

MIGRATION LAW OF THE COMMONWEALTH OF INDEPENDENT STATES

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KEYWORDS

migration, migration law, model legislative act, recommendation, migrant, refugee, displaced person, migrant worker

ABSTRACT

The article presents multilateral agreements and acts of model legislation constituting the basis of developing migration law in the Commonwealth of Independent States (CIS). The author provides brief characteristics to the acts regulating cooperation in governing migration processes and the status of various types of migrants (both voluntary and forced), as well as model legislation designed to help unify and harmonize the legislation of the CIS member States in the relevant field. The results of the research show that the development of migration law in the CIS continues along the path of convergence with generally accepted norms and standards of international law, clarification of terminology, as well as systematization of model norms. At the same time, the implementation of the adopted norms remains problematic due to the lack of appropriate control mechanisms, as well as sanctions for non-compliance with these norms. In addition, the CIS maintains a special approach to countering illegal migration, which shows the priority of state security issues over the protection of human rights and this is also reflected in the terminology used.

The results of research may be used in comparative legal studies of migration law norms in regional legal systems.

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INTRODUCTION

The creation of the Commonwealth of Independent States (CIS) has given the member states the task of preserving, developing and strengthening political, economic and cultural ties. At the same time, the issue of choosing citizenship or the state of residence and freedom of movement for many citizens in the post-Soviet space was often of primary importance for many reasons (family, permanent place of work in a country other than the republic of birth, fleeing armed conflicts, etc.)¹. These issues were reflected in the acts adopted by the CIS since 1992. It can be argued that these acts formed the basis of regional migration law system of the CIS, despite certain shortcomings and gaps in its structure and content. At the same time, member states of the CIS signed the core acts for international legal regulation of migration, including universal legal instruments (for example, International Bill of Human Rights) and special acts regulating status of particular groups of migrants (The 1951 Convention Relating to the Status of Refugees and its 1967 Additional Protocol, The 1990 Convention on the Protection of Rights of All Migrant Workers and Members of Their Families).

The formation of the migration law² is a complex and dynamic process that reflects the complex nature of migration and depends on different factors (political, economic, relations between member states in the regional organization and with neighbouring countries, etc.). As to the migration law in the CIS, it is based on the general norms that were set out in the Charter of the CIS, as well as in multilateral agreements on human rights, and developed in the multilateral and bilateral agreements as a result of interstate cooperation in the region, legal acts regulating interaction in certain areas of migration were also adopted (for example, on labour migration, preventing illegal migration, regulation of enter the territory of member states from the third countries, etc.)³. Special acts of model legislation in the field of migration were created generally for the purpose

¹ 29 years after the establishment of the Commonwealth, the migration movement between the CIS countries is quite impressive. For example, 24,601 migrants arrived to Belarus in 2018, 17,008 of them came from the CIS countries, and 9829 of 15,239 Belarusian citizens departed to the CIS countries. See *Demographic Yearbook 2019*. National Statistical Committee of the Republic of Belarus. Minsk 2019.

² Migration law of the CIS in this article is understood as the set of international rules adopted within the CIS governing: 1) the movement of persons between member states and member states and third countries and 2) the legal status of migrants within host member states of the CIS states (in accordance with the approach to definition of international migration law represented by V. Chetail, see V. Chetail, *Conceptualizing International Migration Law* (Proceedings of the One Hundred Tenth Annual Meeting of the American Society of International Law 2017) 201.

³ Устав Содружества Независимых Государств от 22 января 1993 г.). Межпарламентская Ассамблея СНГ. База документов. <https://iacis.ru/baza_dokumentov/normativno-pravovie_dokumenti_sng_podgotovlennye_mpa_sng> accessed 03 October 2020.

to harmonize and unify national legislation of the CIS member states, and it is necessary to unify terminology for this purpose, that will help to avoid discrepancies in the notions and definitions of concepts related to migration processes⁴.

Despite the importance, the issues of legal regulation of migration within the CIS have not received a comprehensive and systematic analysis in the legal literature. Only some authors pay attention to particular sources of migration law in the CIS in their articles devoted to different issues (labour migration, illegal migration, status of refugees and displaced persons, regulation of migration in particular member – states of the CIS, etc.) using mainly historical approaches for analysing such sources⁵. There are very few papers devoted to the analysis of particular model legislative acts⁶.

The aim of this article is to present the description of the multilateral agreements and acts of model legislation as sources of migration law in the CIS⁷ and the main issues regulated by these acts. The research methodology includes dogmatic and comparative methods. The results of a study may be used for

⁴ Most authors do not pay attention to these acts of migration law and highlight just two directions of the development of migration law within the CIS: creation of international multilateral agreements and conclusion of bilateral agreements (see Khabrieva TY, *Migratsionnoe pravo Rossii: teorija i praktika* (Moskva 2018) 269).

⁵ For example, N.A. Voronina in her book “Migration Law and Migration Legislation of the Commonwealth of Independent States (historical-legal analysis)” pays much attention to the migration legislation of particular states-members of the CIS, provides just a brief analysis of multilateral agreements on migration within the CIS (see: Voronina N.A., *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografija*. Moskva 2015). See also: Chetail V, *International Migration Law*. (Oxford 2019); *Foundations of International Migration Law* (B. Opeskin, R. Perruchoud and J. Redpath-Gross eds. Cambridge University Press, Cambridge 2012); Khabrieva T. Y., *Migratsionnoe pravo Rossii: teorija i praktika* (Moskva 2018); Ormonbekova L. *Freedom of Movement and Labour Migration in the Commonwealth of Independent States Comparative Brief on CIS and EU Legislation* Abazov R, *Current Trends in Migration in the Commonwealth of Independent States* (Human Development Research Paper 2009/36) August 2009 <<https://www.taylorfrancis.com/chapters/equivocal-claims-examining-labour-migration-regimes-ambivalent-control-claims-central-asian-states-policies-migration-control-lilia-ormonbekova-sandra-mantu-elspeth-guild/e/10.4324/9781315573595-22>> accessed 29 October 2020; Taranov S. N., *Regulirovanije trudovoj migratsii v mezhdunarodnom chastnom prave*. (Dissertatsija... kand. jur. nauk. Minsk 2015); Sazon KD, *Pravo ubezhishcha v gosudarstvakh – uchastnikakh Sodruzhestva Nezavisimykh Gosudarstv* (Dissertatsija ...kand. jur. nauk. Moskva, 2014).

