



European
University
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ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

Co-financed by the European Union

Legal Aspects of Circular Migration in the Republic of Armenia

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CARIM-East Explanatory Note 12/62

Legal Module

September 2012



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1. Introduction

Seasonal labour migration has been present in Armenia since the 1960s and the times of the Soviet Union. During those years 50,000 people from densely populated rural areas annually left their country, above all going to Russia, in order to work in construction: this phenomenon was known as “khopanchiner” (labour migrants) and its Russian synonym “shabashniki”. As a rule, departure from Armenia starts in early spring, reaching its height in March and April, and the return starts in the autumn in the second half of October. Annually, 60,000-80,000 people leave Armenia for seasonal work due to low salaries, lack of work and poor prospects. The main destination countries are the Russian Federation, Ukraine and Belarus due to the visa free regime, lack of language obstacles and then comes the US and other European countries¹. Though there is no legal formulation for circular migration in Armenian legislation, circular migration is indirectly referred to in separate legal acts and a number of international agreements/treaties signed by Armenia. They contribute or can contribute to the establishment of circular migration. They can stimulate it, as well as coordinate, to a certain extent, circular migration.

Legal aspects of circular migration should be observed from two angles:

- Circular migration in case of foreigners’ or stateless persons’ entry and residence in Armenia.
- Circular migration when Armenian citizens leaving the RA.

2. Freedom of Movement

The RA Constitution² declares the right to freedom of movement and the right to residence anywhere in RA territory (Art. 25). Along with the constitutional right to leave and return to the Republic of Armenia, this right enables a person to move freely within the territory of Armenia, and if necessary to be protected against any infringement³. According to Art. 25(3), “every citizen and everyone legally residing in the Republic of Armenia shall have the right to return to the Republic of Armenia.”

To the right to freedom of movement is linked the Decision of the RA Government № 297-N⁴ 24 March 2011, according to which the certificate of Return to the Republic of Armenia is a one-way travel document. This document enables RA citizens, those recognized as refugees or those who have sought asylum in the Republic of Armenia, and those with a right to reside in the Republic of Armenia to return quickly should they lack legal documents enabling them to cross the state border (point 1 of Annex 2 approved by the decision). Those illegally staying abroad without legal documents are also provided with return certificates in order to ensure their return to the Republic of Armenia. This is based on readmission agreements for those staying without authorization concluded with the relevant country (point 4).

Those who left Armenia for foreign countries and who have no legal document allowing them to cross the state border and who are unable to return to Armenia (loss of the document, unusable documents and etc.) can apply to the RA diplomatic representation or consular office and receive there return certificates.

¹ Protocol Decision of the RA Government № 51 dated 30 December, Annex, p. 8.

² See the Constitution of the Republic of Armenia, Chapter 2. The Constitution of the Republic of Armenia was adopted on 5 July, 1995, which was amended 27 November, 2005 and entered into force on 5 December, 2005. The official source is the Official Journal of Armenia (OJA) 05.12.2005/Special publication/

³ <http://www.concourt.am/armenian/library/cclibrary/2010/sahmanadrakan2010.pdf>. See Comments on the RA Legislation, p. 291.

⁴ Decision “On Approving the description of the return certificate of the Republic of Armenia and order of providing the return certificate. Entered into force on 16 April 2011, official source: Official journal of Armenia N 19(822), 04.06.11.

3. The circular migration of foreign citizens and stateless persons

The Law on Foreigners⁵ is quite liberal, and it includes some interesting provisions facilitating circular migration. For instance, it is relatively easy for a foreign citizen to obtain a permanent residence status in Armenia (Art. 17). This status is stable too considering that a foreigner will not lose it, even if he or she leaves Armenia for longer than 6 months, provided that the Armenian authorities are informed about such a long absence (Art. 17.1). Under such circumstances, we can assume that a foreigner might use this opportunity for circular mobility between Armenia and his or her or her country of origin. At the same time, it should be remembered that the same law stipulates those grounds which ban a foreigner's entry into the territory of the Republic of Armenia (Art. 8).

The fourth chapter of the same law creates favorable conditions for circular migration, which is entirely devoted to the employment of foreigners in the RA. According to Art. 22(2) of this law, foreigners may be employed in Armenia on the basis of a work permit issued by a competent authority. However, there has been no governmental decision adopted to implement this provision. Thus, procedures and terms of authorization or the refusal of a work permit or the governmental agency responsible for issuing such permits have not yet been specified. As a result, foreign citizens, at least to date, can work in Armenia without permission. It can be assumed that this kind of a situation is beneficial for foreigners as the employment contract concluded between a foreigner and an employer is already a sufficient grounds for him or her to be granted temporary residency in Armenia. Any residency status (having a document attesting the residency status) enables, in fact, a foreigner to leave the RA and return to the RA again (Arts. 12.1 and 6.1). Thus, Armenian legislation gives foreigners a favorable opportunity to migrate circularly.

