

EUROPEAN STANDARDS FOR THE PROTECTION OF SOCIAL RIGHTS OF LABOR MIGRANTS

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ABSTRACT

Description: The purpose of the article is to study European standards for the protection of social rights of migrant workers. The subject of the article is international and European standards for the protection of social rights of migrant workers. Methodology: Research methods are chosen based on the object, subject, and purpose of the study. The study used general scientific and special methods of legal science. The methodological bases for the study are the following scientific methods: formal-dogmatic, systemic structural, historical-comparative and logical. The results of the study: The results of the study made it possible to define the term “international standards” and to classify these standards into: 1) universal and regional; 2) general and special. Practical implications: As a result of the research the feasibility of consolidation of bilateral agreements into a separate group of acts containing European standards of rights of the studied category of workers is proven. Value/originality: On the basis of the research it is concluded that, as a whole, the national legislation of Ukraine meets European standards; however, there are also some shortcomings, the ways of elimination of which are also suggested by the author.

Keywords: International Standards, European Standards, Protection of Social Rights, Migrant Workers, Migration Processes.

INTRODUCTION

An important role and authority of international instruments in the process of regulating relations for protection of social rights is due to the positive results of their implementation in the legislation by the most developed countries of the world, their rich history, the fact that these acts express the unchanging universal values.

Since Ukraine has gained its independence, the State has begun its gradual entry into the international community, actively cooperating with individual countries of the world. Membership in various international organizations has resulted in the ratification of a large array of international legal instruments of different legal nature. This raised the question of conformity of national legislation, which made it possible to determine whether the realization of a certain human right or complex of rights of a certain social group within the State is fully ensured.

Moreover, imperfect regulation of labor migration always means a high risk of violation or restriction of the rights and interests of both the citizens of the host country and the migrant workers and the persons displaced with them. This cannot be allowed.

MATERIALS AND METHODS

Research methods are chosen based on the object, subject, and purpose of the study. The study used general scientific and special methods of legal science. The methodological bases for the study are the following scientific methods: formal-dogmatic, systemic structural, historical-comparative and logical. The European standards for the protection of social rights of migrant workers have been determined using these methods.

Some aspects of the legal status of migrant workers have been of scientific interest for many scholars, such as: Barehamian, Kravchuk, Kuntsevych, Pavliv-Samoil, Triukhan, Chulaievaska and others. However, European standards for the protection of social rights of the studied category of persons have not yet been thoroughly studied, which, in our opinion, is a significant gap for science, and especially in the current realities, in which the course on European integration, transformation of Ukraine into strong and active participant at the international level are perhaps the most promising areas of State development.

RESULTS AND DISCUSSION

Unstable political situation, heavy transformations in the economy, which cause underdevelopment and deformation of the country's labor market, long-term mass unemployment, and the incompatibility of the incomes of the population with the existing demands of the real world nowadays, in contrast to active interstate integration and globalization processes play a fundamental role in the development of such phenomenon as labor migration of the citizens-representatives of almost all parts of Ukraine and completely different social groups (Barehamian, 2015).

The manifestations of globalization, as Kravchuk (2016) correctly points out, a free "*transfusion*" of capital, goods and labor, which is the transfer of labor resources between different countries, takes the formalized form in such kind of international economic relations as labor migration.

It is almost impossible to protect the rights of people, who work abroad, in the situations, in which migration is difficult to control, especially when national means of protecting are at the initial stages. Almost the only way to protect the rights of migrant workers in this case is legal norms (Barehamian, 2015). In view of this, it is of the utmost importance and value to analyze, first of all, the international standards for the protection of the rights of representatives of this social group, in particular the European ones.

We should begin with the fact that the definition of "*international standards*" provokes a number of discussions.

Thus, according to Rudneva (2011), international human rights standards constitute a system of fundamental human rights and freedoms and fundamental universal principles, which are uniform for all the States, which signed the relevant international human rights instrument (if it is the source of their consolidation), and have the same degree of obligation for all these States.

