, the following foreigners are absolved of necessary licensing – diplomatic officers, administrative and technical personnel, accredited journalists, religious figures, experts specialized in concrete projects.

Illegal migrant workers are a cheap labour force, ready for any work, even hard and non-prestigious. Migrant workers, as a rule, are active in low-qualified and low-paid work in agriculture, civil service, civil engineering, and petty trading.

### **Economic and social effects of labour migration**

Attraction of foreign labour force to Kazakhstan (has been carried out since 1993) facilitates the realization of new or technologically complex types of work, for which there are no specialists of relevant profession in the local labour market. Moreover, in foreign companies and/or joint ventures new jobs are created, training and advance training of local workers is conducted to further replace foreign specialists.

During the 1990s in the period of economic crisis, labour migrations gave a chance not only to survive, but also to increase standard of living for tens and hundreds thousand migrant families. According to the research, conducted by the author, labour migration improved living circumstances of most part of households. This is noted by 56% of respondents in Alma-Ata and by 66.5% in Karaganda district. As the sociologic survey revealed, 57% of migrant workers from Alma-Ata and around 45% from Karaganda district support their relatives on a regular or occasional basis, while approximately 10% of respondents in all cities fully subsist their relatives. (12)

The republican authorities responsible for statistics are planning to make an estimation of labour emigrants' remittances.

Earnings of migrant workers enable them not only to solve their material problems: to pay for habitation, purchase furniture, clothes, etc., but also to provide a higher living standard, especially in the sphere of medical service, education, and recreation. According to the survey, 16.0% of respondents in Alma-Ata and 14.5% in the cities of Karaganda district, due to work outside the country, were able to start business or helped their children or other relatives to do it. Tens and even hundreds thousand people reached a relatively high level of life and are shaping now the "new middle class". (9, 12)

At the same time frequent labour trips have a negative influence on health (especially for "shuttle" traders), many migrants face the lack of time for taking care of children.

The consequences of employment of illegal labour immigrants from Central Asia are especially contradictory. Economical profit of employers and migrant workers lies in the usage of cheap labour force, which does not require any social expenses, while in donor countries migrant workers' earnings enable to maintain the acceptable living standard for their families. On the other hand, the non-payment of taxes to the Kazakh budget leads to economic losses; the flow of capitals and labour force becomes directed to the "shadow" economy sphere. Social and international tension is growing, especially in local labour markets and in places of compact settlement of migrant workers, what is insecure for such a multiethnic country as Kazakhstan.

#### Observance of the rights of migrant workers in Kazakhstan

The absence of unified legislation, which regulates the process of interstate labour migrations, is one of the most complex problems in Kazakhstan. Among non-registered migrants, who represent the prevailing part of migrant workers, the mass violations of procedures of entry, residence (including registration) and departure are mentioned.

The violation of the rights of migrant workers is a mass phenomenon; moreover, violations come from both sides – from the state and from migrants themselves. There are cases when the migration police of the Ministry of Internal Affairs seizes on the uncertainty of a migrant's status to pinch money. Legal organizations of Alma-Ata dealt with complaints of petty dealers from Tajikistan, who traded at the Central Market, concerning the fact that regardless of the registration and relevant note in a passport policemen arbitrarily withdrew passport and torn up registration card. Only after appeal of legal organizations' representatives to the MIA or a court passport was returned and registration was prolonged.

Migrants in regions face severe exploitation; conditions of work, labour protection, and security leave much to be desired, social guarantees and the rights of migrants are not provided. For example, the situation with migrant workers from Kyrgyzstan remains tense for several years. (Box 1, sources: 13, 22)

### **Box 1**

Thousands of the Kyrgyzs, who arrive annually in Kazakhstan for seasonal works, get into the situation, when they are exposed to hard works and left deprived of civil rights. Most of migrant workers stay in Kazakhstan for the summer period, when tobacco's harvest time approaches, and in autumn – at the end of season – return home. When leaving for earnings, seasonal migrants from Kyrgyzstan do not conclude any written contracts. Employer and employee usually agree orally. A master either fixes a monthly salary, or promises to pay a part of income from harvest sales. Salary may amount to 3 thousand KZT (\$20) per month, and 1000 KZT (\$6.5) are deducted from this amount for catering, cigarettes, etc.

A whole families leave for work purposes, children and teenagers work equally with parents. Usually tobacco is picked up, sorted and packed manually. A working day lasts from the dawn until the sunset. People have to work at the heat up to 40 C degrees... "For the whole working day we have only one half-hour lunch break. No rest-days. We rest only when it is raining heavily, that is why we pray for rainfall", - says one of Kyrgyz workers.

There are cases when master does not pay to workers at all. "I have been working for 3 months and have not yet seen any contract and not received any money. When I ask the master about money, he says that he will pay me if I work better" – told one of the migrants. As a result workers are happy when they receive even small sums of money, which can be denuded by police on a way home.

By the materials of: [www.iwpr.org/centralasia/archive/investigation/2003](http://www.iwpr.org/centralasia/archive/investigation/2003) (22)

Because of the low level of salary migrant workers live in poor conditions. They face hostility from the side of local population, which takes them for rivals in competing for jobs. Local communities in Kazakhstan, as a main recipient-country for migrants in the region, become the area of expanding xenophobia, "migrant-phobia", social tensions and conflicts. (20)

Migrant workers, both moving within the country and emigrants, or immigrants become not only the object of exploitation, but are often exposed to cheat, squeeze, and racket. Some categories of migrant workers, for example, long-distance drivers and "shuttle" traders, become objects of increased attention of criminal structures. Exaction on roads is practiced not only by traffic police, but also by custom authorities. Migrant workers are not aware of their rights and are unable to protect them. Institutions of civil society are scarcely involved in solving and prevention of conflicts, connected with migrants. (13)

### **Legislative base for the protection of the rights of migrant workers**

According to the Constitution, international agreements, ratified by the Republic of Kazakhstan, underlie national laws and are applied, with a few exceptions, directly. Therefore the national legislation should be brought to conformity with the conditions of international conventions.

Kazakhstan became a UN member in 1992 and since then has ratified five main international documents in the sphere of human rights. In November 2003 the President's decree "On the ratification by the Republic of Kazakhstan of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights" was published. Both covenants must be ratified by the Parliament of Kazakhstan. (23). In 1993 Kazakhstan became a member of the International Labour Organization (ILO), and since 1996 until 2003 ratified 16 ILO conventions (of which seven are basic ones); all of them came into force. The latest Convention #182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was ratified on February 26<sup>th</sup>, 2003. Kazakhstan has not yet joined any of ILO or UN conventions on the protection of the rights of migrant workers. In November 1997 the International Organization for Migration opened its representation in Kazakhstan, which obtained the status of an observer of the organization and since December 2002 became its member-state. To strengthen the legal basis of fighting against illegal migration, Kazakhstan ratified the UN Convention against Transnational Organized Crime in December 2000.

The question of Kazakhstan joining the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was discussed by the Government in August-September 2003. Representatives of different institutions came to the conclusion that Kazakhstan joining this Convention could be possible in the future

The national legislation is based not only on international agreements, conventions and covenants, but also on interstate bilateral and multilateral agreements. The main regulative document in this sphere is the "Agreement on cooperation in the sphere of labour migration and social protection of migrant workers", which was signed in Moscow on April 1994 by Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine.

The relations between Kazakhstan and other states concerning various spheres, including migration, are regulated primarily by bilateral agreements on cooperation; there are agreements on legal regulation of labour activities and social protection of people with Russia, Belarus, and Azerbaijan. In January 2003, the agreement with Kyrgyzstan on the labour and social protection of migrant workers, employed in agriculture in border territories, came into force. The analogous agreement with Uzbekistan is under consideration. (15)

The process of establishment of the legal basis of interstate cooperation between the CIS countries is contradictory. Many agreements are signed but not ratified or did not come into force because were not processed through state registration procedures. Among disadvantages of this process is the absence of practical mechanisms of implementation of signed agreements, what leads to permanent problems in the sphere of labour migration.

Interstate cooperation within the framework of the Eurasian Economic Community (EurAsEC) is developing more dynamically. In October 2003 it was held in Alma-Ata a session of the Council on Social Policy under the Community's Integration Committee. Among the decisions adopted at the session was the approval of the draft Agreement on temporary labour activities of nationals of the EurAsEC member-states, the elaboration of Interstate target programme on the concerted social policy up to 2006. The programme includes issues of migration policy.

The session of the Commission of Permanent Delegations to the EurAsEC was held in Alma-Ata on December 2003, where the Agreement on temporary labour activities of nationals of the EurAsEC member-states was discussed and approved. A draft version will be submitted for consideration to the EurAsEC Interstate Council to be signed in 2004.

In the 1990s the laws on "immigration" (1992, expired in 1998), "migration" (1997, with modifications and amendments), "labour" (1999), "employment" (2001), etc. were adopted. In 2003 the draft concept of Labour Code was prepared and is under consideration at the moment.

The development of the legal basis of migration was reflected in the law on "migration" (1997). The law prescribes the principles of regulation of migration, immigration procedure, conditions of residence of foreigners and apatrides, issues of labour migration, etc. The law includes several articles regulating relations in the sphere of labour migration. In Chapter 2, Articles 5-8, it is stated that the procedure of carrying out labour and professional activities of foreigners and apatrides in the territory of Kazakhstan and of the Kazakhs abroad is determined by the Government of the Republic and is realized upon permission and under control of its local branches, if other is not envisaged by the legislation or international agreements of Kazakhstan.

Protection of national labour market has a priority importance in the regulation of labour migration. Therewith the eviction of migrant workers, legally admitted in the territory of Kazakhstan, is not allowed. According to the Article 6, the Kazakhs have the right to labour activity abroad, with the exception of people at military service. It is for the first time that the law differentiates labour migration and labour activities of foreigners and apatrides. The Article 7 defines the conditions of residence of foreigners and apatrides who arrived for work.

The Article 8 regulates the realization of labour activities of nationals of the CIS countries in the territory of Kazakhstan. This article is supported by the Agreement on cooperation in the sphere of labour migration and the protection of migrant workers, concluded between the countries of the CIS at the intergovernmental level on April 1994. (6)

Issues of the regulation of licensing were reflected in the following legal documents: the President's decree on "Licensing" (1995), the Government's decree "Rules of licensing

activities, connected with the attraction of foreign labour force and the overseas export of labour force" (1999), the Government's decree "Rules of defining the quota, conditions and procedure of issuing permissions to employers for attracting foreign labour force to the Republic of Kazakhstan" (from June 19<sup>th</sup>, 2001 with modifications and amendments from January 20<sup>th</sup>, 2003), etc. (6, 24)

In February 2002 was adopted the law on "modifications and amendments to several legal acts of the Republic of Kazakhstan concerning illegal migration". According to this law, modifications and amendments from July 16<sup>th</sup>, 1997 were adopted for the Criminal Code of the Republic of Kazakhstan (on the organization of illegal migration and repeating violations of the rules of attraction and employment of foreign labour force in the Republic of Kazakhstan); for the Code of the Republic of Kazakhstan on Administrative Violations from January 30<sup>th</sup>, 2001; for the law on tourism in the Republic of Kazakhstan from June 13<sup>th</sup>, 2001.

The articles 6-20 of the law on "legal status of foreigners..." regulate the main rights, freedoms and responsibilities. According to the Article 6, "foreign nationals, permanently resident in the Republic of Kazakhstan, are entitled the same rights and responsibilities as nationals of the Republic of Kazakhstan", with the exception of particular cases, which are fixed in the legislation. (6) The analogous rights and responsibilities are entitled to foreign nationals in social and pension security, in the sphere of health protection, in housing, in the realization of the political, cultural and other rights.

Legal basis of labour emigration has not yet shaped, though several legal acts were adopted in the 1990s. For instance, in 1994 the decree of the Cabinet of Ministers was adopted on "fixing the rules concerning labour conditions of Kazakh workers abroad". These rules represented the first normative document regulating labour matters of the Kazakhs abroad, however it was applied mainly to public officers and members of their families, detached for work in diplomatic, commercial and other representations and organizations of the Republic, as well as to officers of state agencies, assigned for a detached duty abroad. (16)

### **Institutions in the sphere of labour migration**

The state institutional structure for labour migration consists of several establishments. The main functions of the Ministry of Labour and Social Protection include licensing foreign labour force and the protection of the national labour market. For these purposes the quota mechanism is applied. The Ministry actively participates in the elaboration of the legal basis in the sphere of labour migration and the development of international cooperation.

The Agency on Migration and Demography is the central executive institution, established in December 1997. As far as the main direction of the migration policy of the state is the repatriation of the ethnic Kazakhs from the CIS and other countries, the Agency is responsible basically for questions concerning employment, social protection and integration of repatriates, and represents the central institution for work with refugees.

The Ministry of Justice, jointly with other interested ministries and institutions, has elaborated several draft laws concerning migration and refugees. The MFA deals with the questions of international cooperation in the sphere of migration in general (refugees, simplified naturalization, labour migration, etc.). The MFA also registers organizations, companies and foreign nationals, addressing for visa support; besides it is in charge of the execution, delivery and registration of visa documents.

The Ministry of Internal Affairs plays an important role in revealing illegal immigrants. The Migration police of the MIA is in charge of the control of residence and moving of foreigners in the territory of the Republic; of registration of arrived foreigners, etc. The Border Service of the National Security Committee of Kazakhstan also plays an important role in the prevention of illegal immigration.

There are emerging public organizations in the Republic, which deal with problems of migrants, for example, by assisting women – victims of trafficking, providing free juridical help to migrants.

In 2002, the Institute of Ombudsman was established in Kazakhstan. Ombudsman has six priority spheres of activities, among which are the protection of the rights of women, children, pensioners, and prisoners. The problems of migrants and refugees at present are not subsumed to priority ones. However, if the Ombudsman receives appeals from individuals concerning acquiring the citizenship, refugee status, the violation of social rights, these appeals are processed anyway.

### **UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of (1990): main obstacles for ratification**

Among the main international documents on the protection of the rights of migrant workers is the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ILO Conventions №97 on Migration for Employment (revised) (1949) and №143 (1975) on Migrations in Abusive Conditions, and some other. (14) None of them is ratified by the Republic of Kazakhstan.

The analysis of reasons, for which Kazakhstan has not yet joined the Convention, as well as of perspectives of joining, is based on expert consultations, conducted by the author in April-May and October-November 2003.



In expert consultations concerning the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 representatives of state authorities, international organizations, independent scientists and experts, and migrant workers were involved, altogether 15 experts.

Among them were: Deputy Minister, Head of the International Relations Division, Head of the Division of Labour Migration and Licensing Foreign Labour Force of the Ministry of Labour and Social Protection of the Republic of Kazakhstan (Astana); Deputy Head of the Municipal Department of the Ministry of Labour and Social Protection of Akim – 4 experts (Alma-Ata); Ombudsman (Astana);

*Executive Secretary of the Social Policy Council under the EurAsEC Integration Committee (Alma-Ata, Moscow); senior specialist and consultant of the Department for Social and Humanitarian Spheres Development under the secretariat of the EurAsEC Integration Committee – 3 experts (Alma-Ata); Head of mission, legal adviser of the International Organization for Migration in Kazakhstan; national correspondent of the International Labour Organization – 3 experts (Alma-Ata); Doctor of juridical sciences, Professor of the Higher School of Law "Adilet"; PhD in jurisprudence, assistant professor of the State University of Kazakhstan – 2 independent experts (Alma-Ata);*

**Migrant workers – 2 experts (Alma-Ata).**

As expert consultations showed, there are several main reasons, for which Kazakhstan has not yet joined the Convention of 1990: economic, social, political and juridical reasons connected with internal and external factors. It was noted that among these factors the level of the socioeconomic development of the Republic is insufficient to guarantee the observance of the rights of migrant workers, besides, among them there are also the difficulties of transition period, financial burden, which Kazakhstan has to carry in case of joining the Convention. Among other reasons for not joining are the insufficient level of the institutional and legislative development, the absence of necessary specialists, "non-preparedness of public opinion and public officers", and a low scale of international cooperation.

According to the UN Convention, each member-state of the Convention binds itself to provide to immigrants, legally resident in its territory, without nationality, race, religion or gender discrimination, the conditions, which are not less favourable than those provided to its nationals with regard to remuneration, labour conditions, and social guarantees.

According to some experts' opinion, in the present economic conditions in Kazakhstan, i.e. a high level of unemployment (10.4% in 2001), social insecurity of a national worker, the primary task is to provide jobs, improve labour conditions, and increase

remuneration of national workers. At the same time, as noted by one of the experts, a high-level public officer from the Ministry of Labour, in the conditions of globalization Kazakhstan attracts more and more migrant workers, what makes the state to pay more attention to the problem of migrant workers' rights and to the active work with international instruments in the elaboration of the national legislation. Moreover, according to the expert, the demand for a high-qualified labour force from Kazakhstan is now growing. As far as there is no legal basis for labour emigration in Kazakhstan, procedures of residence and employment of the Kazakhs are regulated by laws of a recipient country. In this case joining the Convention will enable us to protect the rights of our nationals in a country of employment.

Another reason for non-joining the international conventions in the sphere of the protection of migrant workers, noted by the experts, is the weak institutional basis in this field. According to one of the experts, there must be an authorized body in the system of governance, which will be responsible for migration policy issues – beyond the Government structure, subordinated directly to the President.

As noted by the experts, private employment agencies have started practicing illegal employment of migrants in Kazakhstan more frequently for the last years (for example, organizing women's trafficking), though most of them have got licenses from the Ministry of Labour.

One of the experts, a representative of an intergovernmental agency noted that there are no objective obstacles for joining the 1990 Convention, and that the main obstructive factor is subjective. The expert noted that heads of state institutions, who are responsible for managing migration processes, "suffer lack of political will".

The weak bilateral and regional cooperation in Central Asia and the CIS in the sphere of migration and labour prevents from the practical solution of the most painful problems, what leads to an increase in illegal migration in the region.

In Kazakhstan there is no system of registration of migrant workers (with the exception of licensed ones), of monitoring of labour conditions of migrants, of the violations of the rights of migrant workers, etc. Sociologic research, conducted by the author in 2000-2002 among migrant workers, revealed the problem of exploitation, overtime works, lack of vacations, unsatisfactory labour conditions, and low remuneration. (13)

The MIA of the Republic periodically conducts "Law and Order" operations, thus revealing non-registered migrants and deporting them outside of Kazakhstan. Recently a target operation "Migrant" has been conducted. Its results were delivered to the General Prosecutor Office. At the same time experts note that severe penal measures contribute more to the growth of corruption than to the regulation of labour migration relations, and point to the insufficiency of legal mechanisms.

The other important reason of non-joining the conventions concerning migrant workers is the legal, namely procedural one. It is the complexity of procedures of the elaboration and implementation of the national legislation. In case if Kazakhstan decides to join the UN Convention and/or ILO conventions, then before the ratification the Republic will have to adopt modifications to all national legal documents in accordance with the conditions of the above conventions, while the country is not ready for that.

Experts provided different opinions concerning possible terms of joining the Convention. According to the Ombudsman, the today's agenda of Kazakhstan includes the ratification of international covenants on civil and political rights, as well as on economic, social and cultural rights. The ratification of the UN International Convention on the rights of migrant workers is not planned in the nearest future. At the same time there are precedents in the practice of the Parliament, when a draft law was supported and relatively quickly got through discussion and approval in the Parliament in case of active lobbying.

One of the experts of the Ministry of Labour and Social Protection informed that in August-September 2003 the question of joining the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 was discussed at the ministries' level. Representatives of the Ministry of Labour, the Agency on Migration and Demography, the MFA, and other state agencies took part in the discussion. It was noted that Kazakhstan was not yet ready to fulfil the requirements of the Convention on the protection of the rights of migrant workers. At this stage it is necessary to undertake steps, directed, first of all, to the protection of the national labour markets.

For the process of the elaboration of the Labour Code of the Republic of Kazakhstan (which is planned to be discussed and adopted in 2004) it is needed to examine and consider the requirements of the UN Convention on the protection of the rights of migrant workers. The elaboration process will include coordination activities with the purpose of fostering the unification of legislation within the framework of international agreements with member-countries of similar alliances as the Eurasian Economic Community. As noted by one of the experts, a Head of Division in the Ministry of Labour, the discussions among the ministries' representatives resulted in a conclusion that in the conditions of gradual harmonization of the legislation within EurAsEC and the CIS, joining the UN Convention is considered possible in the future

In general the expert consultations showed that even those experts, who adopt the middle attitude with regard to the terms of the joining of Kazakhstan to the UN Convention of 1990, nevertheless, emphasize the necessity "to start working with the Convention immediately". The positive estimation of the possibilities of joining the UN Convention was expressed by almost all experts, though the duration and complexity of the preparation process was estimated differently. According to one of the independent experts, a lawyer and

an academic, "it is necessary to work with a huge selection of legal documents", in order to achieve unification and coherence of the conditions of the law on labour migration with laws in allied branches of the legislation.