⁶ See Tomashevskij K. L., *K voprosu o modelnom migratsionnom kodekse gosudarstv-uchastnikov SNG // Pravovoe regulirovanie migratsionnyh processov v Respublike Belarus v kontekste ustojchivogo razvitiya: sb. nauch. statej / Redkol. I.I. Esmantovich. (gl. red.) [i dr.]*. – Homel: GGU im. (F. Skoriny 2017) 258–266; Voronina N. A., *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografija*. (Moskva 2015).

⁷ Bilateral agreements of the CIS member States in the field of migration regulation, as well as acts adopted by the CIS member States within the framework of other interstate entities (in particular, the EurAsEC, the Union of Belarus and Russia, etc.) were not included to the subject of this research.

comparative legal analysis of regional systems for regulating migration processes, in particular, the EU and the CIS. The research methodology includes doctrinal and comparative methods. The first part of the article is devoted to the multilateral agreements that are binding for the CIS member states (both on the general directions of cooperation and on particular migration issues). The second part presents act of so-called model legislation that have recommendatory character and can be used as a model for the CIS member states.

I. MULTILATERAL AGREEMENTS AS SOURCES OF THE MIGRATION LAW IN THE CIS

The analysis of the CIS legal system allows to divide international agreements in the field of migration into: a) the acts of general character (this group includes the CIS Charter; b) legal acts that define basic human rights and freedoms, among them those related to migration processes) and specialized ones regulating relations within a specific type of migration (for example, labour migration, forced migration, fighting illegal migration), concerning the legal status of a particular group of migrants (migrant workers, refugees, etc.), establishing rules for entering the territory of member states.

The main agreement defining the goals of the CIS, areas of cooperation, areas of joint activity and the main legal framework of the CIS is the Charter of the Commonwealth of Independent States signed on 22 January 1993⁸. Assistance to citizens of member states in free communication, contacts and movement in the Commonwealth were named within the main goals of the cooperation within the CIS (as well as ensuring of human rights and fundamental freedoms in accordance with generally recognized principles and norms of international law and CSCE documents) (art. 2). Migration policy was fixed among the areas of joint activity of the member states (art. 4). So, as it was stressed earlier, the regulation of migration in the CIS should be provided in accordance to the international law.

The CIS Convention on Human Rights and Fundamental Freedoms of 26 May 1995 stipulates the next basic rights and freedoms related to migration: equality of all people before the law, non-discrimination (art. 20); freedom of movement and freedom to choose a place of residence within the territory of a Contracting Party; the right to leave any country, including one's own (restrictions on these rights and freedoms may be provided by law in the interests of state or

⁸ Устав Содружества Независимых Государств от 22 января 1993 г.). Межпарламентская Ассамблея СНГ. База документов <https://iacis.ru/baza_dokumentov/normativno-pravovie_dokumenti_sng_podgotovlennii_mpa_sng> accessed 03 October 2020.

ublic security, public order, to protect public health and morals, or to protect the rights and freedoms of others (art. 22); the right to citizenship, the prohibition of arbitrary deprivation of one's citizenship or the right to change one's citizenship (art. 24); prohibition of the expulsion of a person from the territory of the state of which he is a citizen; no one can be deprived of the right to enter the territory of the state of which he/she is a citizen (art. 25), etc.⁹

The CIS Convention on Human Rights and Fundamental Freedoms is based on the International Bill of Human Rights and at the same time develops the provisions of basic international agreements. Unfortunately, there is no body monitoring the implementation of the Convention, which is the main reason for its inactivity¹⁰.

The Charter of Social Rights and Guarantees of Citizens of CIS of 29 October 1994¹¹ addresses the issues of guaranteeing the rights and freedoms of migrants, as well as cooperation between member states in the field of migration regulation¹². Freedom of movement of citizens is one of the key conditions for creating a common market, while Article 1 of the Charter declares visa-free movement of citizens of member states on the territory of the CIS, as well as equal rights for all citizens to work on the territory of any CIS member state.

Section II of the Charter is devoted to the guarantees in the field of migration relations such as the obligation of member states to respect the principle of freedom of migration of workers and the population between them (art. 4), to establish national services for migrant workers and provide permanent contact between them in order to ensure the rights of citizens to work abroad (art. 6). Article 5 of the Charter defines the general tasks of member states in the field of forced migration, such as ensuring social and legal protection of forced migrants (refugees), as well as a life and work regime that is no less favourable than for their citizens. Member states that have granted asylum provide refugees and internally displaced persons with the necessary social and living conditions and assist in employment in accordance with current national legislation. Interestingly, there is a special provision stating that the costs associated with forced migration, including compensation to refugees and internally displaced persons for the cost

⁹ Konvencija Sodrúžestva Nezavisimyh Gosudarstv o pravah i osnovnyh svobodah cheloveka 26 maja 1995 g. Ispolnitelnyj Komitet Sodrúžestva Nezavisimyh gosudarstv. Baza dokumentov <<http://cis.minsk.by/page/11326>> accessed 28 September 2020.

¹⁰ See Voronina N. A., *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografija)* (Moskva 2015) 258.

¹¹ Hartija socialnyh prav I garantij grazhdan nezavisimyh gosudarstv ot 29 oktiabريا 1994 g. Mezhpaplamentskaja Assambleja SNG. Baza dokumentov <<https://iacis.ru/public/upload/files/1/356.pdf>> accessed 03 October 2020.

¹² In the context of ensuring the normal functioning of the labor market and the economic system of the Contracting States.

of housing and other property left or lost by them, are borne by the States of departure¹³.

