

Implementing International Labor Migration Policies into the Russian Legal System

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Abstract

The study objectives are as follows: to determine the nature and features of implementing international labor standards into national legal systems; to characterize conditions and factors to this implementation; to develop proposals aimed at ensuring the effective implementation of international labor standards.

Authors have established the conditions and factors determining the further efforts of the Russian state aimed at the implementation of international labor standards into its national legal system.

This study has concluded that the Russian Federation should focus its efforts on the adjustment of labor migration within the Eurasian Economic Union, which will create the necessary and currently absent conditions for validating the International Labor Organization's conventions by member states of this association.

Keywords

Right to Labor, Labor Market, Labor Migration, Illegal Migrants, International Labor Organization.

Introduction

The role and importance of the International Labor Organization as a specific UN agency protecting human rights are expressed by the development and adoption of international labor standards reflected in the International Labor Organization's conventions by the international community based on tripartism, i.e. the equal cooperation of governments, employers and employees. The global potential of international legal standards adopted by the International Labor Organization is determined by states that have validated these conventions.

The USSR and its successor, the Russian Federation, validated seventy International Labor Organization's conventions, including eight basic conventions. The implementation of international legal standards has intensified but more than one hundred International Labor Organization's conventions are still non-validated, including those aimed at protecting the rights of migrant workers and their families.

Some circumstances impede the implementation of the most important international laws aimed at protecting the labor rights of individuals and the rights of migrant workers into the national legal system. Thus, it is necessary to identify the issues associated with the validation of the International Labor Organization's conventions and determine the conditions and factors affecting the direction and implementation of international labor standards.

Many scholars address the issues of implementing international laws into national legal systems. In the context of this article, we should pay attention to the scientific works of B.I. Osminin, A.M. Barnashov, A.N. Morozov, D.O. Teplovaya, V.P. Kirilenko and E.V. Mandryki who considered the specific implementation of international laws in post-Soviet countries, including Russia.

Since the implementation of international laws is determined by modern features of international cooperation and globalization, as well as by the national interests of Russia, we need to analyze studies on the correlation of international and national laws in the Russian legal system. In particular, it includes scientific works of I.Yu. Nikodimov, E.O. Tchinaryan, etc.

With due regard to the research topic, we studied and reconsidered the views of jurists on the implementation of international labor standards, including those of N.L. Lyutov and I.V. Shesteryakova. We also considered the state of modern migration policy in Russia examined by O.V. Kadyshcheva and G.V. Shoniya. We paid special attention to the

opinions of K.L. Tomashevskii, S.A. Egorova and A.S. Mrikh on improving the labor legislation of the Eurasian Economic Union in comparison with the approaches implemented by the European Union.

Indeed, this analysis was based on the United Nations acts and International Labor Organization's conventions ensuring the rights and freedoms of people and citizens in the above-mentioned field, the Russian laws and regulations on international cooperation and cooperation in the sphere of protecting the rights of migrant workers, as well as reports and other official information on the issue under study provided by various international organizations, including statistical data.

Methods

The study is based on the dialectical method that revealed the interconnections of various aspects of labor migration. It is supplemented by the factor analysis of the conditions in which the Russian legal system implements international legal and, in particular, international labor standards.

In addition, we used the axiological, systemic, formal-legal, comparative-legal and other methods of scientific research to determine the values implemented by the Russian Federation in international cooperation to protect the rights of migrant workers.

The use of statistical methods revealed the current trends in the field of labor migration.

Results

The study allows claiming that universal norms and principles of international law have been successfully implemented into the Russian legal system. There they have been transformed into the Russian laws, primarily the constitutional legislation.

However, the Russian Federation has not validated several International Labor Organization's conventions in the field of protecting the labor rights of migrants since its national legal system is not ready to implement international labor standards in this area.

While recognizing the need to continue the validation of international labor standards by the Russian Federation, we conclude that this implementation should consider some factors and conditions that characterize both modern globalization processes and the interests of the Russian Federation as an independent subject of international relations.

Discussion

Along with other generally recognized principles and norms of international law, the norms regulating human rights to work and freedom of movement enshrined in the Universal Declaration of Human Rights (Generalnaya Assambleya OON, 1948), the multilateral fundamental act of international law, are reflected in the national legislation of the Russian Federation, i.e. regulatory legal acts having various legal force and relating to various areas of legal regulation. The fundamental nature of these human rights determines their consolidation, primarily in the sources of national constitutional law, while their content is reflected by acts relating to different branches of labor and migration legislation.

The Russian legislation considers human rights to work and freedom of movement in different ways. In other words, their implementation (realization, execution) in the national legal system is conducted in various forms, mainly through transformations and references.