Amendments made to the Decision of the RA Government No. 1417-N, 03.12.2009 "On the order of granting the conventional travel document"⁶ might also contribute to the circular migration of those recognized as refugees and those granted asylum in the RA. According to these amendments, the RA diplomatic representations and consular posts are given the authority to prolong the validity of the conventional travel documents of those granted refugee status and asylum in the RA staying abroad. Previously, the absence of such a provision was an obstacle for refugees staying abroad as upon expiration of the validity of their documents, they could not return to Armenia.

4. Dual Citizenship

The fact that Armenia allows dual citizenship (Law on Citizenship⁷, Art. 13.1), the simplified acquisition of Armenian citizenship for people with Armenian origin and the possibility of granting permanent residence status to the latter can also be interpreted as facilitating (or at least not hindering) the circular mobility/migration of Armenian citizens. A foreigner, who acquires RA citizenship, is not deprived from the citizenship of his/her country and still enjoys the protection and patronage of that country. At the same time being a dual citizen, enables a citizen to enter RA territory without an entry visa, it allows them to move freely within the country, choose their place of residence, and then, if necessary, return to the country of their first citizenship without any legal implication. The fact of being protected simultaneously by two countries eases circular migration. Moreover, establishment of dual citizenship is very important for members of the Armenian Diaspora, who wish to strengthen

⁵ Entered into force 3 February 2007 Amended 02.02.2010 (effective 13.02.2010), Official sources: Official Journal of Armenia No. 6(530), 24.01.2007.

⁶ Entered into force on the 2nd of January 2010, effective 30.07.2012, Official sources: Official Journey of Armenia (OJA) No.65 (731), 23.12.2009.

⁷ Entered into force 28 November 1995, last Amendments 06.04.2010 (effective 08.05.2010), Official sources: Bulletin of Parliament of Armenia No. 8, 1995.

their ties with their homeland. They can acquire RA citizenship in a much facilitated procedure without renouncing the citizenship of their own country.⁸

5. International Cooperation

Agreements, concluded in the framework of the CIS countries, also provide a good opportunity for circular migration. For example, according to the Agreement “On the movement of citizens of the CIS countries without a visa in the territory of the CIS”⁹ citizens of CIS countries, regardless of their place of permanent residence, can enter, leave, transit through, and stay in, the territory of the CIS countries without a visa while preserving the rules of residence and registry effective in that country. Bilateral agreements on reciprocal visits without a visa for citizens have been concluded with Belarus, Georgia¹⁰, the Russian Federation, Ukraine¹¹, Turkmenistan, and Kazakhstan. A similar agreement has also been concluded with Argentina.

In accordance with the Agreement “On cooperation in the fields of labour migration and social protection of labour migrants”¹², parties mutually recognize the following documents: diplomas, certificates on education, relevant documents on degrees, qualifications/specializations, as well as documents validating work experience. This creates the favorable prerequisites for finding a legal job and can contribute too to circular migration.

The Convention on the Legal Status of Labour Migrants and their Family Members adopted in the framework of the CIS¹³ regulates the whole cycle of migration of labour migrants coming from CIS Participating States and their family members. The Convention also covers seasonal workers and their family members during the period of their employment (Art. 15.1), thus creating better conditions for circular migration.

In the framework of the Mobility Partnership signed with the EU and its Member States on 27 of October in 2011,¹⁴ Armenia and participating Member States expressed their readiness to conclude necessary bilateral agreements on circular migration. However, no practical steps have been undertaken in this regard so far.

⁸ See Article 1 of the Law on Citizenship and the Annex N 2 of the Decision of the Government RA from 23 November 2007, N 1390-N.

⁹ Signed on 9 October 1992. Ratified by the RA Supreme Council Decision No. H.N-0921a-I dated 27 September 1993; Entered into force on the 27 September 1993. See the current status of ratification by CARIM-East countries on: <http://www.carim-east.eu/1289/agreement-on-visa-free-movement-of-citizens-of-the-cis-countries-on-the-territory-of-the-member-states/>

¹⁰ The agreement was ratified by the RA Supreme Council Decision No. N- 1064-I; adopted 25.05.1994; entered into force 25.05.1994.

¹¹ The agreement was ratified by the National Assembly, Decision No. N-167-2; adopted 04.04.2001; entered into force 25.05.1994.

¹² The Agreement was signed by all CIS states in 1994 in Moscow. See the current status of ratification by CARIM-East countries on: <http://www.carim-east.eu/1299/agreement-on-cooperation-in-the-field-of-labour-migration-and-social-protection-for-migrant-workers/>

¹³ See further details on: <http://www.carim-east.eu/1296/convention-on-the-legal-status-of-migrant-workers-and-their-families-adopted-by-cis-member-states/>

¹⁴ See: <http://register.consilium.europa.eu/pdf/en/11/st14/st14963-ad01.en11.pdf>