The abovementioned acts follow the main international standards in establishing the rights and freedoms, set up obligations of the member states, but their provisions have in general declarative character and are not applied in practice. One of the reasons of this problem is the absence of effective control mechanism, for example, judiciary body or a committee with the appropriate authority to accept claims in cases of violations of the norms of these acts (as the European Court of Human Rights).

The second group – specialized international acts on migration of the CIS – are actually aimed at providing cooperation in various areas of migration relations, while it can be seen as the priority issues related to migration processes such as regulation of enter the territory of the CIS member states, help refugees, the fight against illegal migration, and the exchange of information about persons entering the territory of the CIS member states.

Intergovernmental Agreement on Visa-Free Movement of CIS Citizens on the Territory of Member States of 9 October 1992¹⁴ formulated the principle of the common migration area and had an aim to help in maintaining economic, scientific, trade and other ties, but at the same time it created a situation of uncontrolled flows from the territories of the third states and increased illegal migration in the territory of CIS¹⁵. As a result, Russia withdrew of the Agreement in 2000, the Ukraine established visa regime with Russia in 2014¹⁶.

Agreement on Assistance to Refugees and Displaced Persons of 24 September 1993 (as amended on 10 February 1995) was accepted as an attempt to solve the problem with the increasing number of refugees and displaced persons on the territory of the former USSR as a result of armed conflicts in some former Soviet republics, so the norms of the Agreement apply to citizens of the States – parties to this Agreement (as to the citizens of third countries, the provisions of the 1951 Convention Related to the Status of Refugees and the 1966 Protocol Related to

¹³ Hartija socialnyh prav i garantij grazhdan nezavisimyh gosudartv ot 29 oktiabria 1994 g. Mezhparlamentskaja Assambleja SNG. Baza dokumentov .<https://iacis.ru/public/upload/files/1/356.pdf> accessed 09 October 2020.

¹⁴ Soglashenie o bezvizovom peredvizhenii grazhdan gosudarstv Sodruzhestva Nezavisimyh Gosudarstv gosudarstv na territorii ego uchastnikov ot 9 oktiabria 1990. Ispolnitelnyj Komitet Sodruzhestva Nezavisimyh Gosudarstv. Baza dokumentov. <https://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=149> (accessed 12 October 2020).

¹⁵ Voronina NA, *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografija)*. (Moskva 2015) 259–260.

¹⁶ Nowadays the visa-free regime is regulated mainly by bilateral agreements and the intergovernmental Agreement between Belarus, Kazakhstan, Kyrgyzstan, Russian Federation and Tajikistan on mutual visa-free movements of citizens signed 30 November 2000 <<http://www.eurasiancommission.org/ru/act/finpol/migration/tm/Documents>> accessed 13 September 2020.

the Status of Refugees apply) or the persons who have a permanent residence on the territory of the party to the Agreement.

The Agreement defines the notions of refugee (art.1) and displaced person (art. 2), as well as persons who cannot be recognized as refugees (a person who has committed a crime against peace, humanity or other deliberate criminal act, art. 1)¹⁷. *Refugee* is defined as a person who, not being a national of a Party to the Agreement that granted an asylum, was compelled to leave his place of permanent residence on the territory of another Party to the Agreement because of committed against him or members of his family, acts of violence or prosecution in other forms or due to real risk of persecution on grounds of race or nationality, religion, language, political opinion and membership in a particular social group in connection with armed and international conflicts¹⁸. This definition is close to the one of refugee established by the 1951 Convention, but differs in some points (the reasons for leaving the country are connected to the armed or international conflict, the acts of violence can be committed not just to the person seeking an asylum for these reasons but also against the members of his/her family).

A *displaced person* is a person – citizen of a Party to the Agreement that was granted an asylum, was compelled to leave his place of permanent residence on the territory of another Party due to committed against him or members of his family of violence or prosecution in other forms or actual risk of persecution on grounds of race or nationality, religion, language, political opinion and membership in a particular social group in connection with armed and international conflicts. Both refugees and displaced persons, according to the Agreement, move from the territory of one state to the territory of another state, and the main distinction between them is the fact of the connection with the state granting an asylum.

The Agreement doesn't set out any principles related to the status of refugee and displaced person as well as their rights and obligations, just Article 10 of the Agreement establishes the right of every refugee and displaced person to appeal to the courts within the territory of the Parties to the Agreement, refugees and displaced persons are equal in the right to defend their rights in the court to the citizens of the host state. At the same time, it was stated that the status of the refugee and displaced person is determined in accordance with this Agreement, the generally recognized norms of international law and the legislation of the party that granted asylum, and is confirmed by the issuance of the relevant document (art. 3).

¹⁷ Soglashenie o pomoshchi bezhencam i vyznuzhennym pereselencam ot 24 sentiabria 1993 g. (s izmenenijami ot 10 fevralia 1995 g.). Baza dannyh pravovoj informacii Uchiot. Zakonodatelstvo <<https://zakon.uchet.kz/rus/docs/H930000184>> accessed 01 October 2020.

¹⁸ Ibid.

There are the obligations of the Parties established by the Agreement: the obligations of the country of departure to carry out the evacuation of the population from zones of armed and inter-ethnic conflicts, to ensure the personal and property security of evacuees (art. 4); obligations of the receiving party to provide necessary social and living conditions for refugees and internally displaced persons in places of their temporary accommodation and to assist them in finding employment in accordance with the legislation on employment adopted in each of the Parties (art. 5). Contracting parties are also obliged to assist refugees and internally displaced persons in requesting and issuing documents necessary to resolve issues related to citizenship; in obtaining various types of acts confirming civil status at the place of former residence (marriage certificates, birth certificates, workbooks and other documents necessary to resolve issues of pension provision, proof of work experience, travel abroad, etc.); in obtaining information about relatives living in the territory of the state abandoned by the refugee or internally displaced person, as well as about their property left there (art. 6).