Which conditions or articles of the Convention appear to be the most "problematic"?

According to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 and ILO Conventions №97 and №143 on migrant workers, the main responsibilities of a state are connected with the problems of remuneration, labour conditions and social guarantees (here and henceforth underlined by the author). According to international documents, each state binds itself to provide to legal labour immigrants the same conditions as to its nationals, concerning remuneration, working hours, overtime works, paid vacations, professional training, the protection of women's labour and teenagers' labour, the right to join labour unions, etc.

The important rights of migrants are their rights to social security (in case of illness, for the protection of maternity, for the provision in case of factory incidents, invalidity, senility, death, employment and family duties, as well as in other cases, which, according to a country's legislation, are covered by the social security system). According to some experts' opinion (state officials), it is now difficult for the state to take upon itself the relevant financial burden and provide economic and social rights of migrant workers.

It is stated in the UN Convention that the questions concerning taxes or levies paid for an employee shall be solved equally as the ones regarding a country's own nationals; the right to legal proceeding shall be applied with regard to issues, mentioned in the Convention. There are big difficulties in the realization of the above-mentioned provisions of the Convention. Employers usually use non-registered migrant workers as a cheap labour force and do not make social payments and contributions. Workers, as a rule, do not pay taxes and, thus breaking the law, do not apply to a court or other institutions in case of the violation of their rights. As noted by one of the participants of the consultations, a migrant worker from Alma-Ata, such a situation even suits everybody.

According to the Convention, each state, where the Convention is in force, must either establish a competent and free aid service for migrant workers, which in particular will provide them with precise information, or confirm that in their country such a service exists. The implementation of this condition does not require any time or resources. The results of the research show that migrants are usually not familiar with legislation of a country of residence, insufficiently informed about the conditions of work, social guarantees, are not aware of the fact that their rights are protected by international conventions and agreements, etc. As one of migrant workers noted, "we can not apply anywhere to protect our rights". (7, 9, 12, 13)

Ministries and other state institutions in charge of signing the Convention

The Ministry of Labour and Social Protection, the Agency on Migration and Social Protection, the Ministry of Justice, the Ministry of Foreign Affairs – are the main state institutions, which can initiate, elaborate, lobby proposals on joining the main international conventions.

One of the mechanisms of reaching the goal (the ratification) is to lobby the joining to international documents – covenants, conventions, etc. through deputies and deputies' groups in the Parliament.

The Agency on Migration and Demography is the state institution, responsible for managing migration processes in Kazakhstan, which practically does not implement its functions. As a result, the solution of migration problems in the Republic appears to be very slow. Among mechanisms of influence on the policy of the Agency are its reports to the Parliament. The joint Parliament and public hearings in Kazakhstan represent a new and important instrument of public control over the activities of state institutions and lobbying public interests.

### **Possible consequences of the ratification of conventions concerning migrant workers**

Both before and after the ratification of the UN and ILO conventions it is necessary for the Republic to work on the directions, which were defined as "problematic". The most complicated issue in this process is the application of conditions of international conventions and recommendations in practice.

UN and ILO have their own mechanisms of control over the realization of conventions. A state must submit periodical reports on the realization of either international covenant or convention, ratified by it. In the UN structure, unlike ILO, there is still no committee on the observation of the realization of the UN Convention of 1990, because it came into force only in July 2003. However, after the establishment of the Committee and the elaboration of relevant reporting procedures, the control will be carried out in the sphere of the protection of the rights of migrant workers.

The ratification of the UN and ILO conventions will evidently promote the elaboration of the national legislative base in Kazakhstan in accordance with international norms in the sphere of labour migration, the protection of the rights of migrant workers, the prevention of illegal migration, strengthening international cooperation between countries in the sphere of managing migration processes.

## **Necessary institutes, approaches and actions for facilitating the ratification process**

The progress in the ratification can be achieved in case of the interaction of state institutions, international organizations, non-governmental sector, scientists, mass media, and foreign donors. The main institutes are, first of all, the Parliament and executive bodies, which are responsible for the elaboration and adoption of laws, the discussion and ratification of international documents. Interstate and intergovernmental, international and regional organizations, such as IOM, ILO, OSCE, UNESCO and other could provide their assistance in the unification of migration legislation of Central Asian republics, also through the ratification of international conventions.

Many middle-level officials are not familiar with the provisions of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, some of them are even not aware about its existence. It sets a task of awareness raising not only of state officials, but also of the general public about international norms and instruments of the protection of the rights of migrant workers as one of the first steps towards influencing decision-makers.

When conducting information campaigns it is necessary to attract various institutions: state and independent (for example, the Federation of Labour Unions and the Confederation of Independent Labour Unions, Ombudsman, non-governmental organizations). For the reason that the institute of the Ombudsman has not yet gained a relevant attitude in the public consciousness, it is necessary to conduct round tables on the exchange of experience among ombudsmen from the other CIS states, Eastern and Western Europe. The capabilities of the Ombudsman can be used for facilitating the idea of the ratification of the Convention.

Such a programme (campaign) can be efficient if it is based not only on general data and conditions, but also on reliable factual and analytical data. In this connection, the conduction of scientific researches on the problem of the rights of migrant workers seems to be one of the most important components of a well-elaborated information programme on the promotion of conventions. The comparative analysis of international legislation and the experience of its application in Kazakhstan can become the part of a research project of this kind.

The interaction between the national and international scientific communities has a significant importance in the promotion of ideas of joining international agreements concerning the rights of migrant workers. This interaction can be organized through the conduction of conferences and seminars and the realization of joint projects.

The attraction of independent experts and the Third sector organizations to the expertise and evaluation of activities of a migration institution, to the elaboration of recommendations and draft laws in joint working groups, to the participation in the

parliament hearings – are just some of possible ways of the interaction between science, civil society institutions and government.

It is necessary for Kazakhstan to join the international (global) network on the promotion of the UN Convention on the protection of the rights of migrant workers. It is required to translate into Russian the materials, distributed within the framework of the Global Information Campaign, to put them on web-sites of international organizations, authorized state institutions, legislation databases, and non-governmental organizations. It is necessary to translate the main documents into the national (Kazakh) language and to put them on thematic web sites. It is also essential to annually use the International Migrant's Day on December 18<sup>th</sup> in order to popularize the UN and ILO conventions concerning migrant workers, as well as other international documents.

One of the principles, which can determine the progress in the ratification of the UN International Convention of 1990, is the consistency of joining the conventions. Primarily Kazakhstan could join the ILO Convention №97 on Migration for Employment and/or the ILO Convention №143, and later the UN Convention. It is stipulated by the fact that the UN Convention has just come into force in July 2003; the committee for the implementation of the Convention will be created not earlier than in a year; the elaboration of procedures of observation and control will also take some time.

ILO, in its turn, as one of the oldest international organizations already has institutional and procedural base. Presently Kazakhstan is objectively interested in the elaboration of the legislation, which is directed to the prevention of illegal migration, human trafficking, weapons and drugs trafficking. The ILO Convention №143 on Migrations in Abusive Conditions is aimed to the prevention of illegal migration. Joining the Convention №143 could promote the faster progress of the Republic in this sphere.

Modern labour migrations become illegal mainly because of the absence of a relevant legislative base. The development of the national legislation and international cooperation: signing bilateral and multilateral agreements, joining conventions – is the necessary step towards the regulation of migrations and strengthening security in the region.

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**Kyrgyzstan in the process of joining the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

*General description of labor migration*

Labor migration in Kyrgyzstan, both legal and illegal, is at present the most important factor of the increase of employment. The phenomenon of labor migration in the Republic is determined by a set of socioeconomic factors, typical for a transition period, which started after the disintegration of the USSR and is continuing until now. Here, first of all, a drop in production, a growth of unemployment and a decline in living standards should be noted. Industrial production in Kyrgyzstan during the 1990s dropped by 1.6 times<sup>46</sup>. According to the 1999 census, the employment level of the urban population declined from 66.5% to 42.2%, of the rural population – from 67.3% to 64%. At the same time the share of dependants increased from 12% to 24.8%<sup>47</sup>.

The development of labor migration is determined also by the demographic situation in the Republic, which is characterized by a rapid growth of the population, especially in the southern regions. Around 40% of the population are children and teenagers up to 16 years; labor resources consist of the youth (16-29 years), adults older than 60 comprise only 7-8%<sup>48</sup>. Thus the labor market gets filled up annually with young people who need a job.

The absence of work and jobs creates the prerequisites for external labor migration. Kyrgyzstan is both a sending and a recipient country, however emigration of labor force prevails. The modern labor migration flows from Kyrgyzstan are of a mass and spontaneous character. There is still no reliable calculation of its scales. Official statistics on migrant workers significantly differs from the real processes.

The main countries-recipients of labor migrants from Kyrgyzstan are Russia and Kazakhstan. According to the embassies of the Kyrgyz Republic in Russia and Kazakhstan, there are more than 300 thousand Kyrgyz migrant workers in the Russian Federation and 50-100 thousand in Kazakhstan.

One of the most important factors of the attractiveness of Russia for labor migration is its huge and capacious labor market against the background of a crisis demographic situation. Not less important factors are the stable political situation in Russia, sustainable economic growth, the stable exchange rate of Ruble relatively to national currencies of Central Asian countries.

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<sup>46</sup> Migration and labor market in the countries of Central Asia. Proceedings of the regional seminar in Tashkent, October 11-12, 2001, Moscow-Tashkent, 2002, p.42.

<sup>47</sup> Materials of the first National Census. Book 2. Bishkek 2000. P.23.

<sup>48</sup> See ref. 2, p.15.

According to the Department of passport and visa service of the MIA of Russia, there are 25 thousand Kyrgyzs permanently living on its territory, 41 thousand have temporary registration. The most attractive regions for the Kyrgyz are the Ural and Siberia federal districts (Krasnoyarsk Territory, Sverdlovskaya and Kemerovskaya regions, the Republic of Sakha, etc.), as well as the Central federal district (Moscow and Moscow region, Orlov region, etc.), St.-Petersburg.

Official data is not complete, because a significant part of migrant workers from the Republic of Kyrgyzstan are registered at a place of residence for a short-term period (3 months) and is not included in the official calculation, or their registration is fake or even absent. For example, according to the embassy of the Kyrgyz Republic in the Russian Federation, there are 3,313 Kyrgyzs in Moscow and Moscow region with official temporary registration, though, by estimates, their real number exceeds 10 thousand and in the summer period reaches 15 thousand. Hence the majority of them lives and works illegally.

Concerning their professions, Kyrgyzs, who work in Russia, can be divided into three groups: entrepreneurs – "shuttle"-traders, hired traders on markets, and workers on construction activities. They compose the prevailing majority of migrant workers and, as a rule, are resident on the territory of Russia from several weeks to a year.

Labor migrations link Kyrgyzstan with almost the whole world. Labor markets of such countries as Turkey, OAE, Korea, Syria, Lebanon, Kuwait are assimilated very intensively. There are official contracts for exporting labor force with some of these countries. Now migrants from Kyrgyzstan work even in such remote countries as USA and Israel, and actively assimilate labor markets in Western, Eastern and Central Europe. Great Britain is the most popular country, especially its capital, London, where, according to expert estimates, from 5 to 8 thousand young Kyrgyzs are employed<sup>49</sup>. Employment rate of migrant workers in the countries, which are not the CIS member-states, is very diverse. These are dancers in show business, waiters, household workers (governesses, gardeners, housemaids), workers for general purposes in agricultural activities, builders (electricians, painters, plasterers), and unskilled workers.

In external labor migration, especially within the CIS, mainly Kyrgyzs are involved. These are, as a rule, temporary trips.

For Kazakhstan, Kyrgyzs leave for seasonal works mainly on tobacco plantations in border-close areas.

#### *Legislative base*

Legislative base for the regulation of labor migration in Kyrgyzstan is in the stage of formation. There is yet no concept of migration policy in Kyrgyzstan.

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<sup>49</sup> According to the Department of migration of the Ministry of Foreign Affairs.

The issues of displacement and registration of foreign citizens and apatrides, including refugees, on the territory of the Kyrgyz Republic are regulated by the law on "external migration", the law on "the legal status of foreign citizens on the territory of the Kyrgyz Republic" and other legal documents.

Labor migration of foreign citizens is regulated on the basis of the document "Regulations concerning labor activities of foreign citizens and apatrides on the territory of the Kyrgyz Republic", adopted by the Government's Decree from October 12<sup>th</sup>, 2001.

The document regulates the following matters:

- 1) Obtaining a permit for the attraction and employment of labor force with issuing a standard document by the Department of migration service under the Ministry of Foreign Affairs;
- 2) Obtaining a confirmation for the right to exercise labor activities – a standard document, issued by the MFA Department of migration service, which certifies the right of a foreign worker to work for hire by a certain employer in a certain profession or type of work;
- 3) The concept of "employer" was defined. Employers are either the Kyrgyzs, or foreign juridical persons or individuals, as well as apatrides, who work or live on the territory of the Kyrgyz Republic and deal with the attraction and use of foreign labor force;
- 4) The concept of "foreign labor force" is defined. It is applied to people that are not Kyrgyz citizens, but who arrived on this territory with the purpose of carrying out labor activities;
- 5) A guarantee fee was introduced in order to ensure the departure of foreign labor force to be carried out by an employer after the expiration of a contract term.

Labor migration with the CIS countries is regulated by the CIS agreement from April 15<sup>th</sup>, 1994 "On the cooperation in the sphere of labor migration and the protection of migrant workers". This multilateral agreement is supported by bilateral intergovernmental agreements between the Russian Federation and Kyrgyzstan, as well as between Kazakhstan and Kyrgyzstan.

For the recent years new intergovernmental agreements between these states were elaborated, which envisage, in particular, quotas for hiring workers from Kyrgyzstan.

These are:

- the agreement with the Russian Federation "On labor activities and social protection of migrant workers". The quota for hiring Kyrgyz migrants in Russia is presently being specified.
- the agreement with Kazakhstan on "labor activities and social protection of migrant workers, employed at agricultural works in border-close areas". The agreement entered into force on July 9<sup>th</sup>, 2002. In accordance with it Kazakhstan has fixed the quota of 7,500 people for works on tobacco plantations.

As the interview with representatives of private companies dealing with the organization of external labor migration of the Kyrgyzs showed, the latter are very well informed about the above-mentioned interstate agreements.

On September 22<sup>nd</sup>, 2003, Russia and Kyrgyzstan signed a Protocol "On the amendments and modifications to the 1996 bilateral agreement on labor migration", which envisages a set of privileges regarding labor migrants from Kyrgyzstan on the territory of the Russian Federation.

Besides the mentioned interstate agreements, labor activities of the Kyrgyzs in the Russian Federation are carried out within the terms of agreements between Kyrgyzstan and Russian regions. There are such agreements with the Ural and Siberia federal districts, a "Memorandum of cooperation between the Government of the Kyrgyz Republic and the Governments of Moscow and the Russian Federation concerning mutual employment".

Much attention in the Republic is paid also to the regulation of labor migration between the Kyrgyz regions. The Legislative Assembly of the Parliament adopted the law on "internal migration" from June 2002, whose main purposes are: the regulation of internal migration processes; the protection of the rights and legal interests of internal migrants; the creation of a unified state register of the population; the implementation by state bodies of necessary activities on the support of forced migrants; the creation of necessary conditions for internal migrants in new places of living and residence; the improvement of the mechanism of legal regulation of internal migration processes.

The integration of Kyrgyzstan in the world community and the system of international relations are the imperatives of joining international agreements and conventions in the sphere of labor migration. The Republic has already joined the main international documents on labor migration. It ratified the ILO Convention concerning migration for employment, which was adopted in 1949 and revised by the Governing Body of the International Labor Office on June 1949. The Decree of the Parliament (Zhogorku Kenesh) on "the ratification of the ILO Convention on Migration for Employment " was adopted on January 1994 (№ 1409-12). In 1993 in Kyrgyzstan the office of the International Organization for Migration was opened, in which the Republic had a status of an observer, and in 1996 became its member-state.

In view of the intensification of the processes of labor emigration from Kyrgyzstan, the IOM representation strongly recommended the Government of the Republic of Kyrgyzstan to join the International UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families from December 18<sup>th</sup>, 1990. Joining this Convention would promote the protection of the rights of migrant workers arriving from Kyrgyzstan in other countries. As the most part of migrant workers from Kyrgyzstan organize their activities independently, the Convention would open more possibilities for them in solving their problems.

As a result, the Government has elaborated a draft law on "the joining of the Kyrgyz Republic to the International UN Convention on the Protection of the Rights of All Migrant

Workers and Members of Their Families from December 18<sup>th</sup>, 1990" (Decree №677 from October 4<sup>th</sup>, 2002). This draft law was submitted to the Parliament and is being considered. The law on "external labor migration" is also under consideration by the Parliament. As interviews showed, deputies postpone the ratification of the 1990 UN Convention, because joining it envisages a set of obligations, which the state is not capable to meet.

### *Institutions and hire procedures*

At the institutional level in Kyrgyzstan it is the Department of migration service under the Ministry of Foreign Affairs and the Department of employment under the Ministry of Labor and Social Protection that deal with the problems of labor migration.

The Department of migration service is responsible for issuing and control over permits for the attraction and use of foreign labor force on the territory of the Republic.

In order to obtain a permit for hiring foreign labor force it is required for an employer to submit a set of documents: a filled in standard application; constituent documents; state registration certificate; a certificate from tax agency; a certificate from social fund; a decision of local employment service offices concerning the expediency of the attraction of foreign labor force; an employer's identity card and documents, certifying the legality of his/her residence on the territory of Kyrgyzstan; documents concerning premises' lease; a license for the carrying out of activities; a list of staff-members; a copy of a document proving a payment for issuing a permit. In separate cases other documents can be requested. Permit is issued for a period up to a year. If necessary, a permit may be extended annually upon a motivated request of an employer, but for no longer than five years.

A permit fixes a quota for the attraction and use of a certain number of foreign labour force (as a whole and by professional groups), hired for work on the territory of Kyrgyzstan, not exceeding five persons according to a quota, which is defined by the Government and conformed by the Legislative Assembly (Zhogorku Kenesh). Based on the state interests of the protection of the internal labour market, the MFA Department can increase or decrease a quota, which is provided in a permit.

A permit is signed by the Director of the Department or by his/her Deputy and is attested with a stamp. A permit is not a subject to delivery to other employers, and foreign workers can not be transferred to a work to another employer.

In case of the violation by an employer of the procedure of the attraction and use of foreign labor force the Department delivers a notice to an employer with mentioning a term for the elimination of the revealed violations. In case of the non-fulfillment of the requirements or repeated violations the Department can suspend the validity of a permit until the full elimination of the violations or cancel it.

Foreign citizens and apatrides, hired by an employer, are provided with certificates authorizing them to work in the Kyrgyz Republic. A certificate is considered valid only if an employer has a permit for it. A certificate is issued free of charge.

In order to obtain a certificate for an attracted foreign worker an employer submits to the Department a set of the following documents: an application for a certificate; a CV of an attracted foreign specialist; a copy of labor contract with a foreign worker; a copy of an identity card; a copy of an educational certificate with a specialization, for which a migrant is attracted; a copy of a document proving a payment of a guarantee fee for a foreign worker; a copy of a document proving a payment for issuing a certificate; medical certificate of the international standard about HIV blood analysis. Conditions, remuneration and labor protection of foreign workers, their social security and insurance (including medical) are defined in accordance with the national legislation.

The Department of migration service provides the Department of consulate service of the MFA and the MIA with information about issued permits and certificates, which serves as a basis for Kyrgyz consulates abroad to issue visas with the right to work for foreign citizens, as well as a basis for free arrival in Kyrgyzstan, if the international agreements do not foresee any other entry procedures. Employment agencies note the excessive bureaucratization of the procedure of issuing permits and express their opinion towards its simplification. Some guess that in the conditions of unemployment it is quite possible to operate without any permits.

The Department of employment under the Ministry of Labor and Social Protection pays much attention to annual agreements of the Ministry with regional administrations and Bishkek city administration, the main purpose of which is the regulation of regional labor markets.

In accordance with the article 28 of the law of the Kyrgyz Republic on "external migration" the Government of the Kyrgyz Republic in its Decree from September 2001 fixed a quota for the attraction of foreign labor force for 2003 in the amount of 4,425 people. During the first quarter of 2003, 226 foreign specialists were attracted and 1,923 Kyrgyzs were employed in foreign companies.

Specialists of the State Department of employment together with the staff of the Department of migration service are included in the expert commission, which controls labor conditions of migrant workers on enterprises that attract foreign specialists.

The Information and Consultative Center of the Ministry of Labor and Social Protection has elaborated a clients' database, which contains information on vacancies and professional training courses within the Republic. Internet access to vacancies databases in other countries is provided; a database with textual methodic and their computer versions is now completed. The opening of a special division for the collection and processing of information about

vacancies abroad and recruiting the Kyrgyz unemployed for further placement in these vacancies is planned in the future.