The implementation of international treaties and agreements is the most important means of integrating states into the world community, which fully applies to the Russian Federation. Many scholars highlight the significance of expanding the scope of international legal norms in the national legal system. For example, A.M. Barnashov (2013) notes the growing need for Russia's participation in global integration processes. D.O. Teplova (2018) emphasizes the importance of implementing universally recognized norms and principles of international law for developing democratic institutions in Russia and ensuring the effective protection of human rights.

Based on the provisions of the UN General Assembly Resolution 2013 "The Rule of Law at the National and International Levels" (Generalnaya Assambleya OON, 2013), B.I. Osminin confirms the thesis about the importance of implementing international law for state integration into the world community. The scholar believes that the interaction of international and national laws and the harmonious development of international and national legal systems are prerequisites for ensuring the rule of law at the national and international levels (Osminin, 2014).

The Russian legal system as the legal system of a state that positions itself as part of the world community (1993) is based on universally recognized principles and norms of international law enshrined in its crucial acts.

The Universal Declaration of Human Rights plays a special role among other interstate treaties and agreements since it enshrines the rights and freedoms of people and citizens as the basic values of all humankind and serves as the foundation for building national legal systems in almost all countries of the world. Its norm-principles and norm-declarations are somehow expressed in the constitutions (fundamental laws) of states and are specified in the current legislation. According to A.P. Morozov's (2018) apt words, the "letter" and "spirit" of international law cover the whole constitutional legislation in Russia.

The provisions of the Universal Declaration of Human Rights are implemented into the Constitution of the Russian Federation as a specific form of adopting international law into national law, which jurists classify as a transformation of international law. Such transformations can be exemplified by several articles of the Constitution of the Russian Federation. Thus, Article 2 of the Constitution of the Russian Federation recognizes a person, their rights and freedoms as the supreme value and secures the obligation of the State to observe and protect them, which reflects the basic idea of the Universal Declaration of Human Rights and its objective in international law. Chapter 2 "Rights and Freedoms of Man and Citizen" of the Constitution of the Russian Federation adopts the provisions of the Universal Declaration of Human Rights enshrining the whole range of civil (personal), political, social, economic, cultural and other human rights and freedoms. We cannot but agree with I.O. Loshkarev *et al.* (2019) that the integration of the Russian Federation into the international community through the implementation of internationally recognized norms and principles in the field of recognizing and protecting the fundamental human rights and civil freedoms is the basis of its sovereignty on the global stage.

To emphasize the specifics of this study, we, like many other scholars concerned with the correlation of international and national law, should note that the fundamental acts of international law are transformed into constitutional provisions. As we noted in our previous article, the consistent recognition and justification of the most valuable and inalienable human rights in the course of human civilization which are expressed in acts of international law and, above all, the Universal Declaration of Human Rights is the basis of the Russian and other forms of constitutionalism (Tchinaryan & Kuchenin, 2019).

There is a certain similarity in the implementation of fundamental principles by national and international law. Norms-declarations and norms-principles of the Constitution of the Russian Federation that has supremacy in the whole territory of the Russian Federation are disclosed, detailed and implemented through the totality of its subordinate acts. For

instance, norms-declarations and norms-principles of the Universal Declaration of Human Rights are expanded by the target-oriented conventions and acts of the United Nations and its specific agencies, i.e. declarations, conventions and recommendations of the International Labor Organization.

However, there is a conceptual difference in the implementation of basic norms by international and national legal systems, whose nature is determined by the principle of sovereignty of legal systems. In the context of national law, there is a strict hierarchy of legal sources, the unconditional compliance and consistency of the provisions contained in the acts that have less legal force in relation to the acts of greater legal force. The adoption, amendment or invalidation of a legal act necessitates the appropriate adjustment of acts having lesser legal force. On the contrary, an act adopted by some intergovernmental body does not automatically come into legal force within the context of international law with a few exceptions. Such an act (a bilateral and multilateral treaty, interstate agreement) receives legal force only after its validation by the parties to the above-mentioned treaty (agreement) or by the members of the international organization that adopted this act of international law within the competence defined by its charter.

The success or failure of validating some international act depends on several conditions and factors typical of a country in a certain period, primarily political and socio-economic. This statement fully relates to the legal regulation of "external" labor migration that makes the Russian Federation observe both generally recognized norms and principles of international law and the bilateral and multilateral agreements concluded within the framework of regional integration associations. The issues of "internal" labor migration are governed by national legislation, including transformed norms of international law. This approach is conditioned by the fact that migrants are both subjects of "internal" labor migration and citizens of the Russian Federation.