Theoretically, there are two legal regimes for refugee status that exist in the CIS (for citizens of the CIS member state/persons with permanent residence in the CIS member state and citizens of the third countries), but de facto all the member states of the CIS now are the parties to the 1951 Convention Related to the Status of Refugees and apply the norms of international law in this field. At the same time, as N. N. Voronina reasonably stated, the provisions of the Agreement were not implemented effectively because its creation was a kind of political populism¹⁹.

The Agreement on Cooperation of the CIS Member States in the Fight Illegal Migration of 6 March 1998²⁰ focuses on protecting the national security of the CIS member states, which is reflected in the terminology used²¹. The Agreement does not give the definition of ‘illegal migration’, but defines the meaning of the term ‘illegal migrants’, referring to this category of third country nationals and stateless persons violating rules of entry, departure, residence or transit through the territories of the Parties, as well as citizens of the Parties who have violated rules of stay on the territory of one Party, prescribed by its national legislation (art. 1). However, the Agreement does not apply to persons who have arrived at the territory of one of the Parties in order to apply for asylum or refugee status if

¹⁹ Voronina N. A., *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografiya)* (Moskva 2015) 260.

²⁰ Soglasheniye o sotrudnichestve gosudarstv – uchastnikov SNG v borbe s nezakonnoj migratsiej ot 6 marta 1998 g. Konsorcium KODEKS. Elektronnyj fond pravovoj i normativno-tehnicheskoy informacii. <<http://docs.cntd.ru/document/8313634>> accessed 04 October 2020.

²¹ The International Organization for Migration refrains from using incorrect terminology such as “illegal migrant”, using instead the following wordings such as “migrant in irregular situatuon”, or “undocumented migrant”

their applications have been submitted to the relevant authorities of the state of entry in accordance with the procedure provided for by its legislation (art. 2).

The aforementioned Agreement defines the directions of cooperation of the CIS member states in combating illegal migration: migration control; record of citizens of third States, stateless persons and citizens of the Parties who illegally cross the borders, illegally stay on the territory of the Parties and of persons banned entry to the territory of one of the Parties; a mechanism for deportation of illegal migrants; harmonization of national legislation of the Parties in the field of responsibility for illegal migrants and for persons who facilitate illegal migration (art. 4); training and professional development of employees of the relevant authorities in the States involved in combating illegal migration; exchange of information on illegal migration (art. 6).

To implement the obligations assumed by the CIS member states in the field of migration regulation and combating illegal migration, as well as in order to 'improve the effectiveness of the fight against crime, terrorism, and other challenges and threats', an Agreement on a Unified System for Registering Third-Country Citizens and Stateless Persons Entering the Territories of the CIS Member States (adopted 18 October 2011)²². The parties to the Agreement create, within the framework of the Unified system of accounting for third-country citizens and stateless persons entering the territory of the CIS member states, a Bank of accounting data based on a distributed structure of information from national databases (while mutual integration of national information systems is not performed) (art. 3).

II. ACTS OF MODEL LEGISLATION

The legislative body of the CIS – the Interparliamentary Assembly (IPA)²³ approved the definition of model lawmaking, types of model legal acts, as well as the procedure for the corresponding legislative procedure in its special Resolution²⁴. The types of model legal acts of the CIS include *model legislative*

²² Soglashenie o edinoj sisteme uchiota grazhdan tretjih gosudarstv i lic bez grazhdanstva, vjezzhajushchih na territorii gosudarstv-uchastnikov Sodruzhestva Nezavisimyh Gosudarstv ot 18 oktiabria 2011 g. Konsorcium KODEKS. Elektronnyj fond pravovoj i normativno-tehnicheskoy informacii. <<http://docs.cntd.ru/document/902354340>> accessed 04 October 2020.

²³ Soglashenije o Mezhparlamentskoj Assambleje gosugarstv – uchastnikov SNG. Mezhparlamentskaja Assambleja SNG. Baza dokumentov. <<https://iacis.ru/public/upload/files/1/346.pdf>> accessed 03 October 2020.

²⁴ Postanovlenije Mezhparlamentskoj Assamblei gosudarstv – uchastnikov SNG O modelnom zakonotvorchestve v Sodruzhestve Nezavisimyh Gosudarstv (s izmenenijami na 25 nojabria 2008 g.). Prilozhenie 2. Polozhenie o razrabotke modelnyh zakonodatelnyh aktov i

acts (model code and model law), *recommendations* of the IPA, as well as regulations, charters and agreements. All these acts are of a recommendatory nature and can be used in whole or in part by the parliaments of the member states of the IPA in legislative process to improve their national legislation, as well as for making amendments to existing acts of legislation of the member states.

The Model Code is a legislative act that systematizes the legal regulation in a particular sphere of public relations. From 2011 to 2018, model codes such as Tax, Culture, Library, Investment, Information, of Intellectual property, Criminal and many others were passed in the CIS. A Model migration code was supposed to be approved in 2020, and its draft was discussed in February 2020 in Saint Petersburg.²⁵ However, as of 23 November 2020, this code has not been adopted, and its draft is not available.

The Model law is a legislative act of a recommendatory nature adopted by the IPA with the aim to unite the legal regulation of specific types (groups) of public relations in the CIS member states.

Recommendations are proposals adopted with the aim to unify and harmonize legislation of the Commonwealth member states, bringing their legislation into accordance with the provisions of international treaties signed within the CIS, and to synchronize their ratification procedures.²⁶

Two historical stages in model lawmaking within the CIS could be defined. The first stage covers the 1990s and is associated with a difficult period of formation of sovereign States on the territory of the former USSR and their legal systems. In this area, two documents related to the regulation of migration of workers in the CIS, as well as the expansion of legal regulation of refugee status, should be noted.

rekomentacyj Mezhp Parlamenskoj Assamblei gosudarstv – uchastnikov SNG Mezhp Parlamenskaja Assambleja SNG. Baza dokumentov <<https://iacis.ru/public/upload/files/1/515.pdf>> accessed 01 October 2020.

