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## Legal regulation of migration processes: regional experience and legislation of the Republic of Kazakhstan

Migration processes are of specific significance within the Republic of Kazakhstan, and national policies attach great importance to their development, including with regard to legal regulation. The urgency of the problem is due to the fact that the most important and least solvable problem of migration legislation is directly related to its ability to coordinate a wide range of social problems. This is mainly related to the issues of entry of foreign citizens and stateless persons, as well as the legal or illegal stay of these persons in foreign countries. At the regional level, measures aimed at combating the problem of illegal migration represent a set of effective immigration legislation, its prevention and enforcement. Therefore, the article attempts to identify and analyze the legal and regulatory basis of migration policy of the European Union (hereinafter — EU), the Eurasian Economic Union (hereinafter — EAEC), the Commonwealth of Independent States (hereinafter — CIS). The regulation of migration processes in Kazakhstan was examined through an analysis of the Republic of Kazakhstan's migration policy and the existing foreign policy tools for managing international migration. Furthermore, the effective practices of regional organizations in handling migration flows were discussed, along with suggestions for enhancing the management of migration processes in the Republic of Kazakhstan. Based on the assessment of the preferences and drawbacks of the migration process in the Republic of Kazakhstan, it has been determined that there is a necessity to enhance the legal frameworks for executing national migration policies. Moreover, there's a have to be support collaboration between Kazakhstan and CIS and EAEC member states through bilateral and multilateral agreements to prevent illegal labour migration.

*Keywords:* migration process, migration policy, national policy, EU, EAEU, CIS.

### Introduction

One of the most critical challenges facing contemporary society is the legal governance of migration processes. It is evident that aligning migration management with international standards while safeguarding the rights of migrants represents a pivotal focus of the Republic of Kazakhstan's policy initiatives. On the one hand, the reason for the expansion of the scale of migration processes, as a result of conflicts, wars, natural disasters, can be seen that the number of people who were most likely to forcibly leave their country is increasing. On the other hand, it is linked to economic factors, since each country has a different level of wages. This situation encourages people to cross the borders of neighboring countries and earn money [1].

In the address to the citizens of Kazakhstan titled “Strategy “Kazakhstan-2050”: A New Political Course for the Established State”, there is a notable focus on the importance of tackling migration issues within the nation and improving supervision of migratory flows coming from adjacent countries [2].

Kazakhstan has held some activities related to the migration field, but the resolution of issues related to migration processes remains one of the important issues on the agenda. The Republic of Kazakhstan, actively involved in modern international migration processes, is currently looking for effective tools to manage migration for the benefit of society and the state. The solution of labor migration issues is also given great attention by international communities, and it is also important to consider their experience in practice.

### Methodology and methods

In the study of the article, Resolution of the Government of the Republic of Kazakhstan dated December 30, 2022 No. 961 “On approval of the concept of migration policy of the Republic of Kazakhstan for 2023–2027”, as well as the Law of the Republic of Kazakhstan dated May 13, 2020 No. 327-VI “On

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amendments and additions to some legislative acts of the Republic of Kazakhstan on the regulation of migration processes”, were utilized. Also within the EAEU, the “Treaty on the EAEU”, adopted on 29 May 2014, and the adopted Directives of the Council of the European Union related to this study are applied.

### *Discussion*

Review of regional experience on the legal regulation of migration processes, it can be seen that migration processes take different forms. The EAEU is based on integration interaction at all levels and is an important area of interstate cooperation, the migration part of which addresses many issues. In particular, the development of the regulatory framework regulating the unified mechanisms related to the migration process in the EAEU member states is envisaged.

Since January 1, 2015, a unified labor market has been established for the citizens of the member states of the Eurasian Economic Union, enabling the free movement of labor. The legal framework governing this domain is articulated in the “Treaty on the Eurasian Economic Union”, which was adopted on May 29, 2014. Notably, Section XXVI, entitled “Labor Migration”, contains provisions that facilitate the conditions under which labor migrants from member states may reside within the union. According to Article 96 of the “Treaty on the Eurasian Economic Union”, “member states are obligated to collaborate in coordinating policies related to labor migration regulation within the Union. This includes support for the organized selection and recruitment of workers from member states for employment within the member states”. Nevertheless, it is crucial to emphasize that the EAEU documents indicate that equal treatment for nationals of member countries is not established [3].

The European Union has established the most comprehensive framework for the legal regulation of international migration processes. Presently, a multitude of documents have been adopted and enacted within the EU, wherein the legal governance of migration policy occurs at two levels: the legislation of individual EU member states and the regulatory documents issued by the EU [4].