Labor migration from Kyrgyzstan is carried out through three main channels: special state bodies, intermediary companies by means of concluding contracts, and upon own initiative of citizens. Independent employment of citizens is the most widespread.

Kyrgyzstan has an experience in the organized employment of its citizens in various regions of the Russian Federation, however, the number of such departed citizens is very low – in 1999 it comprised only 201 persons. Migrants departed mainly to Sverdlovskaya and Novosibirskaya regions and the cities of Orenburg and Tynda.

After signing the agreement with Kazakhstan on "labor activities and social protection of migrant workers, employed at agricultural works" four private companies were established in border-close regions for sending Kyrgyz agricultural workers to Kazakhstan. Three of them were opened in the south of the Republic (in the cities of Osh, Dzhahalabad and Batken), wherefrom the main flow of migrant workers comes; one company was opened in the capital of the Republic – Bishkek (in July 2002). An interview was conducted with the head of the Bishkek company, which deals with dispatches of tobacco-planters to Alma-Ata region. He generally approves the agreement with Kazakhstan and expressed satisfaction with the envisaged rules of registration of migrants, the procedure of negotiations with the Kazakh private employment agency, and with contractual provisions concerning parties' activities. Besides, the interviewed manager made a comment with regard to a term of validity of permits for labor activities in Kazakhstan. According to the agreement, a permit is issued for one year and for each separate type of activity. The respondent considers that it would be better if a permit is valid for at least two years and allows labor activities in various directions.

Three officially registered recruiting agencies seem not to be able to realize the allotted quota for work on tobacco plantations of Kazakhstan (7500 people). The main part of workers will be transferred as usual by employers-entrepreneurs on the border, who are absolutely indifferent to the fate of their countrymen after the departure. Mainly women are involved in illegal transfers of workers.

Even registered employers do not have clear organization of the arrival and departure. *"For example, we agree upon the delivery of a certain number of workers with a Kazakh employer, however, not all of them reach the place of destination, because some independently get off on the road in the area of previous employment. As a result we suffer losses, because the transfer and catering are at our own expense. A Kazakh partner is dissatisfied with the fact that less workers arrived and refuses to compensate expenses",* - says a manager of a recruiting company.



Public marketing, informational and consultative work, which ensures the realization of agreements on labor migration, are yet absent. Companies, which obtained an official permit for hiring labor migrants through mass media, advertisements, and leaflets, independently agitate people for legal employment, carry out awareness-raising activities, and familiarize people with official legal documents. However, organizational capacities of companies are of course insufficient.

#### *Protection of the rights of labor migrants*

All interviewed labor migrants noted that the main purpose of their departure for work in other countries is earnings, which generally suit them. For example, the average salary of a Kazakh "shuttle"-trader, selling Chinese goods on Russian markets, amounts to approximately 700-1000 USD per month with a preliminary investment of not less than 2.5-3 thousand USD. Hired traders on markets receive 200-250 USD per month, of which 80-100 USD are spent for catering and habitation. Approximate earnings of builders are the following: unskilled workers receive 180-200 USD, specialists (electricians, painters, etc.) are paid 300-400 USD per month with a 12-hours schedule and one holiday in two weeks. At the same time a stable average salary of builders on a market, if legally employed, amounts to not less than 350-500 USD for unskilled workers, 700 USD and more for specialists, in the conditions of an 8-hours working day with one or two holidays per week and with the payment of the vacation benefit. However, obtaining an official permit for work, which is to be performed by migrants, requires significant financial expenses, which is not economically suitable, especially for employers. "Shuttle"-traders in Alma-Ata (Kazakhstan) earn on average 100-300 USD per month, on tobacco plantations around 200-500 USD per season for a family. Girls working in show business in Korea receive monthly 350-400 USD. Good earnings make people bear with bad labor and life conditions abroad.

Interviewed employers stated that their clients are explained their rights and contractual provisions in detail before concluding a contract, which specify residence and labor conditions of migrant workers. Despite such an optimistic characteristic of employers' activities, the author was not able to see how the rights of Kyrgyz migrant workers are protected in contracts, because none of employers agreed to show any of them.

According to employers, the protection of the rights of migrant workers is best organized in South Korea, where migrants are given a card, a kind of a passport, for a contractual period. In case of the violation of the rights of a migrant in a place of employment, he/she has the right to address a local office for help, and a matter is solved by a local representative of a Kyrgyz company.

However, companies do not guarantee the full protection of migrants' rights abroad. The main task for them is to conclude a contract and purchase transport tickets, while in a country of

destination migrants solve their problems as they can. But managers of companies noted that there were no serious conflicts so far, except common, private matters, which can be solved by a migrant as by any citizen – by means of the right to address the police and in case of an illness – to get medical help in a local clinic.

Migrant workers complained that there is neither available information, nor free consultative service on labor migration in Kyrgyzstan or in the countries, where they carry out labor activities.

The Department of migration of MFA has several informational materials elaborated for migrant workers (for example, the "Instruction for those who leave for the Russian Federation", copies of migration cards necessary to be filled in the Russian Federation, questionnaires for those who leave for seasonal agricultural works to Kazakhstan), though these materials are not disseminated broadly.

A research, which was conducted on tobacco plantations in Kazakhstan in June 2002, revealed hard labor and life conditions of Kyrgyz migrant workers. Tobacco-planters have a working day that lasts from early morning until late night and they do not have elementary facilities. The rights of illegal migrants are not protected from abuses of employers and cheap labor force dealers. Migrants can be forced to work and face the ignorance of their state of health; there were cases of beatings and escapes.

The main problems that migrant workers face both in Kazakhstan and in Russia are the difficulties with registration at a place of living or the impossibility to realize the requirement of the employment legalization. For example, in order to trade on the markets of Alma-Ata in Kazakhstan it is necessary to obtain a temporary registration at a place of living and a permit (license) for the right to carry out commercial activities. Both of them are expensive. Therefore migrants either make a fake registration through intermediaries, or (the majority of them) do not register at all.

Checking migrants' registration at a place of residence and license for labor activities is the source of the police corruption both in Russia and Kazakhstan. On the markets of Alma-Ata there was even a case of an illegal police "raid". Most part of migrant workers do not know about their rights and responsibilities. There were cases in Alma-Ata when the police without any notification seized the children of the Kyrgyzs and left them in orphanages, explaining such actions with either a Decree on the prohibition of labor of underage children, or with the absence of documents for a child. This was one of the ways of money blackmail from parents. Children were released only after paying a certain sum to a policeman. Respondents note that racketeering is something common in Russian cities. Migrants pay monthly a sort of "levy" to a representative of a criminal structure. Besides, respondents noted the aggravation of Islamophobia, intolerance of a separate part of society towards Moslems in Russia. It is expressed in offences and preconceived treatment of the Kyrgyzs.

In Russian cities, representatives of consulates opened by the Government of Kyrgyzstan in the Russian Federation, are usually unknown to the local Kyrgyzs and do not have authority with them. On the railroads across the Kazakh and Russian borders migrants face the abuse of power. Some stations appear for migrants to be the places of a terrible horror and fear. Customs officials, frontier soldiers and policemen in both grounded and ungrounded way take away passports, throw away luggage, making then migrants to redeem it, offend and sometimes beat migrants. In the airport "Manas" (Bishkek) blackmail of patrol and customs officials became something common with regard to girls-dancers upon their departure from and arrival in Kyrgyzstan.

It should be noted that the Government of the Republic tries to control the processes of labor migration of the Kyrgyzs to the CIS countries. So in 2002, upon the Government's assignment, work groups consisting of specialists from the Department of migration of the MFA, the MIA and the Ministry of Labor were created to conduct missions to the Ural, Privolzhsky (December 2002) and Siberia (February 2003) federal districts of Russia, where their members met with the heads of the Russian regions, the Ministry of Labor of Russia and employers in order to discuss labor conditions, social protection and security issues of Kyrgyz migrants, as well as to prevent possible deportations from Russia in connection with the realization of a new law on "the legal status of foreign citizens in the Russian Federation". As a result of these visits, suggestions were made concerning the opening of the Kyrgyz consulates for the protection of the rights of Kyrgyz migrant workers in the Russian cities of Samara and Novosibirsk, where the number of migrant workers from the Republic in the beginning of 2002 comprised 60 thousand people. Presently a consulate is opened only in Ekaterinburg.

### *Summary*

As the conducted analysis showed, the Government of Kyrgyzstan has already expressed its principal preparedness to join the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by adopting a relevant draft law in October 2002. The work in the legal field is carried out on a regular basis in the Republic in the sphere of the protection of the rights of migrant workers in the main recipient countries – Russia and Kazakhstan, as well as inside the country. However, the national legal base is insufficient to guarantee the protection of migrants' rights in the full compliance with the Convention's requirements. Financial resources of the Republic are also scarce. These are the main reasons of the non-ratification of the Convention by the Parliament of Kyrgyzstan.

### *List of experts*

#### *Public officials:*

Sarygulov B.A., Vice-Director of the Department of migration service of the Ministry of Foreign Affairs of the Kyrgyz Republic.

Iyazaliyeva N.I., Head of the Section of external migration of the Department of migration service of the Ministry of Foreign Affairs of the Kyrgyz Republic.

Voronina G.A., Vice-Director of the State Department of employment of the Ministry of Labor and Social Protection of the Kyrgyz Republic.

Agibetova B.N., senior specialist at the State Department of employment of the Ministry of Labor and Social Protection of the Kyrgyz Republic.

*Employers, representatives of private companies:*

"Vork Tour" hires and dispatches Kyrgyz migrant workers to tobacco plantations in the Alma-Ata region of Kazakhstan.

"Capriccio" hires and dispatches girls-dancers to show business agencies in South Korea.

"Sleng" hires and dispatches girls-dancers to show business agencies in Arab states.

"Gais Kadry Ltd" hires governesses, housemaids, and gardeners for household works in European countries.

"Gulaz" hires people for agricultural and building works in South Korea and for work as waiters and barmen in Cyprus.

*Migrant workers, 7 persons, of whom:*

2 worked on tobacco plantations in Kazakhstan; 2 were involved in "shuttle" business in Russia and earned additionally on building works; 2 were involved in "shuttle" business on a market in Alma-Ata in Kazakhstan; 1 was a dancer in Korea.

## **The Republic of Moldova: the protection of migrant workers in the context of the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

### Dimensions and directions of labor migration

A deep socioeconomic crisis and a shattering fall of living standards of people stimulated a mass labor emigration from Moldova. According to surveys, this kind of migration involves up to one third of the employable population<sup>50</sup>. Migrant workers, the main part of whom work abroad illegally, annually remit considerable sums of money, comparable to the state budget's revenue<sup>51</sup>. These remittances enable to smooth away the acuteness of the country's social crisis, because they help to maintain the living standards of people, to solve their economic, living, educational and other problems.

The main recipient countries for the Moldavian migrant workers are: Russia, receiving 240-270 thousand people, Italy – 130 thousand, Portugal – 80 thousand, Greece – 50 thousand, Czech Republic – 40 thousand, Turkey – 20-50 thousand, Spain – 20 thousand, Israel – 15-20 thousand, France – 15 thousand, Germany – 10-15 thousand, Cyprus (both Greek and Turkey territories) – 5-7 thousand, Romania – up to 5 thousand. In other countries this number does not exceed 1 thousand people<sup>52</sup>. The general number of migrant workers from Moldova comprises, by estimates, 650-700 thousand people.

Moldavian migrant workers arrive in recipient countries mainly on a legal basis, however, they stay and participate in labor activities illegally, which has a negative impact on the nature and conditions of labor, remuneration, social and legal protection, and social status of migrants. Male labor migrants are active mainly in civil engineering, transport, and industry. Female migrants work either in the sphere of public services, care of the aged, the sick, and children, or as household maids, or in the sphere of sex-services.

Among the reasons of labor migration the following are named most often: a hard economic position, a low level of living standards, the absence of jobs, non-competitive

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<sup>50</sup> Ref.: Mosneaga V. Independent Moldova and Migration / «Perspectiva». – Chisinau, 1999; Mosneaga V., Evdokimova L., Koman A., Krause A., Rusnak G. Labor migration in faces: people and fates. / «CAPTES». - Chisinau, 2000; Moldova, România, Ucraina: migrațiunea forței de muncă și integrarea europeană. / «CAPTES». – Chișinău, 2000; Population of Moldova and labor migration: the state and modern forms. / «CAPTES». – Chisinau, 2000 and other.

<sup>51</sup> «Only through bank channels 275 mln. USD were received during the previous year from migrants, who work abroad (official data from bank institutions). This calculation can be enlarged with 150 mln. USD, received through non-official channels» (Interview with L.Talmach, the President of the National Bank of Moldova. // «Independent Moldova», 2003, April 18).

remuneration in comparison with other European countries, its untimely payment, the necessity to pay for children's education and medical treatment, etc., as well as easy procedures of moving in/from the country, closeness to countries-consumers of migrant workers' labor, the integration of the Republic of Moldova into the global migration processes –these create good opportunities for the realization of migration intentions of the Moldavian population.

The spheres of activities of a migrant worker from Moldova most often include: civil engineering, agriculture (harvesting), the third sector of economics, trade, public services (bars, restaurants), "shadow" economy, care of invalids, sick and aged people, sex-industry, and prostitution.

#### Activity phases of the protection of the rights of migrant workers

The protection of migrant workers is a topical problem for the Moldavian state, which undertakes and realizes a certain work in this direction. There are several main stages in the migration policy of Moldova on the regulation of labor migration. During the first phase (1990-1994) labor migration was regulated by old methods, which were typical for the Soviet specific area. The second phase (1994-1999) is characterized by the integration of the Republic into the global, mainly European migration processes. An attempt was made to conclude bilateral agreements on the regulation of labor migration of the Moldavian citizens with those states, which have a significant number of Moldavian migrant workers. However, this initiative did not acquire a due support because of a high unemployment in recipient countries.

In November 1997 the Government adopted the Decree on "temporary employment of migrant workers". In accordance with the adopted regulations a list of companies, authorized to place the Moldavians in a job abroad, was defined. However, the undertaken efforts did not provide a real cooperation among state bodies and the civil society institutions, the population and migrant workers.

During the third phase (since 2000) some progress in the real practice of regulating migration was made both from the side of the Western European states and the Republic of Moldova. Now the Moldavian state in its migration policy tends to be a more active actor in the field of the protection of the rights of its migrant workers abroad, to overcome the weaknesses of the previous approaches and real practices of the regulation of migration. The state aims to protect not only those who legally stay and work abroad, but also the Moldavian illegal guest

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<sup>52</sup> Munteanu V., the Head of the Department for Migration of the Republic of Moldova. Speech at the International scientific and practical conference «Unprotected labor: strategy and tactics of labor unions». – Chisinau, 2002, October 24-25.

workers. At the same time, making the Western European direction a priority, the state tends to follow the Moldavian guest workers and to develop new, non-European labor markets.

### LEGISLATION AND INSTITUTIONS

In 2001 in place of the Department for Migration the State Migration Service of the Republic of Moldova was created within the Ministry of Labor and Social Protection, which was transformed in 2003 into the State Department for Migration, which shows the growth of the state attention to the problems of migration and the raise of the state and legal status of this migration institution.

The Department for Migration elaborated the Concept of migration policy of the Republic of Moldova, which was adopted by the Parliament in October 2002. In the middle of December 2002 the law on "migration" was adopted, which entered into force on January 15<sup>th</sup>, 2003.

The harmonization of the national legislation and bringing it in line with the international standards is being carried out. Moldova has joined the international documents, which regulate migration processes: the European Convention on the Legal Status of Migrant Workers, and the European Convention on Social Security. In October 2002 the Agreement on the cooperation between the Government of the Republic of Moldova and the International Organization for Migration was ratified.

The Republic of Moldova joined (on November 23<sup>rd</sup>, 2001) the 1951 Convention and the 1967 Protocol to the European Convention on Consular Functions concerning the Protection of Refugees. On July 25<sup>th</sup>, 2002, the Parliament adopted the law on "refugees" (entered into force on January 1<sup>st</sup>, 2003). Moldova became a member of the International Labor Organization.

Moldova has neither signed the 1949 ILO Convention, nor the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As Mr V. Munteanu, the Director of the Department for Migration, noted: *«The Convention is not signed because we are not ready for it. The prevailing part (95%) of the Moldavian labor migrants work in foreign countries illegally; in other words, they violate the laws of residence in countries where they stay. For them there is nobody to secure any rights and to protect them on such a basis. By signing this Convention we assume significant responsibilities without getting anything. Moreover, by signing these documents we will not be able to secure the rights of foreign migrant workers inside our country. We will not be able to provide them with jobs, habitation, medical insurance, social and legal protection, etc. Hence, we need to bear considerable costs to ensure the guaranties, envisaged by this international legal document. Signing the Convention will be possible only after the serious improvement of the financial and economic position of the state, and the growth of its economy. In its turn, this is*

*possible in case of a serious inflow of foreign investment in the country, the increase in jobs, and securing employment with relevant earnings».*

### **International cooperation**

The main line of action for the public institutions on the protection of migrant workers is the signing of bilateral agreements with recipient countries. The Republic of Moldova initiated and carries out the work on signing an interstate agreement with Portugal, the intergovernmental agreement with Italy, which is already initialed. The negotiations are conducted on the same matters with Spain and Greece. *«It is planned to continue the work on signing similar agreements with 10-12 countries, where a lot of our migrants work» (V. Munteanu).* As it was mentioned above, an accent is put to the legalization of existing migrant workers abroad.

The establishment of the practice of signing agreements in the sphere of labor migration at the regional and municipal level has started. It should be noted that the practice of hiring the Moldavian workers by foreign companies existed before, but this process did not involve relevant state institutions. For example, in 2000-2002 agreements were signed between the Moldavian partners (the State Migration Service, the Agency for Abroad Employment, Chisinau City Administration) and several Italian districts in the sphere of temporary employment of the Moldavian nurses, constructors, welders, etc. There are concrete employment agreements of the Moldavian migrant workers with partners from Czech Republic, Kuwait, and other states. The elaboration of joint programmes on training of specialists in studying the language of a country of employment is being carried out. The Italian Government allotted 500 jobs for the Moldavians within the terms of the work quota for migrants from non-EU countries.

According to Mr A. Lukjan, the representative of the nongovernmental organization "Adjuta civis", not everything is yet adjusted in the activities within the framework of training programmes on working abroad for the Moldavian labor migrants. *«The State Migration Service, for example, announces the recruitment process of 500 people (400 medical servants and 80 constructors) for work in Italy. But for this purpose they have to attend training, which is chargeable – 100 USD from each potential migrant worker. 1500 persons attend training (all of them pay), while there is no such a quantity of jobs. It does not matter whether a person knows the language or not, he or she must pass this training. There are also other types of payments. It is mentioned in the ILO Convention that a state has no right to avail itself of providing employment (including abroad employment) to the citizens».*

COOPERATION WITHIN THE CIS IS CONTINUED. MOLDOVA TOOK AN ACTIVE PART IN THE PREPARATION OF A SET OF DOCUMENTS CONCERNING THE REGULATION OF LABOR MIGRATION. AMONG THEM: THE CIS DEVELOPMENT



PROGRAMME OF ACTIONS UNTIL 2005, THE CHAPTER "PROMOTION OF FREE MOVEMENT OF LABOR FORCE". WITHIN THE TERMS OF THIS PROGRAMME THE FOLLOWING DOCUMENTS WERE ELABORATED: THE CONCEPT OF STEP-BY-STEP FORMATION OF A COMMON LABOR MARKET AND THE REGULATION OF MIGRATION OF LABOR FORCE OF THE CIS MEMBER-STATES, THE CONVENTION ON THE LEGAL STATUS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES – CITIZENS OF THE CIS MEMBER-STATES, THE AGREEMENT ON COMMON PRINCIPLES OF COOPERATION BETWEEN THE CIS MEMBER-STATES IN THE SPHERE OF BORDER-CLOSE LABOR MIGRATION (THE CIS SUMMIT OF HEADS OF STATES, CHISINAU, THE REPUBLIC OF MOLDOVA, OCTOBER 7<sup>TH</sup>, 2002).

Cooperation with Russia is extending. A set of documents concerning labor migration were signed with the Moscow Government. The Department for Migration of the Republic of Moldova has addressed to relevant institutions of the Russian Federation with a proposal to allot 35-50 thousand jobs for Moldavian migrant workers. With similar proposals the Department for Migration has addressed Italy, Portugal, Kuwait and other states.

Cooperation becomes more and more multi-pronged and complex, and exceeds the bounds of interstate or intergovernmental agreements. *«In the countries of the European Union and the CIS Moldova cooperates with relevant institutions, which deal with the problems of labor migration (the MIA, departments for migration). Bilateral agreements are concluded with labor unions and other public organizations. In order to place in a job our citizens we search for vacancies using all available channels. Agreements are concluded with agencies for abroad employment and economic agents in other countries» (V. Munteanu).*

In order to increase the dimension of legal labor migration in the opposition to the activities of various companies, which make money on tears and misfortune of deceived people, the state has undertaken certain steps in this direction. The Agency for employment of Moldavian citizens abroad was established under the Department for Migration (the former State Migration Service) to provide a civilized inclusion of the Moldavian guest workers in the processes of international labor migration.