²⁵ See: *Migracionnyj kodeks dla gosudarstv – uchastnikov SNG obsudiat na forume v Peterburge*. 05 February 2020. Oficialnyj sajt Iсполnitelnogo komiteta SNG. <http://cis.minsk.by/news/13024/migracionnyj_kodeks_dlja_gosudarstv_-_uchastnikov_sng_obsudjat_na_forume_v_peterburge> accessed 10 October 2020; *Migracionnyj kodeks SNG – kakim on budet i dlachego nuzhen*. Sputnik. Blizhnee zarubezhje. 25 October 2019. <<https://tj.sputniknews.ru/analytics/20191023/1030089243/kodeks-migrant-cis.html>> accessed 02 October 2020.

²⁶ Postanovlenije Mezhp Parlamenskoj Assamblei gosudarstv – uchastnikov SNG O modelnom zakonotvorchestve v Sodruzhestve Nezavisimych Gosudarstv (s izmenenijami na 25 nojabria 2008 g.). Prilozhenie 2. Polozhenie o razrabotke modelnyh zakonodatelnyh aktov i rekomendacyj Mezhp Parlamenskoj Assamblei gosudarstv – uchastnikov SNG. Mezhp Parlamenskaja Assambleja SNG. Baza dokumentov <<https://iacis.ru/public/upload/files/1/515.pdf>> accessed 29 October 2020.

Recommendation legislative act ‘Migration of Labor Resources in the CIS Countries’²⁷ was adopted in 1995 in order to regulate labour migration in the CIS, as well as to guarantee the rights of migrant workers, promote the development of national legislation in the CIS countries, the preparation of interstate agreements in the field of labour migration. This act defines the notions ‘migrant worker’, ‘cross-border worker’, ‘family members’, ‘state of departure’ and ‘state of employment’. The term ‘migrant worker’ means a person who will be legally engaged in, is engaged in, or has been engaged in paid employment in a state of which he or she is not a national²⁸. Border migrant workers include persons who maintain their usual place of residence in a neighbouring state, to which they usually return every day or at least once a week (art. 2)²⁹. Family members include a person who is married to a migrant worker, as well as dependent children and other persons who are recognized as family members in accordance with the legislation of the state of employment.

The Recommendation legislative act also establishes the procedure for entry and exit of migrant workers and the corresponding restrictions (art. 5–6, 8), requirements for an employment contract (art. 10), as well as guarantees of the legal status of a migrant worker. The Law enshrines the principles of equality and non-discrimination of migrant workers (art. 9), guarantees migrant workers from the CIS recognition of diplomas, certificates of education, relevant documents on conferring the title, category, qualifications and other required employment documents received in the state, and seniority, including seniority for preferential conditions and in the specialty, to guarantee the protection of migrant workers in case of dismissal through no fault of his reasons, social security, the right to join trade unions, access to education and the right to transfer funds (art. 11–17). Article 21 establishes the state’s obligation to prevent illegal labour migration in the form of illegal movements and employment of citizens and foreign citizens who do not have a legal status. Thus, this legal document sets out in general terms the basis for the legal status of migrant workers in the territory of the CIS member states.

Another important legal act in this group of sources is the Model Legislative Act on General Principles of Regulation of Issues Related to Refugees – Citizens

²⁷ Rekomendatelnyj zakonodatelnyj akt «Migracija trudovyh resursov v stranah SNG» 1995 g. // Mezhparlamentskaja Assambleja SNG. Baza dokumentov.<<https://iacis.ru/public/upload/files/1/20.pdf>> accessed 04 October 2020.

²⁸ This definition is close to the definition of migrant worker established in the article 1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990. United Nations, Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158.

²⁹ These terms are saved in the later CIS Model Acts.

of the Former USSR in the Territories of the CIS States (15 June 1998)³⁰. The main purpose of this act is to help bring into compliance with international humanitarian standards the legislation of the Commonwealth States on the protection of the fundamental rights and freedoms of refugees – citizens of the former USSR. The approach to international standards was reflected in the definition of General principles for regulating issues related to refugees-citizens of the former USSR on the territories of the CIS member states, clarifying the definition of the concept of ‘refugee’, detailing the procedure for recognizing a person as a refugee (including grounds for refusing recognition as a refugee) and grounds for losing refugee status, establishing a list of rights and freedoms of refugees, as well as guarantees of refugee status.

Refugee is defined as a person who is not a citizen of the state in which he seeks a recognition as a refugee, and who by virtue of well-founded fear of being persecuted for reasons of race, religion, language, citizenship, nationality, membership of a particular social group or belief, as well as in connection with an armed or ethnic conflict is outside the country of his nationality and cannot enjoy the protection of this country or unwilling to use this protection due to such fears; or, not having a certain nationality and being outside the country of his/her former habitual residence as a result of such events, cannot or does not wish to return to it due to such fears.

This definition differs from the definition established in the Agreement on Assistance to Refugees and Displaced Persons of 24 September 1993 (with amendments on 10 February 1995)³¹ and approximated the definition established by the Convention and Protocol Relating to the Status of Refugees 1951³².

Article 2 of the Act establishes persons to whom its rules cannot be applied:

- towards whom there are serious grounds to assume that they have committed a crime against peace, a war crime or a crime against humanity, recognized as such by international treaties of the Commonwealth state;
- who has committed a serious non-political crime outside the territory of a Commonwealth state and before being admitted to the territory of a Commonwealth state as a person applying for refugee status;
- for which the competent authorities of the state in which it resides recognize the rights and obligations associated with the citizenship of that state.

³⁰ Modelnyj zakonodatelnyj akt Ob obshchih principah regulirovanija voprosov, svyazannyh s bezhencami – grazhdanami byvshego SSSR na territorijah gosudarstv Sodruzhestva 15 ijunia 1998 g. Mezhparlamentskaja Assambleja SNG. Baza dokumentov. <<https://iacis.ru/public/upload/files/1/75.pdf>> accessed 02 October 2020.