The activities of the Russian Federation in the field of "external" labor migration are conducted through its membership in global interstate associations (the International Labor Organization that has the status of a UN specialized agency; the International Organization for Migration) and regional economic integration associations (the Commonwealth of Independent States; the Eurasian Economic Union, including the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Armenia and the Kyrgyz Republic). In addition, the Russian activities in this area are cooperated with the European Union, which is due to the signature and validation of the Convention for the Protection of Human Rights and Fundamental Freedoms and its

protocols* (1950). However, the interaction between the Russian Federation and this regional interstate association is more similar to Russia's activities within the International Labor Organization or International Organization for Migration.

Russia's interaction in the indicated areas aimed at implementing international norms of labor migration into its national legal system is largely determined by the trends and features of modern global migration processes and their causes.

Based on the United Nations report (United Nations. Department of Economic and Social Affairs. Population Division, 2015) and the Bulletin of the Federal State Statistics Service of Russia (2015), O.V. Kadyshcheva (2016) states that Russia ranked third in the world by the number of migrants (11.6 million) in 2014, following the United States (46.6 million) and Germany (12 million). Most international migrants in Russia are migrants from the CIS countries (especially Ukraine, the Republic of Kazakhstan, the Republic of Uzbekistan, the Republic of Armenia and the Republic of Tajikistan). In 2014, 89.5% of all migrants came to the Russian Federation from the CIS states and only 10.5% arrived from other foreign countries (Kadyshcheva, 2016). On the one hand, it is explained by economic relations among the former republics of the Soviet Union. On the other hand, there is a certain similarity typical of legal systems built on a common basis, i.e. the legislation of the previously unified country.

The second factor that determines the prevailing number (by an order greater) of labor migrants from the CIS countries over migrants from other states (similar legal systems of the former Soviet republics) positively affects the adaptation of migrants in the receiving country, namely the Russian Federation, their understanding of the conditions of stay, the implementation of labor activity and, in general, the attractiveness of the national labor market. In a broad sense, the similar legal systems built over a previously unified basis contributes to the harmonization of national legislation in various spheres, including migration law. At the same time, scholars highlight some differences in the approaches of former Soviet republics to the implementation of international law that does not coordinate the existing legislation (Kirilenko & Mandryka, 2014).

The attractiveness of the Russian labor market is confirmed not only by one of the largest migration flows in the post-Soviet space but also by the World Bank. Accordingly, this region also accounts for one of the largest volumes of money transfers, especially between

* In Russia, the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols have been validated and been in force since March 1998; Protocols 6, 12, 13 and 16 are still unsanctioned as of 2020.

the Russian Federation and Central Asia (United Nations Development Programme, 2015).

While describing the trends and causes of labor migration, we should note that both the International Organization for Migration (2016) and the International Labor Organization (2016) record the annual growth of labor migration in all the regions under consideration (North America, Europe, the Commonwealth of Independent States), which is mainly stipulated by socio-economic reasons. The United Nations Human Development Report defines human development as the process of empowering peoples and ensuring their long and healthy life, education and decent living standards (United Nations Development Programme, 2016). We agree with G.V. Shoniya (2017) that labor migrants moving from one country to another pursue these goals.

According to I.V. Shesteryakova (2011) "globalization which is gaining comprehensive features also affects labor relations, including those in Russia". This fact stipulates the need for the labor-legal integration of states and unification of labor standards while preserving the established mechanisms of regulating labor relations.

Currently, the international legal regulation of labor migration is based on the following documents:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Generalnaya Assambleya OON, 1990);
- The Migration for Employment Convention (Revised) (International Labour Organization, 1949a) and its accompanying Migration for Employment Recommendation (Revised) (International Labour Organization, 1949b);
- The Migrant Workers (Supplementary Provisions) Convention on violations in the sphere of migration and ensuring the equality of migrant workers (International Labour Organization, 1975b) and its accompanying Migrant Workers Recommendation (International Labour Organization, 1975a).

The above-mentioned acts of international law aim at protecting and ensuring the rights of migrants which are based on the mandatory provisions enshrining the rights and freedoms of people and citizens contained in the Universal Declaration of Human Rights.

However, these International Labor Organization's conventions have not been validated by the Russian Federation and Russia has not assumed any obligations arising from these provisions.

In general, the Russian Federation has validated only 70 out of 180 International Labor Organization's conventions. Besides two International Labor Organization's conventions constituting an "international migration charter" together with the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Russia has not validated more than one hundred conventions, whose adoption aims at implementing the strategic goals of the International Labor Organization, i.e. the promotion and implementation of fundamental principles and labor rights; increasing the capabilities of women and men to obtain decent work; improving the coverage and effectiveness of social security for all; strengthening tripartism and social dialogue.

The truth is that the situation around validating the International Labor Organization's conventions by the Russian Federation is not exclusive since almost all members of this international organization have validated less than half of its conventions. To date, Russia has adopted eight fundamental International Labor Organization's conventions (No. 29, 87, 98, 101, 105, 111, 138 and 182) aimed at implementing its basic principles, including the right to freedom of association and collective bargaining; the prohibition of discrimination in labor relations; the eradication of forced labor and the prohibition of child labor.