Today the Republic of Moldova has at its disposal a database on individuals, who seek after earning abroad. As A. Chertan notes, *«we create a database on specialization and work experience of those who aim and have a possibility to leave for work abroad. We also have information on available jobs. When we receive inquiries from companies, we offer them a list of candidates and, after the selection we perform all necessary procedures before the departure».*

Individual labor contracts are concluded with migrant workers. Besides the Department (the Agency for employment of Moldavian citizens abroad), today *«in the country there are*

48 companies entitled to deal with abroad employment. An obligatory requirement is the availability of a contract with a business partner of a relevant country and an individual labor contract with a worker. A contract is registered in the Department for Migration, a copy is kept for two years; a contract is also registered in «Casa Națională», where a migrant pays 600 MDL to the pension fund. An individual, who leaves the country for work under contract, is fully informed about the rights; all provisions are inscribed in a contract, which is a subject to check and registration in the Department. The legality of employment companies is also checked, as well as the availability of agreements with countries and a draft labor contract. If everything complies with requirements, then a contract receives authorization» (L. Gynsar'). At present contracts are concluded mainly for work in Italy (on building yards, in the public services sphere, as medical subsidiary personnel, nursing of the aged), in Spain (as long-range drivers), Israel and Cyprus.

Nevertheless, according to nongovernmental organizations, not everything in labor contracts corresponds to the international legal standards. «Signed contracts do not fully conform to a typical international contract, at least because the exact time of work is not indicated. For example, it is not written "not more than 40 hours per week", as it should be, but "not less than 40 hours". It means that a migrant worker in reality will work 80 hours and will be paid only for 40 hours. It is in the interests of an employer» (A. Lukjan).

A certain attention is paid to the awareness-raising of the Moldavian migrant workers concerning the legal and social protection in a recipient-country and assistance mechanisms in extreme situations. «As regards the awareness-raising of emigrants, they are fully informed about their rights» (T. Samoile, the Department for Migration).

In order to inform migrant workers, the Department for Migration has started to publish an information bulletin «Tu si migratia», in which various issues of international labor migration are examined, concrete recommendations and advice on the protection of the rights abroad are given. The protection of migrant workers is carried out by the Moldavian state mainly through its embassies and representations abroad. Non-governmental organizations of Moldova also contribute to informing Moldavian citizens about employment possibilities abroad<sup>53</sup>.

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<sup>53</sup> See, for example, "Work in Italy" 2002-2003. / «Adjuta civis», «Regina Pacis». – Chisinau, 2002.

Despite the continuous efforts of the Government, the rights of migrant workers from Moldova are very poorly protected both in their country and in countries of residence. The protection of the rights is not guaranteed even at the stage of hiring. Below are some extracts from interviews with migrants:

*«We... have addressed one of the companies, which deal with recruiting in Italy... Visas were issued and we departed, but on the border we were hold up. Everything was a fake».*

«We were promised that after departure we will be provided with jobs, because without the knowledge of language we are unable to find a job ourselves. Visas were processed by a tourist company. When departing we agreed for a certain amount to be paid for an employer for a provided job, but upon arrival we were demanded an additional sum. Moreover, our passports were taken away. Whether we liked it or not, but we had to pay. We had to return an employer our earnings for a month or two in order to get our passports back».

Activities of a migrant worker, who is illegally resident in a country, are characterized with complexity, unprotectedness, high risk, the absence of legal and social guarantees, the unavailability of a medical service or its poor quality, bad living conditions, etc. An illegal migrant worker often attracts the attention of criminal structures and racket.

«We were offered a certain type of work, but in practice it turned out to be a different one. In a month we were fired in order not to pay us».

«We were rather well paid to our measures, however, twice less than the local».

«We lived in desolated schools, installing window panes. However we were expelled even from there. It was expensive to rent an apartment and even difficult to find, because everybody beware of the illegal».

«I was very careful of falling ill, because there is nobody to expect help from. At best I could remain on a job for a day or two, maximum a week. After that a worker is expelled, and another one is hired».

*The illegality of staying in a country leaves an imprint on all the activities of a migrant worker in a recipient country. The lot of illegal migrants is often a low-qualified and non-qualified work. Frequently their status can turn out to be of a marginal level in a recipient country; they do the work, which the local citizens refuse to do.*

«We went to the road like prostitutes. We caught clients at night and early in the morning. We were hired for different works: we renovated apartments, removed rubbish, moved loads, etc.».

A migrant worker, realizing his/her illegal status and being afraid of the deportation, does not want to refer for help to the state structures both of a country of residence and a country of origin.

«There is absolutely nobody to appeal to. It is useless to refer to the police. Employers often escaped without paying after the end of works. They even changed their telephone numbers so that nobody could find them. And there is nobody to complain to».

*The real help to migrants, who got into a difficult situation, according to their words, is provided only by the Church and missionary organizations.*

«A priest solved many problems, including those regarding non-paying for a work. The Church also provided with food. Sometimes we were given breakfasts, lunches and sandwiches. We were provided with a night's lodging» (South Korea).

*The legal protection of the rights of illegal migrant workers is connected by them with their awareness about the rights and with the problem of legal residence in a foreign country.*

*«We had no notion of any rights. We could be fired at any moment. Nobody to complain to. You are an illegal».*

*«Now I am preparing a contract for Ireland, in which everything is prescribed. The contract is formulated by a lawyer. He says that there is also a juridical service at place, to which one can refer in case of necessity. I want to leave now only on a contractual basis, do not want to be an illegal anymore».*

The illegal employment abroad through state or private institutions is not always convincing for a migrant worker, who tends to combine the legality and profitability of abroad employment.

«I addressed the Department for Migration. I was offered a job. But the remuneration is so low that I can earn the same here. If leaving illegally, one can earn twice or three times more».

It occurs quite often, when migrant workers, even those who legally departed for work abroad on the basis of a contract, certified by state institutions, note the unprotectedness of a Moldavian guest worker abroad, the absence of real guarantees in case of the violation from the side of an unfair employer. However, there are cases when an illegal migrant worker, who got a residence permit and legalization in a country of residence, increases his/her social status and brings it into line with his/her education and qualification.

### **Topical tasks**

It is difficult to provide an illegal migrant worker with the legal and social protection. In the context of existing international legal norms the following statement of Mr V. Munteanu seems to be quite right: *«in the sphere of the protection of the rights of illegal migrant workers we do not have particular instruments of influence»*. As practice shows, there are certain instruments of indirect impact.

First, it is essential to define the composition of violations committed by illegal migrant workers. It is known that, though the majority of Moldavian migrant workers work abroad

illegally, most of them arrive on a legal basis with tourist visas. The Moldavian side drew the attention of the European Union's colleagues to the inappropriate interpretation of the activities of the Moldavian illegal migrant workers as the activities of individuals, who penetrated into the territory of a recipient country<sup>54</sup>.

Secondly, the legalization of illegal migrant workers is required. This direction of activities is considered by the authorities of the Republic of Moldova as the most important for the creation of conditions and possibilities of social and legal protection of migrant workers. *«We address to the countries, in which a large number of our citizens work, with a proposal to give them a possibility to legalize their status during a certain period. The process of legalization to a certain extent depends on a patron (employer)» (L. Gynsar', the Department for Migration). T. Samoile draws attention to another aspect of this problem. «We do the work, which is directed at the legalization of illegal workers. Some countries support our activities; legalization terms are already fixed in Italy, Portugal, Russia and Spain. Other countries propose to conclude agreements on readmission, when a state engages itself to accept its citizens, when they are expelled from a country. Since May 14<sup>th</sup>, 2003, Moldova presides in the Committee of the Cabinet of Ministers of the Council of Europe, and our country will raise a question of the ways of legalization of migrant workers».*

Thirdly, the population should be better informed about the risks of illegal labor activities abroad, especially if it regards the trafficking of living beings. State institutions are to a lower extent involved in such kind of information activities. International and national non-governmental organizations, press, radio and television are more efficient and active in this regard. Today a large number of actors are involved in these activities – non-governmental organizations and mass media.

Fourthly, it is required to arrange assistance in the transportation, the repatriation of bodies of migrant workers, who perished or died from diseases, incidents and factory accidents abroad. For the past three years (1999-2002), according to the Ministry of Foreign Affairs, more than 400 coffins with bodies of the Moldavians, who worked in foreign countries, were returned to the Republic of Moldova. And there is plenty of problems here. *«As a public organization, we dealt with the problems of repatriating people who got into troubles, and with the repatriation and search of the dead. This is a very serious problem. The sum of 12 thousand USD is provided in the state budget for the repatriation and transportation of the dead. The cost of the transportation of one person, who died abroad, is about 6 thousand USD. Thus, the total sum is enough for the transportation of 2 persons, while for the last couple of years 300 people died» (A. Lukjan).*

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<sup>54</sup> See: Sub-comitetul UE – Moldova „Vama, cooperarea transfrontalieră, spălarea banilor, combaterea drogurilor, migrarea ilegală”. Protocol comun. Chișinău, 26 septembrie 2000. // Buletin informativ

Fifthly, the assistance in the legal and social protection should be provided to the Moldavian illegal labor migrants in recipient countries. An important role in this process belongs to remedial organizations of those countries, where the Moldavian migrant workers reside. As Mr V. Munteanu noted, *«no special success of the Moldavian public institutions can be reported with regard to the cooperation with non-governmental organizations in the countries of the European Union».*

In this regard, non-governmental organizations, which cooperate with their partners abroad, can and often do provide an adequate help to migrant workers. It regards the problems of trafficking of living beings, providing support in extreme situations, and in searching for and the transportation to a home country of the dead, as well as in the legal and social protection before legal institutions or an employer in a recipient country, etc.

However, non-governmental organizations consider that the formation and functioning of national-state Diaspora in the countries, where the Moldavian guest laborers work, shall be one of the important instruments of the legal and social protection. As A. Lukjan notes, *«In order to quickly address the issues of providing assistance an organized Diaspora is required in the countries, where the most part of our citizens reside. To solve the problem of our migrants we have elaborated a programme "Diaspora". An organized structure could promote the promptest legalization of citizens, solving the problems of allotting quotas, the development of business, investments, etc.».*

Legal labor immigration to Moldova is insignificant. However, the Moldavian state has created a certain mechanism, a legal base for their residence and labor activities. As emphasized by A. Zhosan: *«The number of labor immigrants is very low. These are businessmen, who conclude contracts and wish to start their own business here, and people, who arrived in Moldova for work on the basis of a contract».*

But this is only a visible part of an iceberg of labor immigration to Moldova. The number of illegal labor migrants in Moldova is considerably larger. According to the legal authorities of the Republic of Moldova, there are more than 20 thousand people, foreigners and apatrides, who reside in the country and are involved in various kinds of labor activities.

### **Conclusion**

The Republic of Moldova has joined the processes of international labor migration. Labor emigration became widespread, involving up to one third of the employable population of the country. Labor immigration is insignificant, which is determined by a socioeconomic unattractiveness and a high labor supply in the country.

By means of the international legal mechanisms and using the practice of multilateral and bilateral agreements, Moldova aims to protect its migrant workers abroad through the integration into international mechanisms of regulating labor migration. The European Social Charter (1977) was partly signed, but not ratified by the Parliament. Non-joining the 1990 UN Convention is determined by a set of reasons. First, because after signing this international legal document Moldova must take upon itself considerable responsibilities without getting anything in return. The Moldavian labor migrants work abroad illegally and therefore do not have necessary legal and social protection. Secondly, the country is not yet ready and does not have at its disposal necessary material and financial possibilities to provide guarantees for migrant workers, which are foreseen by this Convention.

However it should be noted that though the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is not signed by the Republic of Moldova, in practice the Republican authorities follow the main principles and provisions of this Convention and other relevant international legal documents in the sphere of the protection of the rights of migrant workers. The Moldavian authorities undertake certain steps towards the legal and social protection of migrant workers. However, the effect of these activities is not yet significant. The activities of migration institutions of the Moldavian state and real practice of labor migration of the Moldavian population are represented yet as separate processes, which develop in different social dimensions and coincide with each other rather rarely.

PROTECTION OF THE RIGHTS OF MIGRANT WORKERS IN RUSSIA AND  
PROSPECTS FOR JOINING THE 1990 UN CONVENTION

During the period of a post-Soviet development, Russia has turned into a country with large-scale labour migration while being at the same time a country of origin, destination and transit of migrants.

**Labour Migration to Russia.**

*Legal Employment.*

Official statistics of labour migration show that the inflow of those entering the country is more than seven times higher as compared to the outflow. In 2002, a total of 359,500 foreign nationals received work permits in Russia, and almost 50,000 left the country with the purpose of temporary employment abroad using the official channels of the Federal Migration Service of the Ministry of Interior (FMS MoI). The amount of recruited foreign labour in 2002 increased by 27 per cent as compared to 2001 and reached 359,500 individuals. In the first half of 2003 the amount of recruited foreign labour was by 10 per cent higher than in the relevant period of 2002.

According to the FMS MoI official statistics based on a number of work permits issued for foreign nationals, the large bulk of migrants come from the Ukraine (more than 60,000) and Moldova (40,000). Among countries other than the former USSR, China takes the first place (39,000) followed by Vietnam (27,000), Turkey (15,000) and Democratic Peoples' Republic of Korea (13,000).

At present, the largest importers of a foreign labour are Moscow and Moscow region, St. Petersburg, Belgorod region, Krasnodar region, Primorskiy and Khabarovskiy krays, Khanty-Mansiyskiy and Yamalo-Nenetskiy Autonomous Districts.

The analysis of migrants' employment in various Russian regions shows that the Russian labour market is being structured upon the same model as labour markets of many world receiving countries. In 2002 the majority of foreign labourers were employed in the construction sphere (18%), agriculture and forestry (18%), industry (12%), trade (10%) and casual work on the markets. Most male migrants work in the construction sphere, on hard road works, markets, disposal tips, filling stations and other sites of urban infrastructure that



are considered to be of no prestige, as well as in agricultural sector. Female migrants are engaged for the most part in the sphere of public and domestic services, trade, entertainment businesses that as a rule are closely connected to a sex industry.

The gender composition of legally recruited foreign labour is characterized by an evident predominance of men (87%). On one hand, it reflects the real situation when so far the spheres of female migrant employment are less developed as compared to the men, which is typical for the provinces. In the capital and large cities where the sphere of human services is developed better, the gender composition of migrants is more homogeneous. On the other hand, such an evident prevailing of men over women shows that legal options for labour migration are somewhat broader for men than for women; through they are not sufficient even for men. Women are practically fully pushed to the sector of informal and “shadow” migration and employment.

The process of Russia’s economy and employment’s restructuring is implemented within the frameworks of existing world trends that means the increase of a human services share in the structure of both GDP (Gross Domestic Product) and employment; labour intensive sectors, which require large amount of hard manual labour and which remain vacant on labor market as they are not in demand from local labourers, are crystallized in the sphere of industry and services. More and more sectors appear that are “retained” for migrants for many years. These economic processes are repeatedly reproducing the demand of a state and society in migrant labour.

Russia keeps to the beaten track of many developed countries as the same process on forming the division of labour on the basis of national and gender segregation of workers is in progress here. It allows assuming that in a certain period of time, the Russian economy will depend on the inflow of migrant labour in the same way as economies of many developed countries do now. To date in Russia, along with unemployment at the level of 9%, there exist around one million of vacant working places, and their number is increasing swiftly: their number doubled in 2002 and tripled in 2003; 27% of enterprises experience labour shortages.

### ***Irregular Migration.***

Official statistics cover only organized legal channels of labour migration that are supervised by the FMS MoI, and do not reflect real flows, of which the most part pass over these legal channels. The rise in irregular migration starting from 1990-s, was determined by a complex combination of factors, including special geopolitical situation; more stable economic

situation as compared to neighboring states; extraordinary scale of shadow economy in Russia; weakness of economic and migration legislation and control; presence of large national Diasporas in Russia, etc. According to estimates, around 4 – 5 million irregular migrants reside on the Russian territory, mostly from the CIS states and Southeastern Asia<sup>55</sup>, including more than 3 million irregular migrants from CIS states<sup>56</sup>.

Three principal components of irregular migration are distinguished, which are irregular entry to the country; irregular stay on the territory of a state; and irregular employment. Irregular entry (without visa or appropriate valid documents) is an important but least spread channel for irregular migration. According to the Federal Border Service data, in 2002 more than 53,000 foreign nationals were not allowed to entry the country (they were not allowed to cross the RF state border).<sup>57</sup> Taking into consideration that the majority of migrants are citizens of the CIS states which have agreements with the RF on visa-free movement of the CIS citizens, the entry to the country is mainly legal.

The second channel of irregular migration is more widespread. Migrants from the CIS states who enter the county on a visa-free regime, quite often do not register their stay in Russia; migrants from other countries often overstay in the country after their visas expired thus losing their legal status. According to the MoI data, in 2000 some 150,000 persons were fined for holding expired visas that comprises just a small share of irregular immigrants.<sup>58</sup>

The most spread channel for irregular migration is irregular employment of migrants. Frequently even those migrants, who have residence permits, work without legitimate work permits in Russia. According to our surveys, the number of migrants who get work permits is several times less than a number of migrants with an appropriate registration on the place of residence. The number of migrants having work permits out of the total number of migrants employed on an open labour market, do not exceed 20% while about 50% of those polled have a registration on the place of residence.

### ***Informal Employment.***

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<sup>55</sup> E.Krasinets, E.Kubishin, E.Turukanova, *Nelegalnaya Migratsiya v Rossiyu* (Irregular Migration to Russia), (Moscow, Academia, 2000), p. 82.

<sup>56</sup> Institute of Economy and Population Forecast RAS, Center for Human Demography and Ecology, *Naseleniye Rossii. 2001. (Russia's Population. 2001)*. (Moscow: Institut Narodnokhozyaistvennogo Prognosirovaniya RAN, 2002), p. 162.

<sup>57</sup> *Migration Trends in Eastern Europe and Central Asia. 2001-2002 Review*, (Geneva: IOM, 2002), p. 38.

<sup>58</sup> *Ibid*, p. 40.

Migrant labour makes a sound union with the “shadow” economy, and cheap labor is widely used by unfair jobbers, “shadow” and criminal businesses. If in European countries migrants’ employment niches are either incorporated into an official economy, or partially covered by a “shadow” economy, in Russia, where almost half the economy is performed outside the legal field, 3/4 of migrant employment lay within the “grey” zone. Less than 20% labour migrants have written contracts with an employer; 74% noted that they received wages in the so called “black cash” meaning that neither employers nor labourers pay any taxes and extra charges.<sup>59</sup> Thus, irregular migrants feed the informal labour market. Their trump card is cheapness of labour and consent to informal employment. Only accurate and well thought-out policy in the sphere of combating a “shadow” economy is able to help breaking this exclusive circle.

Unofficial and informal relations are in the lead and spread over the whole migration chain, starting with obtaining information on migration possibilities and prospects, to channels for sending remittances to native countries and termination of work. The absolute majority of migrants (more than 70%) obtained information on employment possibilities in Russia through their relatives and friends, and no more than 1% through official structures.<sup>60</sup> The situation with employment procedure is just the same. It arises from weakness of official migration infrastructure, its informational, legal and other migration services.

### ***Socio-Economic Conditions.***

According to data of sampling surveys, migrants work on average 60 hours a week; however, their work hours could reach 80-100 hours a week. Most migrants are engaged in hard, unfavorable or non-prestige works. Absolute majority of working migrants do not have a paid sick leave as well as a paid annual leave. Violations of labour rights are well widespread and practically are not considered as anything marginal.

In addition to hard labour and unfavorable working conditions, many migrants mention the existing threat from racket and gangsters. It is obvious that migrants engaged in informal sector are practically defenseless from racket, which is often presented by the police.

### ***Violations of Rights and Illegal Labour Exploitation.***

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<sup>59</sup> The survey among labour migrants aimed at revealing forced labour relations were conducted in 2003 in Moscow and Omsk oblasts, and in Stavropol kray. Some 440 migration engaged in various branches of economy, were polled.

E. Turukanova, Supervisor of the Study, *Forced Labour Outcomes of Human Trafficking and Irregular Migration in Russia*, ILO Study (Moscow, 2004) (<http://www.ilo.ru>).

<sup>60</sup> Ibid.