³¹ Soglasenie o pomoshchi bezhencam i vyzhdenym pereselencam ot 24 sentiabria 1993 g. (s izmenenijami ot 10 fevralia 1995 g.). Baza dannyh pravovoj informacii Uchiot. Zakonodatelstvo. <<https://zakon.uchet.kz/rus/docs/H930000184>> accessed 02 October 2020.

³² Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), art. 33.

The provisions of this model legislative act are not applied to:

- a foreign citizen and a stateless person who has left the state of their citizenship (their former usual place of residence) for economic reasons, or as a result of famine, epidemic, or natural or technogenic disasters³³;
- a foreign citizen, a citizen of a CIS member state, or a stateless person recognized as migrant workers in accordance with an international agreement and/or national legislation;
- a citizen of a CIS member state recognized in this state in accordance with an international treaty and/or national legislation as voluntarily resettled or forcibly resettled person.

The list of grounds for refusing to grant a person refugee status has also been expanded (art. 4). These include, among others, the initiation of criminal proceedings for committing a crime on the territory of the CIS state in which it applies for recognition as a refugee. The formulation of the grounds for refusal to be recognized as a refugee, such as ‘the arrival of a person applying for refugee status from a CIS member state in the territory of which he had the opportunity to be recognized as a refugee’, causes questions. In this case, it is possible to ‘shift’ responsibility between the CIS member states, since there is no specification about the grounds and time of such stay (based on this formulation, it could be either a forced temporary or, for example, a voluntary long-term stay).

It is particularly worth noting the consolidation of the main principles relating to refugee status: the principle of family reunification of a person recognized as a refugee, the principle of non-refoulement, as well as the emphasis on the priority of international law in regulating refugee status. In addition, there are important guarantees such as the right to appeal the decision of the competent authority on expulsion to a higher authority or to a court, the right to stay legally in the Commonwealth state until the final decision on its application is made. The inalienable rights of a person recognized as a refugee and their family members include the right to receive translation services and information about the procedure for recognizing a refugee, the rights and obligations of a refugee, etc. In addition, Article 5 sets out a wide range of inalienable rights of the refugee and members of his family – civil, social and economic.

The provision on granting *temporary asylum* to a citizen of the former USSR is also new: if he/she has grounds for recognition as a refugee, but is limited to an application for temporary asylum on the territory of a CIS member state, or has no grounds for recognition as a refugee, but, based on motives of humanity, cannot be expelled outside the CIS member state (art. 8). Temporary asylum may

³³ In fact, the act does not recognize environmental refugees’ movements.

also be granted to a citizen of the former USSR and members of his family for the period of procedure for recognition of this person as a refugee, taking into account the period of consideration of his complaint about the denial of the right to be recognized as a refugee. Thus, another instrument of international protection has been consolidated in this act³⁴.

At this stage, legislative acts could be referred to as ‘recommendation legislation’ and in fact they are the result of model lawmaking. As many of the documents adopted in 1990s these acts contains unclear legal norms that do not create any legal obligations for the parties, do not create any control mechanisms³⁵, but at the same time it was an attempt (sometimes effective) to define the main notions and make them closer to the international standards.

The second stage of the development of model legislation in the field of migration covers period 2010–2020 and is associated with the need to unify and harmonize the existing legislation of the CIS member states in the relevant area as well as to modernize definitions of some notions. At this stage, the key role belongs to the Resolution of the IPA of the CIS member states of 27 November 2015, No. 43–5, which includes a package consisting of several model legislative acts, as well as model agreements and recommendations in the field of regulating migration in general, labour migration, information cooperation, as well as migration for education and professional training. The text of the Resolution states the need to ‘search for a new paradigm of migration that combines both issues of human rights protection and national security of States’³⁶. Model laws from this package have quite clear structure (from the aims of the act, definition of the main concepts to the regulations of particular issues).

The Model Law on Migration³⁷ is the act adopted within the package, it establishes the general provisions of migration regulation, contains definitions of basic concepts, formulates the basic principles of regulating migration processes, and the basic rights of migrants, defines the main types of migration movements: internal and external migration, external labour migration, cross-border and

³⁴ It was one of the positive results of the CIS Conference on Refugees and Migrants process, which was initiated by the UNHCR (See UNHCR publication for CIS Conference (Displacement in the CIS) - The CIS Conference on Refugees and Migrants <<https://www.unhcr.org/3b5588884.html>> accessed 29 October 2020; Druke L, Capacity and Institution Building in the CIS in Refugee and Human Rights Protection with Emphasis on Central Asia and Kazakhstan. *Revue québécoise de droit international* (Année 2000) 13–2, 99–143.

³⁵ See Voronina N. A., *Mezhdunarodnoe pravo i migratsionnoe zakonodatelstvo SNG (istoriko-pravovoj analiz: monografija* (Moskva 2015) 264; Smirnova ES *Grazhdanstvo Sojuznogo gosudarstva Belarusi i Rossii :istorija, politika, pravo* (Moskva 2015) 58.

³⁶ Postanovlenie Mezhparlamentskoj Assamblei SNG “Mezhdunarodnaja migracija: problem, sotrudnichestvo, perspektivy razvitiya” (2015) 27 nojabria 2015 g. 43–5. [2016] Informacionnyj buleten MPA 64, chast 1.

³⁷ Modelnyj zakon O migracii [2016] Informacionnyj buleten MPA 2016 64, chast 1.

seasonal migration, migration for education, migration for family reunification and repatriation. Special chapters are devoted to the legal regulation of the status of refugees, temporary asylum seekers and internally displaced persons; external labour migration. In addition, the model law establishes model rules for the legal regulation of entry and stay of foreign citizens on the territory of a CIS member state, as well as rules concerning emigration, integration and adaptation of migrants, accounting for the stay or residence of citizens on the territory of the state, transfer and protection of personal data, provision of services in the field of labour migration.