Zapara (2011) gives the definition of the related concept-the international social standard, offering to understand under this concept a structured system of universal international principles

and norms developed as a result of mutual agreements between the States regarding the problems in the sphere of economic, political, social, cultural and legal environment, whose establishment would help to achieve social development.

Shumilo (2012) defines the international social standard enshrined in international legal acts and obligatory for the signatories, as a social minimum, which makes it possible for people with disabilities to exercise fully their rights and freedoms and at the same level as workable ones.

Under international standards we propose to understand the rules in the area of human rights and freedoms, in particular social ones, which are adopted internationally. European standards, in their turn, are the rules adopted by international organizations or by agreement of individual countries within a given continent.

Article 9 of the Constitution of Ukraine stipulates that the existing international treaties the Verkhovna Rada of Ukraine agreed to be bound by are the piece of the national legislation of Ukraine. According to the Law of Ukraine “*On International Treaties of Ukraine*” of June 29, 2004, no. 1906-IV, Ukraine recognizes the primacy of international law, which means the primacy of the rules of the international treaty of Ukraine, which entered into force in accordance with the procedure established by law, over national legislation in the situations, when the contract establishes the rules other than those provided for in the relevant act of national legislation of Ukraine.

Article 3 of the Law of Ukraine “*On External Labor Migration*” of November 05, 2015 no. 761-VIII states that the legislation on external labor migration consists, inter alia, of the international treaties of Ukraine, recognized by the Verkhovna Rada as binding. If such an international treaty establishes a higher level of guarantees than those provided by the Law, the rules of the international treaty apply.

There are many types of international legal acts: conventions, declarations, resolutions, agreements, recommendations, program statements, etc., each with its own peculiarities (Ruhliak, 2008). At the present stage of development, their influence on the formation of domestic legislation is quite tangible. It is implemented in several ways: ratification of international instruments, and then—direct application of the rules of law; application of texts of international acts in the norms of laws; application of norms of ratified or not ratified acts by means of domestic legislation (Bolotina, 2005).

The most important in view of the subject of our study is the division of all international legal acts into universal ones (their provisions extend to countries, which are members of certain international organizations) and regional ones (their provisions extend to the territory of a certain continent, region, etc.) (Bolotina, 2005). There are few places in the literature, where bilateral (particular) treaties are distinguished, that is those which are binding for only two parties—signatories of the act, which, in our opinion, is not entirely correct.

Based on this differentiation, it is possible to distinguish two groups of standards for the protection of social rights of migrant workers: (1) the international legal standards envisaged by UN and its organizations (e.g. ILO); (2) regional (European) standards developed by the CoE and the EU.

The dissemination of migration processes in the world has led to the need to regulate the social protection of migrants, whose social and financial status often cause the need for State support. An unemployment rate among economically active population (people aged from 15 to 70) is about 7.4-7.5% in Ukraine in recent years according to the International Labor

Organization methodology (Law of Ukraine, 2013). The data means that about 1.65-1.7 million people are potential migrant workers. Their real number annually averages 1.2 million people (Kravchuk, 2016), which, by the way, means 35th out of 39th in the rating of migration potential of European countries for Ukraine. The statistics shows that the most often Ukrainians choose European countries (Poland, Czech Republic, Russian Federation, Italy, Portugal, Montenegro, Croatia and others) (International Organization for Migration in Ukraine, 2017), which is obviously explained by the geographical proximity, similarity in mentality, etc. Therefore, taking into account this fact, the second block of international legal acts in the area of human rights protection, which is of particular importance are regional acts, namely—European ones.

Ukraine has ratified about 30 different acts within the Council of Europe, whose member it has been since 1995 (Baimuratov, 2009), and some of them are of fundamental legal nature—the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, which significantly brought Ukraine's national legislation closer to the European one. We propose to define this group of acts as general.

One of the most significant international acts adopted within the framework of this international organization is the Convention for the Protection of Human Rights and Fundamental Freedoms of November 04, 1950, which enshrines the basic, fundamental human rights—to labor, prohibition of slavery or forced labor, etc.