Violations of migrant's labour rights are very widespread, such as compulsion to work extra-hours without remuneration (extra-prolonged working day, work without weekends); underpay or work without pay (just for food, roof, etc.); extra-intensive work; compulsion to fulfill work for which a worker did not give his/her consent; limitation of freedom to leave a given employer, etc. Limitation of freedom of movement, physical and psychological coercion is spread as well. Violations of rights and illegal labor exploitation are so widespread, that even extreme forms of criminal exploitation, such as trafficking with persons or forced labour, often lose their marginal character. Their separate elements (for instance, debt bondage, limitation of freedom of movement, bondage to a given employer, documents withdrawal, etc.) are "dissolved" into regular labour relations, and thus are not considered to be an exception to the rule and become a kind of legitimate ones. According to sampling surveys, in 20% of the cases an employer takes away a migrant's passport; 12% of migrants have deep dependency on an employer; 22% of female migrants claimed they had been sexually exploited.<sup>61</sup>

Informal employment practically disables migrants to protect their labour and other human rights in accordance with the established procedure, including human rights, which are stated in the UN Universal Declaration of Human Rights as inalienable and universal, i.e. every state must guarantee these rights to every person staying on its territory, irrespectively of his/her citizenship and even legal status. Less than 5% of migrants mentioned no violations of their rights in process of migration and employment in Russia while only a few applied for assistance to competent agencies in order to protect their rights.

Shadow migration and employment are closely interconnected with corruption on various levels. It is possible to buy everything, starting with a migration card with a record on registration on the place of residence, and ending with valid passports. The most used and widespread methods of "combating" irregular migrants who reside and work on the territory of Russia are as follows: documents checks and fines for lack of registration. In the absolute majority of cases, migrants pay fines unofficially, that is in the form of a bribe to police. In Moscow, such a bribe amounts up to RU 500 (more than USD 15).

### ***Labour Migration from Russia.***

As a sending country, Russia also participates in the development and reproduction of a universal economic model based on the usage of migrant labour thus providing for flexible

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<sup>61</sup> E. Turukanova, *Forced Labour Outcomes of Human Trafficking and Irregular Migration in Russia*,

offer of labour which “adjusts” to the demand from receiving states. Labour emigration with the purpose of raising money and social promotion is presented now within the spectrum of adaptation strategies of the Russian population, as up to 20% of able-bodied citizens consider this strategy as possible and appropriate for their use. Active potential of labour migration makes up some 5% of able-bodied citizens, out of whom the majority intend to stay aboard for a short period – up to one year.

Some every tenth household is involved into labour migration, which comprises around five million persons, out of whom some 1,5 - 2 million leave Russia to go abroad in search of a job, while the rest migrate within the country. Working migrants present a significant segment of the Russian labour market that comprises 7 – 8 % of the employed in the economy.<sup>62</sup>

However, these migration intentions are not supported adequately by normative, legal and institutional infrastructures, which provide for legitimate ways for temporary labour migration. It results in almost uncontrolled activity of “shadow” structures supervising migration, including criminal nets that practise trafficking with persons.

Since 1994, merely a total of 300,000 Russian citizens have left Russia with the purpose of temporary employment using the official channels, i.e. within the frameworks of intergovernmental agreements and through employment companies, which work under the FMS MoI license. In 2002, a total of 49,300 persons were officially employed abroad. Most of them were men who were engaged in work at sea transport, fishing boats and industrial enterprises connected to fishery, while women comprise less than 20%.

However, not more than 10% labour migrants leaving Russia for employment abroad, use official channels of labour migration. According to estimates of the International Organization for Migration, *some 500,000 Russian citizens work outside Russia*; out of them around 370,000 Russians work in Europe, by Eurostat data.

The main destination countries for Russian labour migrants are Cyprus (19%), Germany (8 %), Great Britain (7%) followed by Malta, Greece and Japan. The list of professions is very long and includes builders, agricultural workers, medical personnel, maintenance workers, domestic servants, baby-sitters, nurses, workers at filling stations, hotels, restaurants, and

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ILO Study (Moscow, 2004) (<http://www.ilo.ru>).

<sup>62</sup> Data was received on the basis of surveys conducted in six cities in 2000 by the Center of Studies for Forced Migration Issues in the CIS States. See “Trudovaya Migratsiya v Rossii” (Labour Migration in Russia), *Migratsiya Naseleniya. Prilozheniye k zhurnalu “Migratsiya v Rossii”*, no. 6, (Moscow, 2001), pp. 10, 21.

those engaged in some other works where unskilled or hard manual labour is used. Nearly 40% of agreements were concluded for the period from six months to one year; some 30% of migrants had contracts for one year and more, while the rest left for abroad for a short period of time – from a few months to half a year.

Some 640 employment agencies working under the FMS MoI license in 42 subjects of the Russian Federation, deal with employment abroad. The large bulk of such agencies (180) is concentrated in Moscow. Official agreements were also concluded with a number of countries, such as Germany, Finland, Switzerland, Czech Republic, China and some other states that provide for labour exchange, employment of Russian students for the period of summer vacations, etc. Besides, there are numerous illegal mediators (working without license) who, as a rule advertise in a striking and aggressive way promising whole mountains of gold and exclusively attractive working conditions. Thus, the absolute majority of migrants leave Russia using informal and illegal channels. At present, the development of official institutions and legitimate possibilities for labour migration may become the only alternative to this situation, i.e. the transfer to the official field of at least some part of the flow which is now pushed out to the sphere of illegal relations.

According to sampling surveys, less than 5% of Russians consider themselves protected when leaving for employment abroad.<sup>63</sup> The main reason for such vulnerability and violation of rights is a completely illegal or incompletely legal character of migration and employment. However, even when leaving the country through official channels, migrants do not have guarantees of full safety and legitimate character of migration. Thus, according to the results of a telephone poll among agencies dealing with employment abroad, nearly% of licensed agencies acting in Moscow provide their clients with tourist or guest visas, which do not allow working abroad.<sup>64</sup>

Sex-business and the so called sexually-related industry, which is very often connected to sex-services, such as dance shows, strip-tease, consummation, escort-services, modeling business, fall into a special at-risk zone. According to the poll, some 80% of potential female migrants are sure that the above forms of employment are in reality hidden sex-services. At the same time, 25% of young women at the age under 30 looking for employment abroad admit employment in sex-industry for themselves. However, it is worth noting that for those

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<sup>63</sup> E. Turukanova, “Zhenskaya trudovaya migratsiya iz Rossii” (Female Labour Migration from Russia), *Rossiya – 10 let reform. Sotsialno-demographicheskaya situatsiya*, ed. By N. Rimashevskaya, Moscow: Institut sotsialno-ekonomicheskikh problem narodnaseleiya, 2002), p. 77.

<sup>64</sup> The above polls were conducted by the author in 2002 and in 2003 in Moscow and covered practically all agencies dealing with employment abroad (more than 80) acting to that date.

women who exclude for themselves the possibility to be employed in a sexually-related industry, the choice is noticeably reduced.

Apart from labour emigration of representatives of the so called mass professions, which raises problems of vulnerability and violation of migrant rights, there is another serious challenge for Russia that is intellectual emigration. It is more often considered in a context of national security while it also associates with some problems in the field of human rights and individual security. This category of migrants encounters significantly less obstacles, and they enjoy greater freedom of movements. Experts emphasize that emigration from Russia of highly qualified elite on a temporary contract basis is three-five times higher as compared to emigration with the purpose of permanent residence. An estimated as minimum as 120,000 highly qualified Russians work abroad on a contract basis while the reported Russian intellectual Diaspora permanently residing abroad comprises approximately 30,000 persons.<sup>65</sup>

Problems related to temporary intellectual emigration are aggravated by the fact that this emigration quite frequently turns out to be irretrievable not only because of the tendency to live outside Russia spread among intellectuals but also because of their gradually increasing isolation from Russia during the period of their work abroad. The reasons of this sort could be smoothed out by means of social policy; however, the policy of the Russian government directed to the assistance in return of highly qualified migrants from foreign countries, or to their intellectual cooperation with Russia, is not active enough.

Migration Legislation in Russia and Rights of Migrant Workers.

### **\*\*\**International Documents.***

The UN Convention On the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) relied on a number of international acts by UN and other organizations, in which main human rights and norms of migrants' treatment were secured. Russia, as the USSR assignee, joined the majority of multi-purpose international UN documents on human rights, such as the UN Universal Declaration of Human Rights (1948), the International Pact on Economic, Social and Cultural Rights (1966), the International Pact on Civic and Political Rights (1966), and the Elective Protocols to them, the International Convention on Liquidation of All Forms of Race Discrimination, Convention on Liquidation of All Forms of

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<sup>65</sup> I. Ushkalov, I. Malakha, "Migratsiya i bezopasnost v Rossii", *Intellektualnaya emigratsiya i bezopasnost* (Intellectual Emigration and Security), ed. By G. Vitkovskaya and S. Panarin, (Moscow, Interdialect, 2000).

Discrimination Towards Women, Convention on the Child's Rights (1994), Convention on Slavery, ILO Convention on Forced and Obligatory Labour No 29, ILO Convention on Abolishment of Forced Labour No 105 and others. However Russia has not ratified any of UN and ILO Conventions<sup>66</sup> on the Rights of Labour Migrants (UN Convention (1990), ILO Convention on Labour Migrants No 97, ILO Convention on the Abuse in the Sphere of Migration and on Providing Migrant Workers with Equal Possibilities and Treatment No 143; ILO Recommendations on Migrant Workers No 86 and No 151.)

In 2000 Russia signed the UN Convention Against Transnational Organized Crime and the Elective Protocols to it Against the trafficking in persons and Smuggling of people across national borders. However these documents have not been ratified yet due to gaps in the Russian legislation (for example, absence of the law on trafficking in persons).

### ***RF National Legislation.***

Main laws and documents of the RF, which regulate the relations of labour migration and the rights of migrant workers are as follows:

RF Constitution, 1993 – determines basic human and citizens' rights and freedoms;

FL (Federal Law) No 1114 'On Order of Exit From the Russian Federation and Entry Into the Russian Federation', 1996 – lays down the rules of free movement, citizens' right to freely leave Russia temporarily or forever;

FL No 115 'On Legal Status of Foreign Citizens in the Russian Federation', 2002 –lays down the rules of stay and employment of foreign citizens on the RF territory;

FL No 62 'On Citizenship of the Russian Federation', 2002;

FL No 1032-1 'On Population Employment in the RF', 1991 – lays down the right of citizens to search for work abroad and employment of foreign citizens in the RF;

Demographic concept in the RF – states Russia's interest in receiving migrants and immigration development as one of the most important population formation sources;

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<sup>66</sup> In accordance with the ILO's Charter, one of the goals of this organization is to defend rights of



Concept of migration development in the RF – determines strategy of migration development, based on Russia's interest in receiving migrants and maintaining of effective intercommunications with compatriots and Russian Diaspora abroad.

The process of migration legislation formation in the country is not over yet. The Inter-Ministerial Working Group on the migration legislation improvement in the RF, founded in accordance with the Presidential Decree, has been functioning in Russia since 2002. And though passing of new laws directly regulating labour migration relations is not at present on the agenda, FMS experts (specifically FMS Deputy Head G.I. Barabanov) note that a number of amendments are being prepared to the laws that were already adopted, in particular to the Law on Citizenship and on Legal Status of Foreign Citizens in RF, which should make the legislation more favourable in terms of the migrants' situation in the country and legalization of their status.

Within the framework of the Inter-ministerial Working Group on the improvement of migration legislation in RF a special expert group on the evaluation of possibility for Russia to join the UN Convention 1990 and ILO Conventions on migrant workers functioned in 2002. This group worked under the supervision of the Head of the Rights Department with Ministry of Economic Development. In accordance with the words of its participant, Mr. A.V. Demidov, Deputy Director of the Department for Compatriots' Affairs and Human Rights with the RF Ministry of Foreign Affairs (MFA), the final 'verdict' which was returned by the expert group, was the decision on 'inexpediency for Russia at this time to join these documents on labour migrants rights.' In accordance with Mr. A. Demidov, this decision was influenced by the fact that very few countries had ratified these conventions, and mainly donor countries. Thus, delaying ratification of documents on the rights of migrant workers, politicians are guided by the following principle: as ratification of the Conventions on labour migrants, including the UN Convention 1990 will demand a lot of efforts on Russia's side, as a receiving country, 'this is not the sphere where it will be profitable for us to be the first.' Apparently, legislators of many other countries are also guided by the same principle, and that is why efforts of the international community should be directed to breaking this 'vicious circle' by means of rendering assistance in cooperation between countries in this sphere, assistance in coverage of positive experience and practices in the countries, which ratified the Convention, etc.

#### *Regional, Bilateral and Multilateral Agreements and Associations.*

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labourers working in countries, other than their own, and also of their family members.

The UN Convention 1990 stressed the importance of regional, bilateral and multilateral agreements aimed at the defense of the rights of migrant workers and their family members. On 28 February 1996 the RF State Duma ratified the European Council Charter and Russia became an EC member. In the same year the European Convention on Protection of Human Rights and Basic Freedoms and also Protocols to it (Roma, 1950) were ratified. European Special Charter (Turin, 1961/1991) was signed by Russia in 2000 in Strasbourg and at present a programme on preparation for its ratification is under way in Russia together with the EC. The Charter, in particular, envisages extension of the rights of migrant workers as compared with the current Russian legislation and introduction of the social security right for each elderly person, which is a very pressing topic for forced and economic migrants from CIS countries.

Russia is one of 55 OSCE members, and it declares its fidelity to the principles of the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Conference), which include such principles as freedom of movement, assistance in family reunification and cooperation between countries.

Other European documents are also of great importance for the development of labour migration. For example, the Convention on Acknowledgement of Studies, Certificates of Degree and Thesis in European Countries (1979), Brussels Declaration against Trafficking in Persons etc. Russia also cooperates with other European states within the framework of the so called Budapest process, which is coordinated by the International Center on the Migration Policy Development (ICMPD) and passed a number of important recommendations for the countries-participants in the sphere of migration and migrants' rights.

The development of the legal basis for migration within the CIS framework goes on. On the 15<sup>th</sup> of April 1994 the CIS governments concluded the Agreement on cooperation in the sphere of labour migration and protection of migrant workers. This multilateral regional agreement is supported by a number of bilateral agreements: the agreement was signed between Russia and Kirgiziya, similar agreements with Tajikistan, Ukraine and Moldova are being prepared.

Mechanisms of state cooperation (both within the CIS limits and outside them) in the process of their initiation and concluding such agreement have not yet been cleanly adjusted. Usually it happens at the initiative of a donor country, which should show enough persistence and activity, overcoming, as a rule, a rising resistance of the receiving country. Thus, to the

question why Russia does not have an agreement with Kazakhstan from where considerable migrant flows arrive, Mr G. Barabanov (Deputy Head of FMS, Ministry of Interior (MoI) replied, that 'Kazakhstan haven't shown such initiative'. Taking into account the balance of forces on the international scene, when as a rule a receiving country is more influential and strong than a donor-country, the factors hindering acceptance of inter-state agreements will remain. And thus there needed well-considered programmes of international organizations on the assistance in such forms of international cooperation with the aim of widening the legitimate area of labour migration and limitation of illegal and criminal channels.

In 1998 the CIS Countries Agreement on the fight with irregular migration was adopted. This Agreement gives a broad definition of irregular migrants that include the element of illegal employment, i.e. 'foreign citizens and stateless persons, who broke the rules of stay on the territory of one of the parties'. The Agreement envisages preventive punishments for irregular migration such as deportation, re-admission (though it requires additional agreements which Russia does not have at the moment, with the exception of the agreement with Lithuania), information exchange, etc. Though, in the opinion of experts - human rights advocates, in the reality, taking into account the weakness of the legal base and legitimate labour migration institutes, the observance of the norms of this agreement often leads to the violation of labour migrants rights, as it happened with the deportation of more than 100 Tajik workers from Moscow in the spring of 2003 without legal investigation in accordance with the established procedure<sup>67</sup>.

In general the resources of interstate cooperation with the aim to legitimize migration relations both within the CIS limits and on a wider scale, have been used by Russia insufficiently. There are not enough agreements with either the countries receiving Russian migrants or with the donor countries. International community can more effectively and constructively assist in the countries' cooperation in the sphere of migration, for instance, in signing inter-state agreements. For that we need special programmes and well thought mechanisms of such assistance.

The UN Convention (1990) on the Defense of the Rights of All Migrant Workers and Members of Their Families: Main Barriers, Hindering Ratification

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<sup>67</sup> Mr Tyurkin, Deputy Head of the Federal Migration Service, informed about this incident in his report at the conference 'Demographic development of Russia through the prism of 2002 census', Moscow, 30 January 2003

### *Economic Factors.*

When assessing the reasons of Russia's non-alignment to the UN Convention (1990) experts underline the leading role of *economic factors*. The seriousness of economic problems does not allow, in the opinion of the majority of experts, providing the main Convention demand – provision of the principle of equal treatment for migrant workers who legally live and work in a country, with citizens of the receiving country in relation to salary, working conditions and social guarantees (art. 43, 55 of the Convention).

*Migrant workers, who have been given permission to perform remunerative activities, have the right for equal treatment with citizens of the employment country in carrying out such remunerative activities. (Art. 55)*

Here we see an exclusive circle. Economic growth and labour resources scantiness generate the demand for migrant labour. Taking into account demographic tendencies<sup>68</sup> and economic growth demands, Russia, in a number of official documents (Demographic Conception, Migration Policy Concept) acknowledged the course for immigration and attraction of additional labour force into the national economy as a strategic line of the migration policy. At the same time while acknowledging it, Russia does not have so far the well thought and institutionalized policy of migrants' integration. *Non-observance of the principle of equal treatment for labour migrants and lack of mechanism for situation tracing and conflict resolution, linked with the labour migrants' rights (which could be part of the integration policy) leads to marginalizing of considerable masses of migrants who work unofficially or illegally.*

However since marginalization of labour migrants is characteristic for the majority of receiving countries, including economically powerful states, it shows that economic problems are not the only and perhaps not the main factor that impedes legal protection of the rights of migrant workers. Integration of cheap migrant labour's exploitation into the current economic order and constant reproduction of the migration regime which maintains and provides for this order – these are the deeper causes of the fact that the UN Convention (1990) remains unclaimed.

### ***Legal Gaps.***

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<sup>68</sup> State Statistics Committee forecasts population cutting down for 15 mln people by 2015, which could be partially compensated by migration. Taking into account that already in 1995-2000 migration

Some specialists including Ms. Kholshchevnikova<sup>69</sup>, expert of the RF State Duma, underline that economic causes is not the only argument against ratification of the UN Convention (1990). There exist serious *legal problems* linked as a rule with specific Convention requirements. As for the provision of the main principle of equal treatment in the labour sphere (Article 55 of the Convention), then, in T. Kholshchevnikova's opinion 'in the Russian legislation there are no norms that discriminate the right of migrant workers to equal treatment with the RF citizens in carrying out remunerable activities.' Main documents regulating labour relations in Russia (Labour Code, Civil-Procedural Codes) are in accordance with this principle. Thus, main problems with observance of this principle emerge at the stage of *law enforcement*. The weak point of the Russian legislation is the bad developmental work of the control mechanisms over its fulfillment. Thus, the main reason of non-observance of the norms set by the law in case of migrants is that migrants are not included into the national mechanism of labour rights tracing (for instance, into the activity of the labour inspections) and there are no special mechanisms intended for the monitoring of the situation with labour and other migrants' rights.

However there is an important limitation, which does not allow considering the situation with legal guarantee of the equal treatment principal successful. In Russia the majority of social and labour guarantees are applied only to migrants, *who reside permanently* on the territory of Russia (who have residence permit). Thus, in accordance with the Federal Law as of 10 December 1995 No 195-FZ 'On the Basics of Social Services of Population in the RF' (p.4 cl. 7) 'permanently residing foreign citizens have equal rights to social service with the RF citizens if otherwise is not stated by an RF international agreement.'

The same situation is with other guarantees. The status of a temporarily residing person, issued for 3 years, gives a migrant the right to work, but does not give the right to pension accounting, allowance receiving and other social guarantees. These rights are granted only to those who have the status of a permanently residing person (residence permit), which is issued for 5 years, but in order to receive it, it is necessary to pass the stage of a temporary

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provided for the one-third of the total growth of labour resources, it is clear how important it is for Russia to maintain the optimal migration level.

<sup>69</sup> As an expert, T.V. Kholshchevnikova was engaged by the RF State Duma in the work on a number of migration draft laws.

residence<sup>70</sup>. The UN Convention envisages such guarantees *for all labour migrants, legally staying and working in another country including those who have temporary status.*

In the Russian legislation there are also serious legal gaps and discrepancies with the UN Convention norms for certain specific conventional norms. In the first place it deals with the principle of providing freedom of movement and family reunification assistance principle. Thus, cl. 11 of the Law On Legal Status of Foreign Citizens in the RF states:

*‘1. Foreign citizens have the right for freedom of movement for personal or business purposes within the RF...*

*2. Foreign citizen who is temporarily residing in the RF shall not at his own wish change the place of his residence within the RF subject, on which territory he is allowed to reside or choose the place of his residence outside the stated RF subject.’*

Per Ms. T. Kholshchevnikova, the family reunification principle is not secured in the Russian legislation; only some of its elements are fixed:

*‘Without taking into account the quota approved by the RF Government the permit for a temporary stay can be issued for a foreign citizen:...*

b) who is found disabled and who has a capable son or daughter who are citizens of the Russian Federation; c) who has at least one disabled parent, who is a citizen of Russian Federation; d) who is married to a person – citizen of the Russian Federation, who has a place of residence on the territory of the Russian Federation;...Law On the Legal Status of Foreign Citizens in the Russian Federation, Article 6).