Article 2 of the Model Law on Migration provides definitions of the main notions related to migration. Migration itself is considered as ‘the movement of individuals from one state to another, as well as within the territory of the state, regardless of the reasons for this movement’. Thus, the Model Law uses a broad approach to the definition of this phenomenon, in which even tourist movements, as well as the transit of a person through the territory of the state, can also be recognized as a form of migration. However, the Model Law defines only certain types of migration: internal migration, immigration, emigration, external labour migration, illegal migration, border migration, seasonal migration, repatriation, and also, as mentioned earlier, describes migration for the purpose of education and family reunification.

In addition, the Law defines the concepts that mean persons engaged in migration movement: migrant; migrant worker, family members, emigrant, refugee; person applying for recognition as a refugee, internally displaced person; foreign citizen; stateless person, temporarily staying on the territory of the state foreign citizen or stateless person; temporarily residing on the territory of the state foreign citizen or stateless person; illegal migrants. Some of these concepts were defined in earlier acts (for example, refugee, migrant worker), while others were defined for the first time.

Thus, a migrant is defined as a person who enters or leaves the territory of a state, as well as moves within the territory of the state, regardless of the reasons for this movement. In my opinion, this definition (as the definition of migration given in the Law under consideration) is too broad, since it does not contain any temporary signs concerning movement.

The definition of the term ‘refugee’ in comparison with the definition given in the Model Legislative Act of 1998 excluded the formulation ‘as well as in connection with an armed or ethnic conflict’. Significant changes were made in the description of ‘forced migrant’: in this Model Act this notion is defined as a person who is forced to leave the place of residence in the territory of one territorial entity, and arrived at the territory of another territorial entity due to committed against him or members of his family of violence or prosecution in other forms when ethnic, religious and regional conflicts, accompanied by mass

violations of the rights and freedoms of man and citizen, legality, law and order and public security (art. 2). At the same time, both terms apply not only to citizens of the CIS member states but also to citizens of other States and stateless persons.

The definition of ‘illegal migrants’ was also changed to ‘foreign citizens or persons without citizenship arriving in the territory of the state without permission of the authorized body or get it the illegal way, and arrived at the territory of the state legally, but have not left it until the expiration of the permitted period of stay specified in accordance with the laws of the state’ (art. 2). It should be noted that in the CIS, the approach to defining migrants as illegal has been preserved, despite the declaring of commitment to international norms and rules, as well as the priority of protecting human rights and freedoms, while in recent years it has been customary to use different formulations (undocumented migrant, irregular migrant, migrant with an irregular status).

The Model Law on Migration sets out *the basic principles* of regulating migration processes: ensuring human rights to work, freedom of movement, choice of place of residence, type of activity and profession, freedom of departure, enshrined in the state Constitution; the inadmissibility of any discrimination on various grounds or circumstances; ensuring compliance of the state’s migration legislation with international standards and recommendations of the International organization for migration³⁸; prevention of spontaneous and disordered migration processes, both inside and outside the state³⁹; participation of relevant state bodies and non-governmental organizations in efforts to streamline migration processes; personal participation of migrants settling in a new place of stay and residence with targeted state support for the initiative and self-activity of each migrant, primarily from among internally displaced persons from environmental and natural disaster zones. It confirms the prohibition of the expulsion or forced return of refugees to the States from which they came, except in cases stipulated by international documents (conventions, treaties, etc.).

The next document in the package is the Model Law on Labor Migration⁴⁰ – a new version of the Recommendation legislative act ‘Labor Migration in the CIS countries’ of 1995. The new version was amended with the norms regulating the scope of the law on persons (it is not applied to persons engaged in business activities, as well as to those working in international organizations; refugees;

³⁸ Also, a clause is made about taking into account the “political and socio-economic interests of the state, its history, traditions, customs and development prospects”. On the one hand, that is natural for national legislation. But, on the other, it can create preconditions for explicit or implicit discrimination based on any signs.

³⁹ This principle is controversial in terms of preventing spontaneous and disorder migration processes outside the state, for instance, in the event of a natural disaster on the territory of another sovereign state.

⁴⁰ Modelnyj Zakon O trudovoj migracii [2016] Informacionnyj Buleten MPA 64, chast 1

clergy; seamen under the flag of the CIS member states; foreign students of educational institutions (with some exceptions), accredited employees of representative offices of a foreign legal entity), regulating the activities of organizations that are engaged in the selection, training, referral of migrant workers for the purpose of employment (art. 4). In addition, Article 2 of the Law contains a broader list of terms (compared to the previous version), including the concepts of 'seasonal migrant worker', 'administrative removal from the territory of the state', 'deportation', 'readmission', 'state of employment', 'migration', 'labor migration', 'illegal (illegal) migration', 'cross-border migration' and others.

Another change in the text of the Law is expanding the list of basic civil and social rights of migrant workers and members of their families, employment rights and property rights. The right of migrant workers to receive comprehensive information on the procedure for exercising their rights and freedoms from the competent state bodies free of charge, as well as the conditions of stay and paid employment and the duties provided for by law (art. 7, part 8). Article 23 provides the new employer's obligation to inform migrant workers about the nature of the work to be done and the working hours, remuneration and living conditions, social security and medical services, and the employer's responsibility for non-performance of this duty, including payment of expenses related to the return of the migrant worker and members of his family to the States of departure. The implementation of this rule in the national legislation of the CIS member states could prevent abuse by employers in the countries of employment.

In the development of certain provisions of model legislation in the field of migration, Model Agreements on Informational Interaction in the Field of Migration⁴¹ and on the Organized Recruitment of Citizens for Temporary Employment in the CIS⁴² were adopted as a part of a package. The first of these model agreements defines the main areas of cooperation: mutual exchange of information and analytical materials, periodicals, as well as materials to share the experience of the competent authorities of the Parties dealing with migration issues, training and professional development of employees of the relevant authorities, joint research activity in the field of combating illegal migration, exchange of regulatory, organizational and operational information related to illegal migration. Information is exchanged between the parties on the basis of

⁴¹ Modelnoe soglasenie Ob informacionnom vzaimodejstvii v sfere migracii [2016] Informacionnyj Bulletin 64, chast 1.