With to find a balanced solution on cooperation on illegal migration over the past this, EU member states emphasized the need in recent years. Based on the list of countries included in the Council of Europe Regulation № 539/2001, “list of third countries whose nationals must have visas when crossing external borders and the countries whose nationals are exempted from this requirement”, defining the EU’s priorities on legal regulation of external and regional migration processes [5], provides established conditions for the entry of foreign nationals into the EU. The document includes a comprehensive list of countries that require a visa to cross the external borders of a member state, as well as a list of countries that are exempt from visa requirements for stays of up to three months.

The primary aim of the EU immigration policy is to attract and retain highly skilled professionals while discouraging the influx of low-skilled labor. In this regard, the Council Directive 2009/50/EC, titled “On establishing conditions for entry and stay of third-country nationals with a view to obtaining highly qualified work”. Specifically, this document will facilitate the process of family reunification for these immigrants and will consider provisions for the expedited acquisition of the status of “long-term resident” in the EU. These measures are designed to provide extensive opportunities for employment within the EU.

Likewise, within the EAEU, trends in migration are shaped by various factors: on one hand, laborers aspire for just rewards for their work, while on the other hand, countries receiving migrants aim to tackle the deficit of low-cost and proficient workers [6].

The right of third country nationals to move and reside in the EU is enshrined in the following act: directive 2003/86/EU Council “On the right to family reunification” [7], directive 2003/109/EU Council “On the status of citizens of third countries who are long-term residents” [8], Directive 2011 /98 /EU Council “On the procedure for applying for a single permit for citizens of third countries to live and work in the territory of a member state and on the set of Rights common to workers of third countries legally residing in a member state” [9].

The essential difference of legal regulation of labor migration within the EAEU is the de facto complete absence in the EU of norms of “Treaty on EAEC” and other multilateral regional international agreements of the states that are part of it, the labour migration of third-country nationals, and there is a substantial legal framework for such regulation in EU countries. In this context, there is a need to develop a migration policy strategy from third countries that can use the visa-free space in the EAEU. The need to involve these third countries in the migration management process is due to the need to distribute the burden of responsibility of the EU in this area.

In this section, the Eurasian Economic Commission should be invited to initiate the inclusion in the “Treaty on the EAEU” of provisions on legal regulation of labor migration of third-country nationals, taking into account the experience of the EU and the feasibility of staying in the territory of the states belonging to the EAEC. There is also a need to identify specific categories of migrant workers for which special employment arrangements are in place.

In addition, the EU policy places particular emphasis on broadening the contractual framework for re-admission, aiming to stimulate partner countries’ interest in concluding agreements beneficial to the EU. This approach is complemented by measures that promote development in migrants’ countries of origin, including technical support, exchange of information, and consultations. [10].

The Agreement “On Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers”, which was established under the framework of the CIS, remains in effect within the territory of the EAEU. The agreement demonstrates that the models of labour migration management applied in the EAEU — initiated by Russia, Belarus and Kazakhstan — contribute to the development of a comprehensive labour migration regime, taking into account economic disparities between member states. The rights and obligations of migrants are defined in bilateral intergovernmental agreements [11]. Nevertheless, the fight against illegal migration remains one of the priority areas for cooperation between the internal affairs agencies of the CIS member states in combating cross-border crime [12]. Speaking about illegal migration, we will focus on one of the features of illegal migration characteristic of the CIS: most migrants enter the receiving state legally, but then, in violation of the legislation, or rather, due to ignorance of it, they pass into the category of illegal migrants.

An essential area of collaboration within the Commonwealth of Independent States necessitates the enhancement of the accounting system for citizens of third countries and stateless individuals entering the territories of CIS member states. It is also urgent to analyze important data related to illegal migration within the country and to enhance the rapid exchange of this information [13]. To ensure efficient oversight of migration patterns, a system will be implemented involving an inter-state database to monitor migrant workers and a separate database to record breaches of migration laws and occurrences of illegal migration.

### *Results*

The Republic of Kazakhstan guarantees observance of human rights on its territory in the process of regulating migration processes in accordance with its Constitution, international obligations in the field of human rights, and other normative legal acts. The problem of illegal migration is acquiring an increasingly clear characteristic that it poses a threat to stability and security for all world communities. It is important to recognize that illegal migration activities persist along the state border of the Republic of Kazakhstan. A key element contributing to this problem is the visa-exempt policy adopted by numerous countries, including Kazakhstan. Citizens of nations outside of Russia, such as those from Pakistan, Bangladesh, Kenya, Afghanistan, Tajikistan, Uzbekistan, and various other countries, enter Russia through Kazakhstan’s border. In some instances, they illegally pass through established checkpoints [14; 59].