#### *Institutional Problems.*

Many experts, and in particular Deputy Head of FMS MoI of Russia Mr. G.I. Barabanov, also underline the existence of serious *institutional problems* that impede the development of labour migration and the decision-making in this sphere. Per A.V. Demidov (Ministry of Foreign Affairs), labour migration in Russia ‘is an orphan whom no department is willing to accept as its own.’ Until 1993 the head agency for labour migration was the Ministry of Labour, but then it was passed under the FMS jurisdiction, where it has never been a priority

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<sup>70</sup> Now law modification is under consideration in order to abolish this discriminating norm and to introduce a possibility to get a permanent resident status without passing through the stage of a temporary residence.

topic, and it is true for today as well, when the Ministry of Interior is the head department for migration. In the 1990-s FMS's priority task was forced migration regulation; after the inclusion of the Migration Service in the Ministry of Interior, the fight with irregular migration became the priority direction, but the creation of legitimate mechanisms of labour migration once again has remained outside the political and financial attention of the RF Government.

Ms. M.O. Korunova, Head of the Department on Humanitarian Cooperation and Human Rights with the RF Ministry of Foreign Affairs, also noted the existence of serious institutional problems in the sphere of labour migration; she also pointed to the lack of systematic cooperation between various departments on labour migration matters. For example, such cooperation between the RF Ministry of Foreign Affairs and FMS MoI is necessary for the development and conclusion of bilateral and multilateral agreements on the labour exchange with the states, which receive Russian migrants, as well as with donor states.

All the above-mentioned institutional problems hinder the development of the legal base for legitimate labour migration and in particular adversely affect Russia's readiness to join the UN and ILO Conventions on labour migrants. In order to initiate the process of the UN Convention ratification, it is necessary to have *an interested agency, which would be ready to address the RF Government with the ratification initiative*. As Mr. I.K. Ponevkin, Legal Department specialist with the Ministry of Foreign Affairs noted at present in Russia there is no such agency, which was ready to display such initiative.

Experts of the Ministry of Labour and Social Development of Russia and in particular Mr. Stepanov, Head of the Department of International Legal Documents, confirm the above mentioned opinion, noting that the most real initiator of the ratification of Conventions on the rights of migrant workers could be Administration of the RF President, as it was the case with the Convention on Equal Rights of Men and Women in the Labour Sphere. As for the Ministry of Labour itself then there are no conventions on migrant workers included in the list of more than 10 international documents, ratification of which is acknowledged by the Trilateral Commission (the body uniting representatives of the RF Government, All-Russian Trade Council and Employers organizations) as priority for Russia in 2002-2004.

With the establishing of quotas for the acceptance of labour migrants (established by the Law 'On the Legal Status of Foreign Citizens', 2002) there was an increase of the role of the Placement Service (which is included into the Interdepartmental commission on the preparation of suggestions on the quotas formation for the next year). Work permits for

migrants are issued by the Ministry of Interior locally only with the authority of the local Placement Service. Ministry of Labour issued an instruction reading that the responsibility for the use of foreign workers is fully made for the employer. In the opinion of Mr. A.F. Rudik, expert with the Ministry of Labour, it corresponds to the spirit of the new Labour Code and should assist in the increase of the employer's responsibility for the observance of labour migrants' rights.

Ministry of Labour experts also note that labour migration problems, in particular, migrants' rights, are closely connected with the development of the economy's informal sector. In Russia more than 20 per cent of GDP (per some estimations up to 40 per cent) is produced in the informal sector, and every seventh person works in this sphere<sup>71</sup>. Majority of labour migrants are involved into the informal economy, and thus they are primarily placed outside the legal economic sphere. Russian Labour Inspection (a subdivision of the RF Ministry of Labour, which controls the observance of the legislation in the sphere of employment and labour conditions) works poorly in this sphere. And in this sphere there are mass violations of rights of all workers and especially migrants, as the most unprotected group. That is why it is only possible to fight the violation of labour migrants' rights if we include this activity into a broader context of fight for legitimization of economic ties and relations, development of small-scale and middle-scale business, counteraction to corruption, etc.

V. Stepanov (Ministry of Labour of the RF) touched upon a very important question of equal responsibility of states of origin and of destination for the observance of labour migrants rights. To meet these requirements, Russia as a donor country, per Mr. Barabanov's (FMS) words, reconsidered the approach to licensing of agencies on the employment of Russian citizens abroad, having assigned primary importance to the principle of responsibility of these agencies for the migrant's fate (and not only for the quantity of employed abroad as before), and having introduced corresponding indices into the accounts mechanism before FMS.

## Conclusion

To sum up the analysis of the pilot expert survey on the observance of labour migrants' rights and the UN Convention (1990) ratification, it is possible to draw the conclusion that experts from practically all governmental departments express much less interest in this matter as opposed, for instance, to problem and decision discussions, linked with irregular migration of labour force. On a state level there dominates an approach from the point of view of national



interests' concept, but the relations, based on the human rights paradigm, are still viewed as an opposition to the state approach. It is very hard to find common grounds and ways of cooperation between these two approaches. The solution can be found in a closer cooperation between states, in more effective use of international organizations' influence on government, introduction of new state management concepts (in this case, migration), based on a tighter cooperation of the state and the civil society.

IRINA

PRIBYTKOVA

**Legal status of the Ukrainian migrant workers  
and protection of their rights and freedoms**

Preconditions of overseas labour migration of the Ukrainians

In the Ukraine, which is facing a lingering economic crisis, society undergoes a condition of social tension. 56.4% of population is not satisfied with their life conditions, 61.4% - with their social status. The hopes for life improvement in the upcoming year are hard to be estimated as optimistic. The half of the Ukrainian population is convinced that there will be no positive changes, 40.0% of inhabitants are unable to define the nearest perspectives for living.<sup>72</sup>

The general situation at the Ukrainian labour markets is estimated by the Ukrainian population as extremely negative. Three fourths of adult inhabitants consider it very difficult

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<sup>71</sup> Nenablyudayemaya ekonomika: popytka kolichestvennykh izmereniy (*Non-observable economy: attempt of quantitative measurements*). Edited by A.E. Surinov (Moscow, 2003), p. 23, 44.

<sup>72</sup> Here and further the data of the national monitoring of the public opinion is used, which has been carried out for 1994-2003 by the Institute of Sociology of the National Academy of Sciences of the Ukraine on the basis of representative selection within the terms of the projects "Ukrainian society at the threshold of XXI century" (1994-2001) and "Ukrainian society: monitoring of social changes" (2002-2003).

in the Ukraine to find an appropriately paid job, which corresponds to their preferences and qualifications. According to 56.5% of respondents, it is also difficult to find a job, where employee's qualification is required but an adequate income is not guaranteed. Seven of ten respondents point to difficulties in employment regardless of specialisation, each second inhabitant (56.1%) of employable age considers any job difficult to be found. Unemployment impends firstly the people of around-pensionary age, the handicapped, women with little children, the amenable to illnesses, and those who work improperly.

The records of the State Employment Service as of December 1<sup>st</sup>, 2003 list 984.3 thousand people, what amounts to 3.5% of employable population. The amount of unemployed, measured by the ILO methodic, is twice more: in the first half of 2003 this contingent numbers 2051.2 thousand people, or 9.7% of economically active population. By December 2003 there were 7 people per one vacancy in the Ukraine. In western territories this indicator is 2-3 times above (1). In reality the level of unemployment is higher. According to the monitoring of social changes in the Ukrainian society as of February 2003, 2.4% of respondents were unemployed and had no income sources; 7.1% had no permanent job but earned additionally in different places depending on circumstances, while the share of the registered unemployed numbered 2.4%.

Overseas labour migration of the Ukrainians has become one of the most efficient recipes to survive. By 2003 an overseas working experience was obtained by 12.1% of the Ukrainian householders (by 2002 – 10.2%). The most attractive countries for the Ukrainian migrant workers are Russia, Poland, and more rare Germany and Czech Republic. More than a half Ukrainian overseas workers were employed abroad on the basis of verbal arrangements with employers, without legal execution procedures. Others concluded a contract either in the Ukraine or in a country of temporary residence. Half of those, who have an overseas working experience, are going to leave the country during the next year for temporary earnings.

According to expert estimates of the Ministry of Foreign Affairs, more than 2 millions of the Ukrainians are employed on an illegal basis. The number of people officially employed with the support of the Ministry of Labour and Social Policy in the first half of 2002 equals only to 20.6 thousand people. According to expert estimates, no more than 5% of migrant workers, moving abroad, register at the Ministry of Labour and Social Policy [1, p.16].

By the estimates of the Ombudsman of the Supreme Council, the Ukrainians employed abroad earn in totality more than 2 billion UAH per month, or 400 mln. USD [1, p.33]. The major part of this amount returns to the Ukraine. Earnings of migrant workers exceed the level of income of the Ukrainians at home by several times and open new opportunities for them. A significant part of earned money the Ukrainians after their return use for starting entrepreneur activities, thus providing themselves and their families with jobs and creating working places for others. According to the Ombudsman of the Ukraine, the state should

legally fix a simplified system of money transfers from abroad and lessen the costs of bank services in the transfer of earnings.

#### *Countries-recipients of the Ukrainian migrant workers*

The main recipient of migrant workers from the Ukraine is Russia. The Ukraine is the biggest source of labour force in Russia: according to the Federal Migrant Service of the Russian Ministry of Internal Affairs, 87874 of 359509 foreigners, who officially worked in Russia in 2002, were the Ukrainian workers. Principally they were employed in civil engineering (24605 people), in trade and catering (13053 people), in transport sphere (12903 people) [2]. Taking into account the illegal migration, the overall number of migrant workers from the Ukraine to Russia reaches 1 mln. people, and during seasonal upswings it is even more<sup>73</sup>. Thus the major part of the Ukrainians works at the Russian territory on an illegal basis. Legalization is frequently disadvantageous to workers because in that case they will have to pay income tax.

In 2002 964 people addressed the Consulate department of the Ukrainian Embassy in the Russian Federation with regard to the violation of their rights: 50% of complaints regarded social problems, 20% - civil matters and 15% - administrative matters. The most prevalent types of violations in the labour sphere were:

- the violation of rules of acceptance to work (without a contractual basis);
- the violation of labour conditions, particularly non-observance of sanitary norms in places of living;
- the significant spread between salary rates in comparison with the Russians.

Very often the right of migrants for medical aid is ignored. Intergovernmental agreements on mutual insurance (of October 28<sup>th</sup>, 1999) in practice do not work because of lack of coordination in calculation methodic and tariffs. A serious problem for the Ukrainian migrant workers is the Russian legislation, which hampers bank money transfers.

The second largest flow of migrant workers from the Ukraine is directed to Poland. According to the Ukrainian Ministry of Foreign Affairs, 6 mln. people cross the Ukrainian-Polish border annually, and the number of non-documented migrant workers amounts to 300 thousand people. This was much facilitated by non-visa regime between the Ukraine and Poland. Since October 1<sup>st</sup>, 2003 a visa regime was put into force at the Ukrainian-Polish border as a consequence of the joining of Poland to the European Union. At the same time the regime is significantly simplified. Entry visas for Poland are free of charge for the Ukrainians, from its side the Ukraine fixed a non-visa regime for the Polish. Despite the mutual intention to maximally liberalize the visa regime at the Ukrainian-Polish border, its initiation will

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<sup>73</sup> By the estimates of the Ukrainian embassy in the Russian Federation.

evidently result in a decrease of migration exchange between two countries and in a growth of illegal Ukrainian migrants in Poland.

One of the main problems, which the Ukrainian migrant workers face in Poland, is the lack of medical insurance, what in its turn leads to problems with disbursement of medical services, and in case of necessity – with disbursement of patients' conveyance to the Ukrainian territory. In July 1993 an Agreement was signed between the Ukrainian Ministry of Public Health and the Ministry of Public Health and Social Security of Poland for 1993-1994, which regulated particular matters in providing medical help to the nationals of both countries during their stay at the territory of one of the parties. The term of validity of this Agreement passed on December 31<sup>st</sup>, 1996. Since then such bilateral agreements were not concluded, though the Ukrainian Ombudswoman initiated the question of the necessity of urgent solution on the bilateral basis. Such a document, according to the information of the Ukrainian Ministry of Foreign Affairs, was elaborated by the Polish side still in November 2001, but the Ukraine did not find a possibility so far to take part in the expert consultations, the conduction of which is expected in the nearest future.

Both Czech Republic and Poland host a significant contingent of migrant workers from the Ukraine. According to the Ukrainian embassy in Czech Republic, their number comprises 100-200 thousand people. The residence of migrant workers in Czech Republic implies the same problems as in Poland. Simultaneously there are particular differences, caused foremost by the initiation in 2000 of a visa regime between the Ukraine and Czech Republic, and as a result, by a tougher policy, practiced by the Czech government towards migrant workers, including the Ukrainians.

In March 1996 an Agreement on mutual employment was signed between the Ukraine and Poland, which envisages a possibility of legal employment of a limited quantity of the Ukrainians and the Czech. In particular, in 1997 the quota was 60 thousand people. However the number of the Ukrainian workers in Czech Republic and those, who were searching for job there, significantly exceeded the fixed quota. Non-official Czech information sources give the value of 300 thousand people [1, p.71]. The visa regime had a low influence on the situation. Visas execution procedure is very bureaucratic and may last sometimes up to six months, what evidently contradicts with interests of employers and migrant workers. Therefore, according to the MFA of the Ukraine, in most cases, in order to advance the procedure, the Ukrainians move to Czech Republic with tourist visas with further employment, often illegal.

A considerable flow of migrant workers from the Ukraine is directed also to Portugal, what was till recently much stipulated by a simplified scheme of legalization in Portugal: search for job – contract, certified by the General Labour Inspection, - one-year visa for work with a possibility of its prolongation up to five years. A decree-law № 4/2001 of January 10<sup>th</sup>,

2001 enables migrants with visas for work to invite to Portugal their spouses, children of under-21 age and parents, and many employed Ukrainians took this possibility. According to the Portuguese sources, relating to first 8 months of legalization (January 22<sup>nd</sup> – September 5<sup>th</sup>, 2001), the permission for temporary residence in the country for the purpose of work was granted to more than 50 thousand working migrants from the Eastern Europe. The Ukrainians were dominating among them (33304 people) [3, p.98-100]. By the estimates of the Ukrainian embassy, there are 150 thousand Ukrainians in Portugal.

The number of the Ukrainian illegal migrant workers in Greece for the last time decreased abruptly. According to the Ukrainian embassy in Greece, this value in the middle of 2002 approached to 3 thousand people. Such a notable reduction is connected with the adoption in Greece in May 2001 of the law "On foreigners", which enabled illegal migrants, who had been living at the Greek territory for not less than two years by the date of the adoption, to obtain legalization and permission to stay [1, p.78]. Greece supports the possibility of a bilateral agreement in the sphere of social security and mutual employment. The ministers of foreign affairs of both countries discussed this matter on April 18<sup>th</sup>, 2002. As a follow-up to those negotiations the Ukrainian embassy submitted on April 24<sup>th</sup>, 2002 to the MFA of Greece a draft agreement for consideration. Moreover, the Ministry of Internal Affairs of the Ukraine and the Ministry of Protection of Civil Order of Greece are preparing at present an agreement on cooperation in struggling against terrorism, illegal drugs circulation, and organized criminal activities. The Greek parliamentarians supported also the idea of liberalization of visa regime with the Ukraine [1, p.78].

During the period of 2000-first half of 2002, according to the Italian embassy in the Ukraine, more than 4 thousand people legally arrived to Italy from the Ukraine for work (3660 visas), for studies (469 visas), and for medical treatment (44 visas), while the general quantity of the Ukrainians in Italy is estimated within 50-100 thousand, and sometimes around 200 thousand people [1, p.80]. In Italy principally women are employed, who are busy mainly in the private sector. Men are more often busy in civil engineering and agriculture. The Ukrainians gained a foothold as a community, which is treated very respectfully by the Italians and which is distinguished for its high sociability [1, p.80].

The Ukrainian migrant workers are hired abroad mainly by the owners of small businesses and individuals for a non-prestigious work, which does not require any qualification. Migrants are hired either for agricultural activities in harvesting, or for civil engineering, for attending children and old people, for work in bars, restaurants or entertaining establishments. Men are employed more often in Portugal, Spain and Russia, principally in civil engineering, agriculture and public services. Italy is mainly the recipient of women, employed in the private sector as domestic servants. Labour migration to Japan and

Turkey appears to be also female. These countries have a sustainable demand for women labour in the entertainment industry.

#### Legal status of the Ukrainian migrant workers and violation of their rights and freedoms

The Ukrainians, who are resident at the territory of another state for the purpose of work, can be grouped by the following categories depending on their legal status:

- persons, who have permission for permanent living at a territory of a foreign state, which provides a right for termless employment;
- persons, who have temporary permission for residence and employment at a territory of a foreign state;
- persons, who are temporary resident at a territory of a foreign state on a legal basis (for medical treatment, study, tourist or private purposes), and illegal workers;
- persons, who are illegally resident and employed at a territory of a foreign state.

In legal point the most protected persons are those, who belong to the first two categories. A permission for permanent living and employment means that an individual, who has obtained it, is compared in his/her rights to citizens of a country of residence. According to the existing experience, such persons more rare face the problems of the realization of their labour rights, particularly the right for fair remuneration, employment guarantees, as well as the right for medical service, because they, as a rule, conclude a written contract with an employer and are protected by the labour legislation in force in a country of residence. The most widespread type of rights violation of this category of migrant workers is the refusal of employers to hire them despite the *permission for permanent living*.

In some countries migrant workers from the Ukraine, *who are temporary resident at the territories of these countries and temporary employed*, face problems. First of all it regards young women, who leave for Turkey and Japan for work in the entertainment industry, particularly in night clubs and restaurants. In spite of the legal basis of residence and employment in these countries, women often face discrimination, and their rights are roughly violated by employers. The prevalent types of violation are the enforcement to prostitution, non-observance of contract provisions regarding labour conditions and adequate and timely remuneration for work.

Due to innovations in national legislation of Greece and Portugal, the majority of the Ukrainians, illegally resident in these countries, got a possibility to legalize their residence and formalize their contracts with employers. It expanded significantly the possibilities of getting legal support from relevant institutions, including diplomatic representations abroad and lawyer services. Frequently such services are required in cases of regression of unpaid

salary from employers, compensation of damage, caused by factory accident or worker's death. Thus, according to the Ukrainian MFA, for ten months of 2002 the overseas Ukrainian diplomatic establishments provided assistance in regression of unpaid salaries to 183 Ukrainians in the amount of 624600 USD.

Some migrants are resident in the territories of foreign countries, but get involved in working activities without proper documents. Foremost it happens in countries, which have agreements on non-visa regime with the Ukraine – Russia, Poland, and Kazakhstan. The majority of the Ukrainian migrant workers appear to be absolutely illegal: they live and work in a country beyond any legal ground. This category of migrants is the most deprived of civil rights and non-independent. They are bounded with their employers only through verbal arrangement, which is regularly violated. It regards first of all the realization of the rights for appropriate working conditions, timely material remuneration, adequate to labour inputs, and social guarantees. The illegal status, law illiteracy of migrants complicate and limit the possibilities of the overseas Ukrainian diplomatic representations in providing legal support.

Illegal migrant workers compose a considerable part of those who were deported from foreign countries. According to the information of the Ukrainian MFA, during 2000-2002 23620 people were deported to the Ukraine.

In order to illegally enter a country, migrant workers often refer to the services of suspicious intermediary employment agencies or tourist companies. In cases of illegal employment agents of intermediary offices and agencies in a country of residence pocket up to 50% of money, earned by a labour migrant, under the pretence of payment for accommodation, transfer to a place of work, protection from racketeers and robbers. The last are a real disaster for migrant workers, especially in such countries as Russia, Poland, Czech Republic, Portugal, and Italy. Criminal factions of the Ukrainian origin riot there and denude from their countrymen the hard-earned money, and sometimes lives. In some cases racketeering involves representatives of law machinery.

According to the Ministry of Labour and Social Policy, as of July 1<sup>st</sup>, 2002 there were 749 economic agents in the Ukraine, which obtained licenses to carry out economic activities in intermediary services in the overseas employment. Because of the violation of the legislation in force and unfair observance of license conditions during 2000 – first half of 2002, 454 licenses were cancelled. One of the most frequent and substantial types of violation is taking payments for not-yet-provided intermediary services in the overseas employment. Moreover, after transfer of the Ukrainians abroad the majority of intermediaries incurs no accountability for their subsequent situation.