⁴² Modelnoe soglasenie Ob organizovannom nabore grazhdan dla osushchestvlenija vremennoj trudovoj dejatel'nosti na territorii SNG. *Informacionnyj bulletin* 2016, № 64, chast 1.

requests, and the agreement sets out requirements for the form of the request and response to it⁴³.

The Model Agreement on the Organized Recruitment of Citizens for Temporary Employment in the CIS establishes a framework for legal regulation of the organization of specific activities in the field of labour migration. Organized set is a set of activities organized to attract citizens of the state of one of the parties to temporary employment in the territory of the other contracting country by profession, is included in a special list of professions (specialties, positions) for foreign workers (art. 2). The agreement defines the obligations of the employer that attracts migrant workers in the appropriate form (it is interesting that only a legal entity acts as an employer), and also establishes a list of documents submitted in the state of employment that attracts migrant workers in an organized recruitment procedure.

III. RECOMMENDATIONS

The first point to be noted concerning this group of documents, are the Recommendations on stimulating the integration of immigrants into host communities, including teaching the state language of the host state, assistance in employment, obtaining general and professional education, and participation in local self-government dated 29 November 2013⁴⁴. According to this act, special attention should be paid to the adaptation and integration of migrants, such as taking measures to simplify and facilitate procedures for migrants to apply to the relevant official bodies and judicial authorities in order to protect their rights and legitimate interests, especially to protect the rights and legitimate interests of women and children. In addition, the Recommendations have an aim to encourage and promote the establishment and development of an infrastructure of a complementary network of public and private organizations and structures providing various services to migrants. In 2015, provisions on facilitating the adaptation and integration of migrants in host countries were also more generally set out in Chapter 9 of the Model Law on Migration⁴⁵.

⁴³ Modelnoe soglaszenie Ob informacionnom vzaimodejstvii v sfere migracii, article 4.

⁴⁴ Rekomendacii po stimulirovaniju integracii immigrantov v prinimajushchie soobshchestva, v tom chisel cherez obuchenie gosudarstvennomu jazyku prinimajushchego gosudarsva, sodejstvije v trudoustrojstve, poluchenii obshchego i professionalnogo obrazovanija, uchastie v mestnom samoupravlenii: Postanovlenie Mezhpaparlamentskoj Assamblei SNG ot [29 November 2013] Mezhpaparlamentskaja Assambleja SNG, 39–20. Baza dokumentov. <<https://iacis.ru/public/upload/files/1/542.pdf>> accessed 04 October 2020.

⁴⁵ Modelnyj zakon O migracii ot [27 November 2015] Informacionnyj buleten MPA 2016 64, chast 1

Recommendations for the Development of Migration with a Purpose of Studying and Internship⁴⁶ were adopted as a part of a package in 2015. This document (in contrast to the Recommendations discussed earlier) does not have the structure typical of a normative act (division into articles, paragraphs, etc.), but rather resembles an analytical document. The introduction briefly describes the process of formation of the legal framework of the unified educational space, which includes a wide range of documents, including model acts. The following parts of the document are devoted to the analysis of the current state of the educational services market and academic mobility (migration) as a component of the export of educational services, characteristics of factors affecting the export of educational services and academic mobility, assessment of the state of academic mobility (migration) in the CIS. It concludes with 11 recommendations for the development of migration with the aim of education and training of citizens of States – participants of the CIS, including proposals for developing financial support mechanisms for students, development and implementation of educational programs, including ‘the international component’, development of measures to simplify the registration of students, etc.

IV. CONCLUSION

The CIS migration law can be defined as a set of norms regulating relations in the field of movement of persons in the CIS, labour migration, providing asylum to refugees and internally displaced persons and countering illegal migration. The norms contained in international multilateral agreements establish common areas of cooperation between the CIS member states in the migration sphere and the protection of the rights of CIS citizens. In the first decade of the CIS’s formation, basic human rights and freedoms and guarantees for their implementation, including freedom of movement and choice of place of residence, the principle of non-discrimination, and social guarantees for workers, including migrants, were established at the interstate level. The principles of cooperation of the Commonwealth States were defined and definitions of concepts in the field of labour migration, protection of refugees and internally displaced persons, as well as in fighting illegal migration were established.

Despite the ones declared by CIS members’ commitment to the norms and principles of international law, the content of acts and definitions of basic concepts

⁴⁶ Rekomendacii po razvitiyu migracii osushchestvlajemoj s celju obuchenija i stazhirovki grazhdan gosudarstv-uchastnikov SNG ot 27 November 2015. Mezhparlamentskaja Assambleja SNG. Baza dokumentov. <<https://iacis.ru/public/upload/files/1/628.pdf>> accessed 04 October 2020.

sometimes differ from those established in the acts of international law. At the same time, relevant provisions of the CIS multilateral agreements have, in general, declarative character and are not applied in practice because of the absence of effective control mechanism, for example, judiciary body or a committee with the appropriate authority to accept claims in cases of violations of the norms of these acts.

An attempt to create a legal basis for regional system for protecting refugees and displaced persons within the CIS was made; definitions of refugee, displaced persons and the obligation of the countries on this field were established (these norms differ from the provisions of international law). Theoretically, there are two legal regimes for refugee status that exist in the CIS (for citizens of the CIS member state/persons with permanent residence in the CIS member state and citizens of the third countries), but de facto all the member states apply the norms of the 1951 Convention Related to the Status of Refugees and the 1966 Additional Protocol in this field.

The acts of model legislation in the field of regulating migration within the CIS have a recommendatory character, but they have clearer structure (close to the acts of national legislation), contain more precise definitions of the important concepts that are closer to the commonly accepted international norms and standards, bring the model norms into the system (Model Law on Migration). The common issues on migration regulation are performed in the model acts, as well as specific norms on the status of refugees, displaced persons and international protection, status of migrant workers and members of their families, issues of integration of migrants and academic mobility. The provisions of the model legislation have been revised and they could be used in member states of the CIS for harmonization and unification of their legislation in the field of migration.

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