Following Kazakhstan’s inclusion among the 30 developed nations, and acknowledging the imperative to expand the understanding of migration policy, the nation has implemented various key policy documents. In particular, it is pertinent to refer to “the concept of migration policy of the Republic of Kazakhstan for the years 2023–2027”, which was adopted by resolution No. 961 by the Government of the Republic of Kazakhstan on November 30, 2022. Under this framework, a key objective is to guarantee the proper accounting and oversight of foreign workers participating in labor activities conducted individually and beyond allocated quotas, operating under a patent. One of the main areas in the management of migration processes is to strengthen the fight against illegal migration, implemented at national and international levels. The concept also states that the main areas of foreign policy in developed countries in the field of countering illegal migration are digitalization of all aspects of public administration, processing and analysis of migration flow data [15].

According to G.N. Appakova, E.N. Nesipbekov, and A. Zh. Panzabekova, “the analysis of the concept of migration policy of the Republic of Kazakhstan for 2022–2026 allows us to conclude that the presented indicators are insufficient to fully cover the tasks set for migration policy. There are few of them, and besides, some indicators do not have a justification for units of measurement and mostly include them as indicators. This is especially true for population figures and the number of bilateral agreements” [16].

Government agencies regulating this area noted that, despite the measures taken to reduce the growth in the volume of illegal labor immigrants accepted by the state, problematic issues remain regarding the legalization of labor activity of labor immigrants attracted by small businesses [17].

One of the latest legislative innovations is the law of the Republic of Kazakhstan dated May 13, 2020 No. 327-VI “On amendments and additions to some legislative acts of the Republic of Kazakhstan on the regulation of migration processes” [18]. However, this law does not regulate the issues of illegal recruitment of labor immigrants by small businesses.

The reason for illegal migration in the Republic of Kazakhstan is often the inability of migrants and employers to use labor legislation correctly, includes issues such as employment practices that disregard the regulations governing the drafting of employment contracts, the hiring of low-skilled foreign workers, and violations related to working conditions and their corresponding remuneration [19].

Highly qualified specialists are often invited by local employers (legal entities). At the same time, employers receive permits from local executive bodies for free and legal work of foreign employees before their arrival [20]. However, this category includes only citizens of countries that have a visa regime in the Republic of Kazakhstan.

In order to tackle international migration, one of the most effective strategies is to enhance the number of signatory readmission agreements with foreign nations. However, the establishment of agreements regarding the expulsion of individuals involved in illegal migration presents significant legislative and practical challenges. Thus, the establishment of international readmission agreements constitutes one of the primary avenues for the legal regulation of illegal migration processes. Currently, the Republic of Kazakhstan has entered into and ratified 12 agreements pertaining to readmission with the following countries: Switzerland, Uzbekistan, Belarus, Hungary, Lithuania, Russia, Latvia, Moldova, the Czech Republic, Germany, Norway, and the Benelux states. Additionally, nations in both the immediate and distant regions maintain readmission agreements with 13 other states, namely: Afghanistan, Bulgaria, Greece, Iran, Iraq, Canada, Cyprus, Korea, Kyrgyzstan, Pakistan, Poland, Tajikistan, Ukraine [14; 30].

The examination of the migration legislation of the Republic of Kazakhstan reveals a dynamic evolution in the state’s approaches to migration processes, as well as its regulation. However, despite this situation, it is essential to address the problem areas of compliance with migration legislation through further enhancement of migration policy. This necessitates the establishment of dialogue platforms between states, where migration issues can be discussed at both national and international levels.

### *Conclusions*

International migration is one of the most important challenges facing the modern world in a globalized world, as well as a process that has direct relevance to all aspects of the life of communities in the world. The formation of a full-fledged new migration situation in all states affects the development of international relations, and also has certain consequences for the multilateral system. Within the context of Eurasian integration, the legislation of the country has been expanded to incorporate new provisions, which notably include modifications to the regulations governing the entry and exit of foreign nationals into Kazakhstan. Furthermore, the protocols for their movement within this region, as established by the Eurasian Economic Union (EAEU), have been considerably streamlined. In addition, by studying the legal regulation mechanisms used in the CIS and EU, it is possible to form new directions that can be introduced into the migration system.

Currently, there is a need to improve the migration legislation. It is essential to establish conditions that enhance the appeal of a skilled foreign labor force in Kazakhstan, which is sought after in the labor market. This includes facilitating their entry, residence, and professional activities. Secondly, as part of countering the organizers of illegal migration channels, it is necessary to develop permanent means of operational communication for the exchange of information with law enforcement, as well as other bodies of foreign states. Third, there is a need to conduct an examination of the system of legislative acts aimed at regulating migration using foreign experience.