On September 14, 2006, the European Social Charter was ratified by the Verkhovna Rada of Ukraine (Law of Ukraine, 2006). Having acceded to 27 articles and 74 points of the act, Ukraine recognized among them some articles of the document on regulation of labor of the studied category of workers.

It should be noted that, despite rather progressive step towards ratification of the Charter, some important provisions have been ignored, which, by the way, are obligatory for ratification (Medvid, 2015); among them, above all, some of a general nature—right to social security (Article 12); the right to social and medical assistance (Article 13). Besides, according to the Law of Ukraine “*On Ratification of the European Social Charter*” (Law of Ukraine, 2006) of September 14, 2006, Ukraine is obliged to provide everyone with the right to housing enshrined in Article 31 of the Charter, by creating access to appropriate housing; to prevent homelessness and gradually eliminate it (Law of Ukraine, 2007).

Particular attention deserves Article 30 (the right to protection from poverty and social exclusion) of the Charter, which indirectly but nevertheless may concern migrant workers. Based on the content of these articles, States undertake to create conditions for access to housing, education, vocational training, work, medical and social assistance, etc. (Pishchulina, 2009).

Article 4, Paragraph 1 of the Charter, to which Ukraine has not acceded, guarantees the right to a fair remuneration—that is, to ensure a sufficient standard of living for a person and his (her) family. The issue of estimation of poverty of Ukrainian population is still not resolved; the criterion for estimation of poverty does not correspond to reality, resulting in deterioration of the standard of living of the population as a whole.

The Charter contains a separate article on migrant workers. Thus, Article 19 of this Act enshrines the right of migrant workers and their families to protection and assistance. It has not yet been ratified by the Verkhovna Rada of Ukraine as well.

The European Social Charter refers to another international legal act—the European Code of Social Security (Lytvyn, 2005).

A separate group is made up of specific standards in the area of protection of migrants' social rights—that is, acts that are specifically targeted at the representatives of this category of persons.

For example, one of the main sources of regulation of labor relations in the territory of the Community is the Regulation (EEC) no. 1612/68 of the Council of 15 October (Regulation, 1968) on freedom of movement for workers within the Community. According to the provisions of this Regulation any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote; he may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking. The provisions of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States. He shall also enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

This Regulation also establishes exception to the general rule, i.e. restrictions on labor migration.

The European Convention on the Legal Status of Migrant Workers of November 24, 1977 ETS no. 93 was ratified by Ukraine in 2007, but with adjustments for:

“Ukraine recognizes the right of migrant workers to establish organizations for protection of their economic and social interests, except political parties and trade unions” (On the ratification of the European Convention on the Legal Status of Migrant Workers).

The documents required for a migrant worker for emigration and immigration shall be issued as soon as possible, free of charge or at a rate not exceeding their administrative costs.

As Triukhan (2015) correctly notes, this Convention regulates the fundamental aspects of the legal status of migrant workers. In addition to the definition of the term “*migrant worker*”, it also contains a list of persons to whom the provisions of this Convention do not apply, that is, it focuses on the number of persons who cannot belong to the category of migrant workers. To date, there is no single normative document at the international level that would regulate all the issues of the work of foreigners.

Ukraine has also signed a number of other international instruments governing migration. These include, for example, European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe.

Migration for work is a leading resource for regional integration and development in the European Union. It is from this standpoint that the EU takes into consideration the interests of all Member States, because it is clear that the indispensable effect of ignoring them will be a violation of human rights, tensions in society, loss of conditions for economic growth and welfare (Pavliv-Samoil, 2014).

In 2003, a directive was adopted concerning the legal status of third country nationals who have resided continuously for a long time (at least five years) in the territory of the Member States. Its effect extends to third country nationals who have a stable and regular source of income, health insurance and do not pose a threat to the security or public order of the country of residence (Malynovska, 2014). This document gives the persons who obtained a residence permit in one of the EU countries, are provided with the right to move and reside in the territory of other EU countries, they are guaranteed the basic economic and social rights at the citizen level, namely: to employment and business activity, to education and vocational training, to social protection and basic benefits (Lisovska, 2017).