Currently, the Russian Federation continues to implement international labor standards and norms in the field of labor migration. Thus, the joint efforts of the Ministry of Labor and Social Protection of the Russian Federation, the Federation of Independent Trade Unions of Russia, the Russian Union of Industrialists and Entrepreneurs, the Technical Support Group for Decent Work and ILO Bureau for Eastern Europe and Central Asia should ensure the validation of conventions that Russia has not adopted yet (Program, 2016). Russia will stay on the sidelines of the ongoing globalization processes, which also implies the intensified implementation of international law into the Russian legal system.

However, the implementation of the provisions of international law and the rules governing labor migration into the national legal system should be adjusted to fully meet the interests of the Russian Federation. In this regard, it is necessary to identify some factors and conditions accompanying the indicated process.

1. Inconsistent international cooperation affects the regulation of labor migration. On the one hand, there are certain globalization and integration trends. On the other hand, some countries have become overprotective in securing their economic interests in recent years. For example, there are disagreements among the United States as the world's largest economy, China and the European Union. In this context, we should also consider Brexit.

We have recorded a different understanding of both the scope and content of the basic inalienable rights and freedoms of the individual due to mental, economic, socio-cultural and civilizational factors typical of various countries (Kuchenin & Stoyanova, 2019). E.O. Tchinaryan and other scientists (2019) express a similar viewpoint on factors that hinder the implementation of international law and highlight their dependence on the course of historical development. Of course, all this undermines the implementation of international law.

2. The crucial condition for the global realization of labor rights and personal freedoms is the equality of conditions in different countries (regions). According to N.L. Lyutov (2013), competition between rich and poor countries and fundamental economic difficulties in most regions aggravates the issue of international cooperation in the field of labor rights.

In addition, the readiness of various legal systems to implement mechanisms and legal provisions that differ from their existing legal framework plays an important role. These reasons do not allow modern Russia to validate certain International Labor Organization's conventions affecting labor migration, namely International Labor Organization Convention No. 97 and International Labor Organization Convention No. 143. International Labor Organization Convention No. 48 on Maintenance of Migrants' Pension Rights, 1935 has not been validated neither by the USSR nor by the Russian Federation.

3. Interest in the development of regional cooperation in the post-Soviet space is primarily conditioned by mutual economic interests of the countries in the Eurasian Economic Union and difficulties in integrating Russia with other interstate associations due to geopolitical reasons. Thus, S.A. Egorov states that the establishment of the Eurasian Economic Union aimed at forming a single market for goods, services, capital and labor. This objective can be achieved thanks to a unified legal basis for activities and, in particular, unified labor legislation (Egorov, 2015).

K.L. Tomashevskii (2017) marks the similarity of socio-political processes and phenomena occurring in different countries of the Eurasian Economic Union, the legal features of these countries typical of the Romano-German legal system and the continuity of some labor and legal structures inherited from the previously unified labor legislation. The consideration of these factors is manifested in various approaches to improving the supranational legal regulation of labor relations in the European Union. After analyzing

its legislation, A.S. Mrikh (2017) emphasizes the following factors that influence the legal integration of European countries: a) the state of economy; b) the political course chosen by the current governments of the European Union; c) different legal systems of the European Union states in the field of labor relations (such subsystems of labor law as Roman-German, Anglo-Irish and Scandinavian); d) differences in the level of their economic development.

To ensure one's right to work, it is necessary to ensure several other social rights, including the right to family life, the right to housing, the right to social security, the right to medical care, etc. Member states of the Eurasian Economic Union objectively have better conditions for harmonizing their legal systems in the field of ensuring the social rights of their citizens if compared to other countries.

4. The coordination of migration policies and the security interests of the Russian Federation is stated by the Concept of state migration policy in the Russian Federation for 2019-2025 (Prezident Rossiiskoi Federatsii, 2018).

Conclusion

The interrelated consideration of the above-mentioned conditions and factors accompanying the implementation of international legal norms in the field of labor migration into the Russian legal system allows us to draw the following conclusions:

1. The harmonization of legislation in the field of migration, in general, and labor migration, in particular, becomes possible within the framework of interstate associations with a high degree of economic integration among member countries, including the European Union and the Eurasian Economic Union.
2. International labor standards should be implemented in stages. For a start, the main efforts should aim at developing supranational mechanisms for ensuring the rights of migrant workers within the framework of the Eurasian Economic Union. The unification of labor standards by member states of this integration association will ensure the effective implementation of the International Labor Organization's conventions in the field of labor migration consistent with the interests of such members.

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