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## **Көші-қон үдерістерін құқықтық реттеу: өңірлік тәжірибе және Қазақстан Республикасының заңнамасы**

Қазақстан Республикасында көші-қон үдерістері ерекше орын алады, оның дамуына ұлттық саясат деңгейінде, оның ішінде құқықтық реттеу мәселелерінде маңызды мән беріледі. Мәселенің өзектілігі көші-қон заңнамасының маңызды, әрі аз шешілген сұрақтары, оның әлеуметтік мәселелерінің кең ауқымын үйлестіру қабілетіне тікелей байланысты болатындығында. Бұл негізінен шетел азаматтары мен азаматтығы жоқ адамдардың келуі, сонымен қатар аталған адамдардың шет елдерде заңды не болмаса заңсыз түрде болуы мәселелерімен байланысты. Өңірлік деңгейде заңсыз көші-қон проблемасымен күресуге бағытталған шаралар иммиграциялық заңнаманың, оның алдын алу мен оның орындалуын қамтамасыз етудің тиімді жиынтығын білдіреді. Сондықтан да, мақалада Еуропалық одақ (бұдан әрі — ЕО), Еуразиялық экономикалық одақ (бұдан әрі — ЕАЭО), Тәуелсіз Мемлекеттердің Достастығының (бұдан әрі — ТМД) көші-қон саясаттарының нормативтік-құқықтық негіздерін анықтауға және талдауға әрекет жасалды. Сондай-ақ, Қазақстан Республикасының көші-қон саясаты мен халықаралық көші-қонды реттеудің қолданыстағы сыртқы саяси құралдарын талдау негізінде көші-қон үдерістерін реттеудің қазақстандық тәжірибесі қарастырылды. Бұдан басқа, өңірлік ұйымдардың көші-қон ағындарын басқарудағы нәтижелі тәжірибесі Қазақстан Республикасында көші-қон үдерістерін басқаруды жетілдіру бойынша ұсынымдар ұсынылды. Қазақстан Республикасында көші-қон үдерісін дамытудың оң және теріс жақтарын талдау негізінде көші-қон саласындағы ұлттық саясатты іске асырудың құқықтық тетіктерін жетілдіру қажеттілігі, сондай-ақ заңсыз еңбек көші-қоны фактілерін болғызбау мақсатында екіжақты және көпжақты келісімдер жасасу жолымен ҚР-дың ТМД және ЕАЭО-ға мүше мемлекеттермен ынтымақтастығын күшейту қажеттілігі туралы қорытынды жасалды.

*Кілт сөздер:* көші-қон үдерісі, көші-қон саясаты, ұлттық саясат, ЕО, ЕАЭО, ТМД.

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## **Правовое регулирование миграционных процессов: региональный опыт и законодательство Республики Казахстан**

Особое место в Республике Казахстан занимают миграционные процессы, развитию которых придается важное значение на уровне национальной политики, в том числе в вопросах правового регулирования. Актуальность проблемы обусловлена тем, что важнейшая и наименее решаемая проблема миграционного законодательства напрямую связана с его способностью координировать широкую сферу его социальных проблем. В основном это связано с вопросами въезда иностранных граждан и лиц без гражданства, а также легального или незаконного пребывания указанных лиц в зарубежных странах. На региональном уровне меры, направленные на борьбу с проблемой нелегальной миграции, представляют собой совокупность эффективного иммиграционного законодательства, его профилактики и правоприменения. Поэтому в данной работе предпринята попытка выявить и проанализировать нормативно — правовые основы миграционной политики Европейского союза (далее — ЕС), Евразийского экономического союза (далее — ЕАЭС), Содружества Независимых Государств (далее — СНГ). Также, был рассмотрен казахстанский опыт регулирования миграционных процессов на основе анализа миграционной политики Республики Казахстан и действующих внешнеполитических инструментов регулирования международной миграции. Кроме того, был представлен эффективный опыт региональных организаций в управлении миграционными потоками, рекомендации по совершенствованию управления миграционными процессами в Республике Казахстан. На основе анализа преимуществ и недостатков развития миграционного процесса в Республике Казахстан, был сделан вывод о необходимости совершенствования правовых механизмов реализации национальной политики в области миграции, а также необходимости усиления сотрудничества РК с государствами-членами СНГ и ЕАЭС путем заключения двусторонних и многосторонних соглашений в целях предотвращения фактов незаконной трудовой миграции.

*Ключевые слова:* миграционный процесс, миграционная политика, национальная политика, ЕС, ЕАЭС, СНГ.

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