It is essential to start, also through mass media, public awareness activities among the Ukrainians with regard to functions, formalities of work and responsibilities of such intermediary agencies. Not less topical is a control over tourist companies, which often carry

out illegal intermediary activities on the overseas employment of the Ukrainians under the pretence of tourist services.

It is also important to continue the elaboration of the national legal base of regulation of interstate labour migration and social protection of migrant workers; this process nowadays in the Ukraine remains in the preparatory phase. One of the important steps in this direction can be the adoption of the law "On companies, carrying out intermediary activities in the overseas employment", the draft of which is being considered in the Supreme Council.

As a matter of fact, illegal migrants are abridged of a possibility to advocate their rights themselves in a court or in any other way because of the absence of legally executed contracts. Appeals to official bodies will result in immediate deportation from a country of residence. That is why non-documented workers have to accept the slavish conditions, and as a rule, to work regardless of specialization and without any social protection, doing a hard, often dangerous and nasty work. The illegal status of an employee fully suits many employers, because non-observance of legally fixed standards enables to decrease manufacturing expenses.

The general working conditions of the Ukrainian workers overseas as a rule do not conform to minimal standards. According to the Ministry of Labour and Social Policy in 2000 more than two thirds of labour migrants, working abroad, had a working day with duration of 10 hours and even more, while one fourth of them worked 12 hours and more per day. Housing conditions do not conform to civilized norms. Migrant workers nestle in overcrowded apartments, live in vehicles at construction plants, in other places inapplicable for living. The typical violation of rights of migrant workers is a non-observance of salary arrangements. There are cases when employers at the day before the accounting day delivered migrant workers in hands of police for further deportation, without paying for their work. Such people are unable to return to the Ukraine for a long time.

The major number of violations from the side of employers is noted by migrant workers in Czech Republic. In particular, as witnessed by 85% of the Ukrainians, who worked in Czech Republic, they were unprotected from deception, squeeze and direct robbery from the side of employers; 77% of them faced the deficit of juridical help in the protection of their rights and interests; 64% of them suffered from the immanent sense of danger [1, p.47]. Similar rights' violations of migrant workers were noted by those who worked in Russia, Poland and some other countries.

*Legal documents of the Ukraine, which provide rights protection of migrant workers  
abroad*

The Ukraine concluded bilateral agreements on employment with Belarus, Armenia, Vietnam, Latvia, Lithuania, Moldova, Poland, Portugal, the Russian Federation, and Slovakia.



Preparations to the conclusion of such agreements with Azerbaijan, Argentina, Belgium, Greece, Georgia, Iran, Spain, Kazakhstan, Cyprus, Congo, Hungary, Czech Republic, and Switzerland are now in process. These agreements, as a rule, envisage the possibility of the temporary employment of the Ukrainians – from six months to four years. Some agreements prescribe certain quantitative quotas for employment.

Such agreements are one of the efficient mechanisms, which guarantee the rights of the Ukrainian migrant workers abroad. In particular, they include the guarantees of full application of the legislation of a country of residence concerning labour matters and remuneration, medical and health insurance of a labour migrant. The responsibility of compensation for harm, caused by factory accident or death, as well as compensation of costs, connected with body repatriation, is rested on an employer. The guarantees concerning form and language of labour contract, and obligatory information to be included in it, are also important.

Beside the employment agreements, important guarantees of rights and freedoms are contained in the agreements on social protection. Bilateral agreements at the interstate and intergovernmental levels are in force now between the Ukraine and Azerbaijan, the Republic of Belarus, Bulgaria, Georgia, Spain, Estonia, Latvia, Lithuania, Moldova, Mongolia, Russia, Romania, Slovakia, Hungary, and Czech Republic. Similar agreements are planned with Argentina, Brazil, Georgia, Kazakhstan, the Netherlands, Russia, Tajikistan, Turkey, and Hungary. Multilateral interstate agreements in the sphere of social protection are in force within the CIS.

Realization of the agreements in force requires relevant monitoring for the evaluation of their efficiency and the improvement of implementation mechanisms. The Ombudsman presumes that it is necessary to more actively use the existing universal and regional instruments of rights protection of migrant workers, in particular to facilitate the process of preparation and ratification of the European Convention on the Legal Status of Migrant Workers of 1977.

*Joining of the Ukraine to the international legal documents, fixing the norms and procedures of the protection of rights and freedoms of migrant workers*

The question of the possible ratification by the Ukraine of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 was raised in 2000. On February 25<sup>th</sup>, 2000 the Ombudsman made a relevant proposal to the Prime Minister of the Ukraine.

The Cabinet of Ministers of the Ukraine came to a decision that the ratification of this document is premature. Among the reasons was, first of all, the disinterestedness in the ratification of the UN Convention of those EU countries, which are the main recipients of

migrant workers from the Ukraine. Besides, according to the Government of the Ukraine, its membership in the Convention will create certain difficulties with the protection of rights of labour migrants working in the Ukraine, principally from the developing countries, because of the required financial costs for their social protection.

On December 24<sup>th</sup>, 2001 the Ombudsman raised before the Cabinet of Ministers the question of joining of the Ukraine to the European Convention on the Legal Status of Migrant Workers of 1977 – the document, which to the highest extent possible corresponded to the conditions and capacities of the Ukraine at that moment. The attention was drawn to the fact that the joining to this Convention will enable to increase the level of rights' protection of the Ukrainians, who are employed overseas, in the member-countries of the Convention – France, Italy, Portugal, the Netherlands, Norway, Spain, Sweden and Turkey, and in perspective – in four more countries, which signed the Convention – Belgium, Germany, Greece, and Luxembourg.

The advantage of the European Convention is that it is applied only for migrant workers of those member countries of the Council of Europe, which are its member-states. Thus, the joining to the Convention of 1977 is not connected with any commitments before migrants, arrived to the Ukraine from the non-member-countries of the Council of Europe, particularly from the East. In response to this initiative, the Cabinet of Ministers of the Ukraine on January 27<sup>th</sup>, 2003 ordered the relevant executive authorities to start the preparatory organizational work on joining the European Convention on the Legal Status of Migrant Workers of 1977.

According to the Ombudsman, the joining of the Ukraine to ILO Conventions №97 on Migration for Employment of 1949 and №143 on Migrations in Abusive Conditions of 1975, which envisage general norms concerning labour conditions, remuneration rates, household conditions, conveyance and social insurance of workers, will increase the range of possibilities in the protection of rights and interests of the Ukrainian migrant workers overseas.

#### Marine labour market

An extremely complex situation takes place at the marine labour market. According to official estimates, the number of sailors without permanent work by profession in the Ukraine reaches 70 thousand people. At the same time there are 22 higher schools and colleges in the Ukraine, which annually graduate marine personnel. Unemployment makes the Ukrainian sailors search for work overseas at the ships of foreign shipowners. The numerous crewing agencies cynically use this situation in hiring sailors. The intermediary activities of such agencies in the Ukraine are not regulated by the legislation, the term "crewing" has no official definition. A large number of crewing companies is established for short periods of time,

while the state control over their activities just does not exist. Information about the functioning crewing agencies and managerial staff is also absent.

According to the estimates of the labour union of workers of the marine transport of the Ukraine, the Federation of Marine Labour Unions of the Ukraine, state company "Ukrcrewing" and private company "V. Ships", only in Odessa there are 200 established and functioning crewing companies, while in the Ukraine their number is around 500. The majority of crewing agencies is established by occasional individuals, who just do not know anything about the organization of marine business.

In this connection the Ombudsman is raising the question on the ratification by the Ukraine of the ILO Convention №179 concerning the Recruitment and Placement of Seafarers of 1996, which envisages the most effective and universal international standards in the protection of social rights of marine transport workers, as well as control over the activities of companies, performing intermediary functions in hiring personnel to the ships of foreign shipowners. The same attitude is being adopted by the Ministry of Foreign Affairs of the Ukraine, the Ministry of Transport of the Ukraine and the labour union of marine transport workers of the Ukraine. However, the Ministry of Labour and Social Policy of the Ukraine unfortunately supports the opinion of private intermediary companies about the prematurity of the joining to the ILO Convention №179, thus having its previous attitude radically changed.

In August 2002 in Vancouver the 40<sup>th</sup> Congress of the International Transport Workers' Federation (ITF) was held, which adopted the resolution №25 on the activities of crewing agencies in shipping. This document lists numerous violations of international legal norms in the sphere of labour legislation, which create the labour market without rules, norms and rights for marine transport workers. This evaluation by ITF fully corresponds to the Ukrainian realities in the sphere of crewing agencies' activities. Thereby the Ombudsman of the Supreme Council considers that the basic document for the development of the national legislation in the sphere of the protection of labour and social rights of marine transport workers in the Ukraine and abroad is the ILO Convention №179 concerning the Recruitment and Placement of Seafarers of June 22<sup>nd</sup>, 1996. To his opinion, the ratification of the ILO Convention №179 and its integration in the national legislation of the Ukraine do not require any material spending or the establishment of a special body for control over crewing companies' activities, because in accordance with the decree of the Cabinet of Ministers of the Ukraine "On the establishment of the list of licensing bodies" the Ministry of Labour and Social Policy of the Ukraine is obliged to perform the functions of control in this sphere.

The real possibility to bring the national legislation into line with the international norms is provided by the Ukrainian draft law "On companies, carrying out intermediary activities in the overseas employment", registered in the Supreme Council of the Ukraine on December

10<sup>th</sup>, 2002. This draft law contains regulative norms for the activities of companies, involved in hiring of sailors and crews of sea-crafts.

On April 2<sup>nd</sup>, 2003 the Ombudsman of the Supreme Council of the Ukraine spoke to the parliament with a report "Condition of observance and protection of rights of the Ukrainians abroad". The report contained the following suggestions and recommendations concerning the ratification of conventions in the sphere of labour migration and conditions of the Ukrainian migrants overseas.

*To the Supreme Council of the Ukraine:*

- to ratify the European Convention on the Legal Status of Migrant Workers of 1977;
- to ratify the ILO Convention concerning the Recruitment and Placement of Seafarers of 1996;
- to facilitate the consideration of draft law of the Ukraine "On companies, carrying out intermediary activities in the overseas employment", registered in the Supreme Council of the Ukraine on December 10<sup>th</sup>, 2002.

*To the Cabinet of Ministers of the Ukraine:*

- to facilitate preparations to the ratification of the European Convention on the Legal Status of Migrant Workers of 1977 and submit it for reading to the Supreme Council of the Ukraine;
- to submit for ratification to the Supreme Council of the Ukraine the ILO Convention concerning the Recruitment and Placement of Seafarers of 1996;
- to consider the question of the joining of the Ukraine to the ILO Conventions №97 on Migration for Employment of 1949 and №143 on Migrations in Abusive Conditions of 1975 and propose their ratification to the Supreme Council of the Ukraine;
- to elaborate a set of measures, directed at comprehensive explanation to the Ukrainian citizens of their rights and freedoms during their residence and employment overseas, as well as legislation peculiarities of recipient countries, including the conditions of relevant interstate and multilateral agreements.

*To the Ministry of Foreign Affairs of the Ukraine:*

- to establish in the diplomatic representations in the countries-recipients of the Ukrainian migrant workers the position of an executive officer for labour migration

issues, responsible for monitoring of national labour market in countries of residence and promotion of the full realization of the rights of the Ukrainian migrant workers;

- to spread the practice of the Ukrainian consulate officers' participation in court sittings on accusations from the Ukrainians, especially in cases of evident proofs of prepossession and discrimination towards them;
- to facilitate, together with the Ministry of Labour and Social Policy of the Ukraine, the process of concluding bilateral agreements on employment and social protection, first of all with the countries, where the major part of the Ukrainian migrant workers are resident, in particular with Spain, Italy, and Greece. In parallel to prepare agreements on mutual acknowledgement of professional education in order to secure and increase the qualification of national specialists during their temporary residence abroad.

*To the Ministry of Labour and Social Policy of the Ukraine:*

- to intensify the control over observance of the Ukrainian legislation in force and fulfillment of licensing conditions by entrepreneurs, carrying out intermediary activities in the overseas employment of the Ukrainians;
- to perform continuous monitoring over the realization of bilateral and multilateral agreements in force in the sphere of employment in order to increase their effectiveness;
- to elaborate a mechanism of accounting of money transfers of the Ukrainian migrant workers within the structure of family incomes for the purpose of planning and securing their living wage;
- to broaden the power of state regional structures in preparation and conclusion of contracts with foreign economic agents on the employment of the Ukrainians;
- to intensify, together with the State Committee for Tourism, the control over tourist companies' activities, which carry out illegal intermediary activities in the overseas employment of the Ukrainians under the pretence of tourist services.

*To the National Bank of the Ukraine:*

- to elaborate legal documents for the organization of a simplified system of money transfers of the Ukrainians working abroad, ensuring acceptable bank commission rates for their money transfers from abroad.

*To the General Prosecutor Office of the Ukraine:*

- to facilitate the process of conclusion by the Ukraine of bilateral agreements on delivering of the condemned individuals for serving a sentence, first of all with the Russian Federation, the Republic of Belarus and the Republic of Moldova.

*To the Ministry of Internal Affairs of the Ukraine:*

- to expand international cooperation of the Ukrainian law machinery with relevant foreign structures in order to increase the efficiency of struggle against organized (including transnational) crime, pointed at the Ukrainian migrant workers. For this purpose to increase the number of representatives of the Ministry in the diplomatic offices abroad.

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## Summary

The proposal of the Ombudsman of the Supreme Council of the Ukraine to consider the possibility of the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, submitted to the Prime Minister of the Ukraine on February 25<sup>th</sup>, 2000, was not supported by the Cabinet of Ministers. The reason for rejection was the disinterestedness in the ratification of this document by those EU countries, which are the main recipients of migrant workers from the Ukraine. Moreover, according to the Government, the state's membership in the UN Convention of 1990 will entail difficulties with the protection of rights of migrant workers arriving in the Ukraine, principally from the developing countries, because of lack of financial resources for their social protection. However the Cabinet of Ministers of the Ukraine supported the proposal on the joining to the European Convention on the Legal Status of Migrant Workers of 1977, what to the highest extent possible corresponds to the present conditions and capacities of the Ukraine, and enables to increase the level of rights' protection of the Ukrainians, who are employed overseas, first of all in the member-countries of the Convention – France, Italy, Portugal, the Netherlands, Norway, Spain, Sweden and Turkey, and in perspective – in four more countries, which signed the Convention – Belgium, Germany, Greece, and Luxembourg. Under the instruction of the Cabinet of Ministers of the Ukraine the interested central executive authorities have already started the preparatory organizational work on the joining to the European Convention of 1977.

## **Labor migration in Uzbekistan and the protection of migrants' rights**

### *Particularity and dimensions of labor migration*

Labor migration in Uzbekistan takes place with a simultaneous flow-out of the population from the country. The peak of the flow-out has passed, though its dimension remains at a quite high level. External labor migration had developed into a large-scale and growing process. In the conditions of increasing labor migration the problem of social protection of migrant workers becomes more topical. In view of demographic and socioeconomic particularities, Uzbekistan is predominantly a country of labor emigration.

Uzbekistan is a densely populated and demographically tense country. More than a half of the population represents labor resources (53-54%), the number of which increases rapidly at 2.0-2.5% on average per year, and for the recent years at 2.7-2.9% per year. Labor market gets annually an increase due to a significant number of young people, who search for employment. For this reason export of labor force is an important mean of providing jobs for Uzbekistan's population. The development of labor migration is determined also by the difficulties of the transition to a market economy, the main are poverty, low level of remuneration of labor force and lack of jobs. Moreover, some people aim at working abroad neither only for material earnings, nor because they can not find a job at home. At the same time there are factors, which restrain the expansion of export of labor force in Uzbekistan. These are the absence of experience of entering international labor markets, a relatively low competitiveness of labor force, inaccessibility of western labor markets which are most attractive for migrants, low quotas for employment fixed by importing countries.

Organized labor migration in Uzbekistan for a long period of time was rather insignificant, within 1.0-1.5 thousand people per year<sup>74</sup>. The main partner countries for organized labor migration are South Korea (more than 90% of migrants, who are officially detached for work abroad), Malaysia, the United Arab Emirates and Saudi Arabia. At the same time the supply of labor force is rather high, while the demand is limited by low quotas of recipient countries. There are big difficulties with the conclusion of long-term agreements. In many cases long negotiations come to the end at the design stage. With respect to practical experience in abroad employment Uzbekistan remains far behind other states. There are not much foreign partners, negotiations on labor cooperation and export of labor force last for years with some of them, and eventually all efforts get wasted in vain.

The most share of labor migration from Uzbekistan is realized illegally, individually and through illegal channels. This situation is determined, first of all, by small dimensions of



organized labor migration; secondly, by a high demand of the population for work abroad; and, thirdly, by a strong monopoly of the state in the sphere of organized employment. Activities of private companies and agencies for employment abroad are prohibited in the country; therefore the proper infrastructure is very low developed. It creates the prerequisites for the appearing and spreading of illegal forms of labor migration. According to various estimates, there are annually from 100 to 500 thousand Uzbeks illegally employed abroad. Russia was and remains the main recipient of these flows, where around 70% of illegal migrant workers go. Illegal labor migration from Uzbekistan is directed, besides Russia, to border regions of neighboring Central Asian countries, where the Uzbeks are involved mainly in seasonal agricultural works.

Short-term border-close migration provides employment for a significant number of people, who in another case would be unemployed. Some of illegal migrant workers from Uzbekistan go to selected Western and Eastern European countries, Arab states of Persian Gulf, South Korea, Japan, USA, and Malaysia. Most of such migrants leave as tourists or upon private invitations.

As sociological surveys show, representatives of the title nationality, the Uzbeks, most actively participate in labor migration (60-70%, men and women in equal proportions). Russians comprise 9-10%, Kazakhs – 3-4%. Ethnic composition of migrant workers differs distinctly from the composition of migrants, who leave for permanent living to other countries; in the last Russians predominate – around 70%, Tatars – 10-11%, Uzbeks – 5-6%.

#### *Legal base of labor migration*

The right of Uzbeks to work abroad is proclaimed and fixed in the law of the Republic of Uzbekistan "On employment". Moreover, in the second edition of the law (May 1998) this right is extended. For example, the first version of the law (1992) allowed the Uzbeks only to carry out professional activities during temporary residence abroad (Article 12). The second edition of the law allows labor activities, independent job searching and employment outside Uzbekistan (Article 13).

Organization of work on the employment of the Uzbek nationals outside the country is carried out on the basis of the Decree of the Cabinet of Ministers (CM) №353 "On the regulation of import and export of labor force" (July 14<sup>th</sup>, 1993). This legal act has fixed the order of import and export of labor force and the licensing of labor activities. As a matter of fact, this document has laid the basis of and put the beginning to organized employment of the Uzbeks abroad on a contractual basis and with a relevant social protection of migrant workers.

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<sup>74</sup> S. Saidnazirkhonov, A. Sabdullayev "To work abroad". Taxes&Customs Bulletin, #7(395), February

On the basis of the Decree №353 in 1993 under the Ministry of Labor the Republican Agency for Migrant Workers was established, which was involved in exporting labor force to foreign countries on the basis of contracts and quotas, fixed by the General agreements between countries.

The CM Decree №408 "On professional activities of the nationals of the Republic of Uzbekistan abroad and of the foreign citizens in the Republic" (October 19<sup>th</sup>, 1995) has defined the status and regulations of professional activities of the Uzbeks in other countries, as well as of the attraction and use of foreign labor force in Uzbekistan.

In 2001 the Agency for Migrant Workers was transformed into the Agency for External Labor Migration with a wider range of powers (CM Decree №162 from April 6<sup>th</sup>, 2001). The Decree also prescribes regulations concerning the Agency, which include its goals, functions and rights. According to these regulations, the Agency for External Labor Migration is a state institution with the rights of a juridical person, dependent on the Ministry of Labor and Social Protection. Unlike it was before, the Agency has its own regional branches, and twice-increased staff is authorized to additionally attract specialists on a contractual basis and create subsidiaries. Thus, the Bureau for employment abroad of the citizens of Tashkent and the Tashkent region effectively functions presently, the analogous Bureau is being established for the population of the Republic of Karakalpakstan and the Khorezmsky region.

Hence, by the legalization of work abroad the Republic has expanded the framework of legal labor activities of its nationals, and made first steps towards integration into the world economy and international labor markets.

On the CIS' territory labor migration is regulated by the Agreement on cooperation from March 6<sup>th</sup>, 1998, and bilateral and multilateral agreements. Uzbekistan had such agreements in 1994-2000 with Kazakhstan and the Kyrgyz Republic ("Memorandum on Migration", June 1994).