Given the future course of Ukraine's development, the regulation of labor migration in the EU should be an example for harmonization of our legal framework.

As Chulaievska (2013) correctly states, European integration course of development of any State, first of all, envisages the perception of European norms and standards and the development of the institutional capacity of the State, the use of European principles of public administration, the adaptation of national legislation to EU law, as a result of which the country must carry out systemic reforms.

This is also emphasized by the Ukrainian authorities. Thus, the Strategy for State Migration Policy of Ukraine for the Period up to 2025, approved by the Decree of the Cabinet of Ministers of Ukraine of July 12, 2017 no. 482-p, states that the political course of the State is based on the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand; on the intention of Ukraine to become a member of the European Union, which, among other things, implies a gradual approximation of policies and legislation, including rules on migration, to EU standards (Strategy for State Migration Policy of Ukraine for the Period up to 2025).

An independent group of acts – bilateral treaties between European countries on labor migration, which also contain standards for the protection of this category of people, cannot be overlooked. Typically, such documents enshrine employment, labor and social rights arrangements for citizens of signatories, legal assistance in criminal and civil matters, and others. Ukraine has concluded similar agreements with a wide range of countries: Armenia, Belarus, Lithuania, Russia, the Czech Republic, Poland, Moldova and others. First of all, they relate to visas, registration of documents, taxation, social insurance, benefits, compensations and other areas of social protection of migrants, medical aid, procedures for resolving disputes arising from labor relations, etc. (Barehamian, 2015).

CONCLUSION

The legal framework of Ukraine for international labor is only emerging, because in our recent Soviet past and during the first years of independence, such social relations were not widespread, and this area is quite new. Therefore, it is logical that it is too early to say that the regulation of this area is perfect one. The gaps, inaccuracy, duplication, contradictions are inherent to the legislation of Ukraine, although, in general, it meets European standards.

The most problematic is the existence of unresolved conflicts, namely, what rules should be applied to regulate certain social relations in the area of labor of migrants: the law of the country of employment or the country of origin?

Besides, the works of representatives of constitutional law, who highlight the features of guarantees for the protection of social rights of migrant workers, are quite interesting (Kovler et al., 1996). Particularly valuable, in the context of the issues under consideration, is that such guarantees can be applied both to all migrants (obviously, these are guarantees for the protection of natural human rights), and only to those who work legally (on the basis of an employment contract). Therefore, it becomes clear that there is a need to guarantee the rights of a large group of people who work illegally. This is possible through the creation of legal and organizational conditions-the formation of the necessary legal framework and the proper system of State and international organizations aimed at protection of the rights of migrants. It would be particularly effective to do this at a pan-European level.

The lack of bilateral or multilateral treaties of Ukraine with the countries with a large number of our emigrant compatriots and which are potential consumers of our workforce is the obstacle to the effective protection of the rights of migrant workers from Ukraine in addition to not ratifying the mentioned important articles of the European Social Charter. These countries are: Germany, Italy, Great Britain, Montenegro, Cyprus, Denmark, Finland, Greece (Kuntsevych, 2018). The conclusion of such contracts would fill the gaps in legal regulation, which would have a positive impact on the social status of migrant workers abroad: it would provide political and social guarantees for emigrant workers: legal and economic freedom for citizens; economic expediency of exchange of labor resources; registration of the greatest possible number of migrants, etc. Besides, an increase in migration quotas, which would be enshrined in such treaties, would improve the situation with the number of illegal labor migrants.

It should not be neglected that the most powerful catalyst for migration is the significant difference in living standards and wages of different countries (first of all, neighbor ones), and therefore, it is obvious that improving the economy of the country and, consequently, increasing the income of the population would become one of the factors that would have a positive impact on ensuring a decent standard of living. Ukraine in these relations could be transformed from a donor country to a country that the national population would not leave because of the lack of working proposal, and, moreover, in which foreigners would like to find employment.

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