As a result of the reorganization of the Ministry of Labor and the Agency for External Employment, the situation with export of labor force from Uzbekistan improved significantly. First of all, this improvement became apparent in paying more attention of the state to the problems of labor migration. The interaction of the Ministry of Labor and Social Protection with South Korea, the main importer of contractual labor force, as well as with the Embassy of South Korea in Uzbekistan, has broadened. As a result, quotas for export of labor force from Uzbekistan only for one year increased considerably. Only for the first two months of 2003 more than 1.5 thousand people were dispatched for work, while in the past the highest values comprised 1.0-1.7 thousand people per year. A system of candidates' selection has

changed also. Now the final selection is carried out in Korea on the contest basis according to lists, which are sent from Tashkent, which makes corruption in this sphere impossible. Moreover, there were quotas in 2003 for export of labor force to Malaysia, Saudi Arabia, though in significantly lower dimensions than to Korea. Possibilities for organized labor migration to the CIS countries increase too. Public authorities undertake active efforts in this direction. Particularly, a draft agreement with Kazakhstan on border-close migration is prepared, which was supported by both stakeholders; there is also a progress in the elaboration of a project proposal on cooperation in the sphere of labor migration with Russia.

#### *Socioeconomic consequences of labor migration*

There are no official estimates of economic efficiency of external labor migration in Uzbekistan for the reason that, firstly, it is difficult to register incomes of illegal migrant workers and, secondly, the population does not trust its country's bank system and prefers not to resort to its services for the remittance of earned money to home. That is why economic consequences of temporary labor migration can be estimated only upon indirect data, obtained through the survey.

Our survey, which was conducted on markets of the Russian city of Saratov<sup>75</sup>, has revealed that the main reason of leaving Uzbekistan for temporary work in Russia was the possibility to earn money there. It was mentioned as the main reason by 56.9% of respondents. Without noting concrete amounts of earned money a considerable part of migrants marked their satisfaction with earnings out of the country: among legal workers in Russia it was mentioned by each third, among the illegal by two of three. More than a half respondents (52.6%) noticed that as a result of their work in Russia the financial position of their families, left in Uzbekistan, improved, and by 11.4% of them improved considerably. All labor migrants have earned enough money for the maintenance of their families (there were 5 dependants per each migrant on average). Besides, migrants' earnings enabled to some of them to start their own business (6.5%), purchase habitation (9.1%), purchase valuable stuff (18.2%), pay for children's education (2.6%). Here is the estimation by migrant workers of the economic efficiency of their external employment: 99.5% said that they brought foreign currency home, 58.4% release the state from the necessity of social payments to their families, 26.9% vacated their jobs thus having decreased the level of unemployment, etc.

Sociologic surveys show that beyond the CIS earning of migrants are much higher than in Russia. For example, in the USA, migrant workers can earn more than 5000 USD for a guest term (6 months) even on the most ordinary jobs, not requiring any qualification. In South

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<sup>75</sup> The survey was conducted by the author within the terms of the project of the Independent Research Council on Migration in the CIS and Baltic States "Labor Migration in the CIS" in summer 2002.

Korea migrants are paid 600-800 USD and remit to their bank accounts in Uzbekistan 300 USD on average monthly<sup>76</sup>.

According to the estimates of Russian researchers, the Uzbeks working in Russia remit monthly to home the amount of 62 USD<sup>77</sup>. By the estimates based on international experience, non-official import of foreign currency to the country accounts for more than a quarter of remittances through official channels<sup>78</sup>. In Uzbekistan, taking into consideration the distrust of the population with regard to the bank system, illegal import of foreign currency may comprise more than a half of the official one. Besides, migrant workers purchase and bring in Uzbekistan expensive household equipment, medicines, clothes, footwear and other goods for their families. Calculations concerning Tajikistan, conducted for all of the mentioned items, showed that in 2002 the general economic effect from labor migration in this country was 200-230 mln. USD<sup>79</sup>. Calculations using the same method concerning Uzbekistan evaluate economic effect from labor migration as not less than 400 mln. USD. Entrepreneurs, who have work experience abroad, consider that external labor migration enabled them to acquire necessary experience (it mentioned each third) and starting capital (mentioned by each second), to increase qualification and broaden the business scope (mentioned by each fourth). Almost 40% consider that they have significantly increased living standards of their families.

Labor migration has economic importance also for recipient countries, which is confirmed by the results of surveys conducted in Russia. Labor migrants from Uzbekistan, who work on Russian markets, pay taxes to the Russian budget, pay market duties, provide Russians with cheap goods, which are in requisition by the population, contribute to price-cutting on local Russian markets, pay money to private housing sector, etc.

Temporary labor migration in Uzbekistan has a positive influence over the internal labor market. It becomes a factor of a decreasing demographic pressure; jobs get vacated for additional employment in such segments of the national labor market as civil engineering, agriculture, trade, small and middle business. Moreover, migrant workers, who invest their resources in business and entrepreneurship, themselves create a large number of jobs. Labor migration brings new relations in the establishment of a labor market, promotes the development of business and entrepreneur behavior. People, who worked abroad, differ from their countrymen. They are enriched with the international work experience, with the

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<sup>76</sup> Data of a poll of migrant workers from Uzbekistan, who worked outside the country. The poll was conducted by the author in an airplane (route New-York–Tashkent) and at a place of work in Tashkent.

<sup>77</sup> E. Tjurjukanova. Labor migration in the context of globalization. Report to the Conference "Migration and labor market in the countries of Central and Eastern Europe". Chisinau, May 2003.

<sup>78</sup> V. Arkhipov. International migration of labor force in Asia (1970-80s). Institute of Oriental Studies of the Russian Academy of Sciences, 1997, p.50. Russian Academy of Sciences.

<sup>79</sup> Labor migration from Tajikistan. IOM report jointly with the scientific and research center "Shark". Dushanbe, 2003, 94-95 pp.

experience of entering world labor markets, with the practice in searching the ways of survival in complex conditions of a transition period. The international labor exchange becomes a basis of merging cultures of different nations; as a matter of fact, migrants are the active bearers of internationalism in the everyday life.

At the same time labor migration has negative consequences. The shaping type of temporary labor migration in Uzbekistan and other countries of the CIS is typical for low-developed countries – exporters of labor force. It is also proved by the principally illegal type of migration, the prevalence of economic motivation over the professional one, the preparedness of labor migrants for hard and unhealthy works, for a lower level of remuneration and social protection, etc.

#### *Level of the protection of Uzbek migrant workers*

The creation of the Republican Agency for Migrant Workers and its further reorganization into the Agency for External Labor Migration represented actually the immediate reaction of the state to this new and very complex socioeconomic phenomenon. Thus the state has shown the realization of its responsibility for labor migration and social protection of its nationals, who work in other countries.

Migrants, who were detached for work through the Agency, are to a certain extent socially protected. For example, in accordance with the regulations concerning the Agency, it "provides, on the basis of the prescribed order, social protection of the nationals of the Republic of Uzbekistan, who are involved in labor activities abroad, including social insurance under a contract concluded between an employee and an employer". However even in case of organized dispatches to work the violations of the rights of migrant workers take place.

For the recent time the Republic has made concrete steps to improve the protection of its nationals working abroad. In recipient countries the Agency for External Labor Migration works with Partner-Agents. For example, in the Republic of Korea a staff of such a body includes three representatives of Uzbekistan, who protect the rights of migrant workers from their country. Moreover, in Korea an official representation of the Ministry of Labor and Social Protection of Uzbekistan was opened, which has official accreditation and a wide range of authority for the protection of interests of the Uzbeks, including the right to address the MIA and local police departments of Korea. It is the first official representation of Uzbekistan at the level of a ministry abroad.

Among the forms of the protection of migrant workers there are adaptation programmes, which provide wide information on legal aspects of the conclusion of labor contracts, on the particularities of residence in a country of employment, on labor legislation, the rights and responsibilities, and natural and climatic peculiarities of a recipient side. Such

programmes are applied to all candidates for departure for work abroad. Besides, in case of necessity, the Agency provides assistance in studying foreign language, however on a chargeable basis.

As a result of an increasing interaction between the sending and the recipient sides and undertaking new concrete measures to improve social protection of migrant workers, which took place in Uzbekistan for the recent years, the part of migrants, who broke contractually fixed terms of labor activities or other contractual provisions, has decreased significantly.

However all above-said on social protection regards only migrants sent in an organized way. Illegal migrants in their turn are deprived of social protection. According to sociologic polls conducted in Russia, Kazakhstan, USA and Canada, more than half respondents worked outside Uzbekistan on an illegal basis. 68.2% of labor migrants from the Tashkent region, who worked in Russia, have complained about the violation of their rights<sup>80</sup>, and only insignificant part of migrants (6.2%) addressed to the appropriate legal bodies<sup>81</sup>. Migrant workers have to accept even the most non-prestigious and low-paid jobs, because at home a rate of remuneration is noticeably lower. Often they are employed abroad regardless their professions and specialities, even those who left legally and through official channels. According to surveys, these migrants comprise 50-60%. Educated women principally work abroad as maids and provide household services; men work as drivers, bars' and restaurants' personnel, and in civil engineering, etc. In Russia men work in civil engineering and agriculture; a considerable part of both men and women are involved in trading activities on markets.

There are numerous violations of the rights of migrant workers in the sphere of labor conditions and labor protection. People, who are mostly deprived of the rights, are those who illegally left the country and got deceived. There is people's trafficking in Uzbekistan, though such a type of criminal business was never peculiar to this country. Mainly tourist agencies are involved in such activities. Entrepreneurs provide their services on a commercial basis without any guarantees of social protection of migrants abroad.

*Attitude towards the 1990 International UN Convention on the Protection of the Rights  
of All Migrant Workers and Members of Their Families*

The UN Convention is based on general principles and norms concerning human rights and accordant to such important international documents as the Universal Declaration of Human Rights, international covenants on human rights, the International Declaration on the Elimination of Discrimination against Women, the Declaration of Children's Rights. This

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<sup>80</sup> Migration of labor force of the Republic of Uzbekistan: problems and perspectives. Edited by V.V. Chupik. Tashkent, 2003, p.122.

<sup>81</sup> NGO research "Development of human resources", 2003.

Convention provides protection to migrant workers on the international level. Member-states of the Convention commit themselves to provide the rights of all migrant workers and members of their families, who are resident on the territories or are under the jurisdiction of these states without distinction of sex, age, race, religion, political opinion, economic position, etc. (Article 7). Each article of the Convention defines and concretizes migrant workers' rights to the protection and assistance from both a state of origin and a state of residence, which are based on international documents on human rights. The most important are the Convention's provisions, which protect the rights of migrant workers concerning hire, remuneration, labor conditions and social protection in the employment sphere (Articles 25, 26, 27, 52, 54, etc.). Protected are the rights of migrant workers to transfer earnings and savings, as well as their belongings, in accordance with the legislation of a country of residence (Articles 32, 47, etc.). Of great importance are those Articles of the Convention, which provide the right to any medical care, also urgent (Article 28), the right of access to education (Article 30), the right to participate in public affairs (Article 41).

The necessity of legal protection is determined by the status of a migrant worker, which is often uncertain and vulnerable. In reality migrant workers quite often face economic, social and cultural discomfort, certain discrimination in the employment sphere (uneasy accessibility of professional training or advance training, non-prestigious jobs, application of unequal standards concerning remuneration rates, preferences, etc., in comparison with the nationals of a country of residence).

The UN Convention provides a wide range of rights to migrant workers both in the labor and humanitarian spheres. It ensures the right to work without any sex, nationality or country-of-origin-based distinction, to the necessary social protection, to the possibility of free arrival in any country for labor activities and return to a home country in accordance with an established procedure. The above-said testifies the importance of the country's joining the 1990 UN Convention. First of all it is important to the participants of the analyzed processes.

Uzbekistan, as other CIS countries, has not yet joined the UN Convention. In order to study the reasons, preventing from joining it, we have conducted a poll among experts, who deal with this problem. Among them are representatives of public administration (6 persons), organizers of labor dispatches of people abroad (5 persons) and migrant workers themselves (5 persons). The poll has revealed the following problems.

First of all, a very low level of awareness about the Convention was revealed. Even among *decision-makers*. Half of experts from this group were not aware about the 1990 UN Convention. Those who knew about it were absolutely unaware about its contents.

As we requested, the following reasons, which prevent Uzbekistan from joining the Convention, were named after examining its main provisions:

1) Joining international conventions applies certain commitments to the country, which are difficult to be implemented in the conditions of a transition economy. Moreover in case of joining, it will be necessary to undertake concrete measures inside the country, including legal ones.

2) Uzbekistan has its own national legislation concerning labor migration. In case of joining the UN Convention this legislation will need to be adjusted with it, which is a significant work.

3) Uzbekistan as a sending country is not interested in joining this Convention, because labor migration is basically illegal. Joining the Convention will commit the Republic to protect illegal migrants. It will promote the growth of illegal labor migration, which will prevent from the creation of a positive image of the state.

4) Joining the Convention is connected with a big financial burden, which is difficult for Uzbekistan.

5) There are fears of possible lingering lawsuits on concrete cases of violation of the rights of migrant workers.

*Organizers of external labor migration (staff-members of the Agency for External Labor Migration under the Ministry of Labor and Social Protection), on the contrary, consider that joining the 1990 UN Convention will be favorable both for the country's image and for the increase of social protection of migrant workers. At the same time they are afraid of the necessity to pay considerable fees after joining. Besides, according to their opinion, the internal legislation should be strengthened before joining international conventions.*

Some of respondents have expressed an opinion that joining the UN Convention deserves attention just now, when a system of legal hire starts developing broadly. It could be in the interests of both migrants and the state.

None of interviewed *migrant workers*, even those who worked more than once outside their country, knew about the existence of the Convention. When discussing this question with them, pretensions were expressed mainly towards the state.

*One of migrants says: "In Uzbekistan it is considered that labor trips abroad are an exceptionally individual matter, therefore there is no need to protect such migrants. Actually people have to search for job outside for they do not see a possibility to earn money at home. Constitutionally the protection of nationals is a responsibility of the state, we pay taxes for this purpose. But I do not feel myself socially protected in my country, even more so outside it".*

Migrants understand that joining international conventions costs money, which their country can not afford. *"Moreover, the issues of social protection are mentioned in contracts. On the basis of my work experience in South Korea I understand that in case of any accident at work a person receives protection in a form of money compensations, and all everyday-life*



*incidents are investigated strictly according to the law of this country without any nation or related distinction".*

An opinion was also expressed that Uzbekistan does not join the Convention because of a fear of a possible inflow into the country of a foreign labor force, which will expect the protection of the rights too. Such complications are not desirable.

The expressed specter of opinions shows the ambiguous attitude towards the question of joining such an international document, which is important to migrant workers, as the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the same time there are no principal objections against joining the Convention from any group of respondents. There is a widespread opinion about the advisability of joining both among officials and participants of migration processes.

The UN Convention in the context of strengthening the organizational and legal base of labor migration

It is worth mentioning that the UN Convention was adopted just on the eve of the collapse of the Soviet system, when, on the one hand, a very complex process of emerging new independent states took place, which entailed the elaboration of new principles, models, ways of development, and national legislation, and, on the other hand, a mass inflow of migrant workers from the post-Soviet countries was expected. Maybe for this reason Uzbekistan, as other post-Soviet countries, displays so far a certain caution towards this document. Nevertheless, Uzbekistan as a sovereign state, which actively integrates into the world community, fully shares the main principles and ideas of the Convention. In December 1991 Uzbekistan became a full member of the UN, thus admitting all basic principles of this international organization: equality and dignity of all people, development of international cooperation, respect for human rights and fundamental freedoms, condemnation of all forms of discrimination, etc. Entering the UN Uzbekistan acknowledged the Universal Declaration of Human Rights, signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and joined the UN Convention on the Rights of the Child. Besides, Uzbekistan joined the UN Convention on the Elimination of All Forms of Discrimination against Women (May 6<sup>th</sup>, 1995), adopted in New-York on December 18<sup>th</sup>, 1979, widely known as the "Female" Convention, and other international documents.

Uzbekistan did not take part in the Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the CIS and relevant neighboring states in Geneva (1996), however at sub-regional conferences in 1995-1996 it joined the collective efforts of the world community,

undertaken "in response to an unprecedented explosion in the contemporary world... after the unexpected collapse of the Social political and social regime"<sup>82</sup>. Thus Uzbekistan has contributed to the elaboration of such important documents as "Priorities for the CIS countries" and "Programme of Action", adopted by the Geneva Conference on May 30-31, 1996.

During the sub-regional meeting of the Geneva Conference (1995) for Central Asia in Ashkhabad, the Republic's delegation informed the participants about the intention to solve migration problems in a broad context of human rights. During the next sub-regional meeting in Ashkhabad (January 1996) Uzbekistan and other Central Asian states agreed to the necessity of bringing their migration-related legislation in correspondence with provisions of international documents.

Thus Uzbekistan actively participates in the world process, through a number of international documents has approved the essence, goals, tasks and principles of the UN, including those contained in the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and undertakes certain steps towards their realization. Particularly, the rights of migrant workers, described in the Convention, are to a certain extent taken into account in the elaboration of national legal acts.

The most important lesson learned from the country's experience gained in the sphere of organization and carrying out of labor migration, is the understanding of the necessity of further improvement of the national legislation. The situation on the world labor markets has changed significantly for the recent years, competition increased among countries, which export their labor force. It makes new requirements to a system of legal and organizational management of labor migration.

Migration legislation in Uzbekistan is obviously insufficient and is not adequate to the present migration processes. So far the law "On migration" is not adopted, several variants of which were elaborated several years ago. There is even no law "On labor migration". It could have been elaborated either independently or as a part of the law "On migration". The private intermediary activities on abroad employment are not legally permitted in Uzbekistan. Factually, abroad employment exists but is not controlled by the state. It is advisable to legalize these activities through the legitimization of its licensing, as well as the licensees' responsibility before the state, and state control over the organization of employment in other countries. Only such an organizational and legal base can promote the decrease in illegal labor migration level, provide reliable social protection of nationals, who work abroad, and avoid the criminalizing of this sphere.

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<sup>82</sup> Foreword to the publication of materials of sub-regional meetings. The European series, volume 2, #2, May 1996.

The necessity to strengthen the organizational potential of the system of labor migration, especially the recently created institution – the Agency for External Labor Migration, is also topical. However it is now time to consider the issues of labor migration in a wider context, from the point of the country's external economic activities and the increase of efficiency of the national labor market. Maybe, following the example of other countries, the following bodies should be created: a Department of external employment, and a relevant organizational and managing mechanism for the entire range of organizational and legal activities in this sphere. The most important directions of such activities can be the following: organization and strengthening of agencies, which deal with migration; elaboration of a mechanism of interdepartmental cooperation; creation of a unified multileveled information system; organization of immigration control system at main terminals and checkpoints of the country; ensuring a scientific and methodic basis for professional training of managers of migration processes, etc.

The market of migrants' employment services must represent a branch structure with representatives from the following institutions: state administration bodies; intermediary non-commercial organizations; intermediary commercial organizations, which provide chargeable services in abroad employment; emigrants' individual activities in searching for job and employment abroad.

The realization of the above-mentioned organizational and legal measures will promote the creation of a necessary and sufficient infrastructure to ensure the civilized abroad employment, which will enable to radically change the situation with export of labor force from Uzbekistan and provide necessary social protection of migrant workers.

It should be taken into account that the problems of external employment lie now not only in legal protection, but also in overcoming a severe competition on the international labor markets. For these purposes the state should have a concrete, long-term and large-scale programme of developing international cooperation and supporting its nationals in abroad employment.

In this context the question of joining the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families becomes more topical, because it creates a real basis for international interaction of states in the protection of human rights in the labor sphere.

One of the most important lessons learned by the country in the process of organization of labor migration is the necessity of elaboration and creation of an efficient mechanism of prevention of illegal migration, which is fraught with bringing organized crime to the country. Solving this problem requires not only state regulation but also the assistance of international organizations, which have their representations in Uzbekistan (UNHCR, UN, OSCE). Unfortunately there is no representation of the International Organization for Migration

(IOM) in Uzbekistan, though certain steps in this direction are undertaken. Taking into account the emergence of such negative social phenomena as women and children trafficking, opening of IOM representation is now very important for Uzbekistan. There are numerous cases when women, who departed for work abroad, get deceived and their rights are roughly violated. In such situations the MFA and the Republican legal bodies get involved, in order to return victims of trafficking home. In other countries IOM does a significant work in this direction, providing real help in solving concrete matters concerning the return of victims of trafficking. In Uzbekistan such help is provided by the IOM representation in Kazakhstan through non-governmental non-commercial organizations.

### *Conclusion*

In the conditions of globalization of worldwide processes joining the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is very important for Uzbekistan. In comparison with other international documents, in particular the analogous ILO conventions (№97 on Migration for Employment and №143 on Migrations in Abusive Conditions), the UN Convention significantly broadens the migration-related legislation, emphasizes aspects of human rights, prevention of exploitation of people and illegal labor migration. The mentioned documents, supplementing each other, can become a sufficient legal base for the elaboration of a national migration policy and international cooperation in the labor sphere. There are no necessary prerequisites for joining the UN Convention in Uzbekistan, because the shaping of the national migration-related legislation is not yet finished. However it is favorable for the harmonization of the national legislation with the Convention's principles at the stage of its shaping. Assistance of international organizations here is indispensable.