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The Legal Framework for Circular Migration in Belarus

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In this paper we regard circular migration as recurrent entry (and subsequent departure) of foreign citizens to the Republic of Belarus, as well as Belarusian citizens to other countries for a short period of time for employment and labor activities, as well as for studies. It should be noted that the term 'circular migration' is not used in Belarusian legislation. Nevertheless Belarus concluded a number of international agreements directed at regulation of labor migration and adopted national legal acts on labor migration and other types of migration that we can consider circular.

As far as the main component of circular migration is labor migration, its legislative regulation is ensured by legal acts on labor migration (both international and national) that we have studied in detail in the paper devoted to labor migration.¹

1. International cooperation

As far as freedom of movement encourages circular migration, international legal instruments ensuring freedom of movement will be analyzed below.

1.1 Regional level: Commonwealth of Independent States

The biggest progress in this direction was achieved within the Commonwealth of Independent States. A number of multilateral agreements were concluded². These agreements encourage circular migration primarily due to the fact that they envisage visa-free entry and transit, as well as unified list of documents for movement of citizens within the CIS. Besides, bilateral agreements were also concluded with post-Soviet States,³ that contribute to circular migration, as they make provisions of multilateral agreements more specific, identifying rather long terms of stay in the territory of contracting parties, including without the need to register in relevant public authorities. They also specify the lists of documents necessary for crossing of borders and technical procedures associated with crossing of borders and stay in the territory of contracting parties.

Major part of legal circular migration is supported by bilateral agreements in the field of social security. There are such multilateral and bilateral agreements within the CIS⁴. These agreements aim

¹ See on www.carim-east.eu

² Agreement on visa-free movement of citizens of the member states of the Commonwealth of Independent States over the territory of its members of 9 October 1992 // Commonwealth: Newsletter of CIS the Council of Heads of State and Government.- 1992.- No. 7; Agreement on procedure of exit of citizens of member states of the Commonwealth of Independent States to the states that are not members of the Commonwealth of Independent States, and exit therefrom of 17 January 1997 // Commonwealth: Newsletter of CIS the Council of Heads of State and Government.- 1997.- No. 1 (25); Agreement between the Government of the Republic of Belarus, Government of the Republic of Kazakhstan, Government of the Kyrgyz Republic, Government of the Russian Federation and Government of the Republic of Tajikistan on reciprocal visa-free trips of citizens of 30 November 2000 (entered into force on 7 June 2002).

³ Agreement between the Government of the Republic of Belarus and the Cabinet of Ministers of Ukraine on visa-free trips of citizens of 12 June 2009; Agreement between the Governments of the Republic of Belarus and Republic of Armenia on reciprocal visa-free trips of citizens of the Republic of Belarus and Republic of Armenia (entered into force on 19 December 2003); Agreement between the Government of the Republic of Belarus and the Government of Turkmenistan on reciprocal trips of citizens of 22 December 1999 (entered into force on 21 July 2000); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Uzbekistan on reciprocal trips of citizens of 19 January 2005; Agreement between the Government of the Republic of Belarus and the Government of Azerbaijani republic on reciprocal visa-free trips of citizens signed on 15 May 2006.

⁴ Treaty between the Republic of Belarus and Latvian Republic on cooperation in the field of social security of 29 February 2008; Treaty between the Republic of Belarus and Lithuanian Republic on social security of 4 February 1999; Intergovernmental Agreement on guarantees of rights of citizens of CIS member states in the field of retirement benefits of 13 March 1992; Treaty between the Republic of Belarus and the Russian Federation on cooperation in the field of social security of 24 January 2006; Agreement between the Ministry of Healthcare of the Republic of Belarus and Ministry of Healthcare and Social development of the Russian Federation on cooperation in healthcare and medical science

to protect the rights of citizens in the field of retirement benefits and healthcare. Most agreements have deficiencies associated with the fact that they are based on ‘territoriality’ principle, and retirement benefits are offered according to the legislation and at the expense of the state where a citizen resides permanently (conditions and level of retirement coverage may worsen when moving to a different country due to variations in retirement legislation, one might need to obtain the status of a permanent resident in the new country etc.). In the meantime, some provisions can have a positive impact on circular migration, for instance, length of service in Belarus and Russia is summed up under the treaty with the Russian Federation.

Taking into account that many migrants from Ukraine are employed in agriculture in the border areas, one can conclude that agreements on labor activities and social protection of migrants have a positive impact on circular migration.

1.2 Union of Russia and Belarus, Eurasian Economic Community

The most favorable conditions for circular migration were created within the Union of Russia and Belarus and Common Economic Space, as workers from Russia, Belarus and Kazakhstan are granted expanded labor and social protection rights based on a mechanism similar to the European Union law⁵. Citizens of the sending state working in the territory of the receiving state have equal rights with citizens of the latter in terms of salary, labor hours and leisure, work safety, working conditions and other aspects of labor relations. It is stipulated that length of service and employment experience in the same occupation acquired while working in Belarus and Russia are mutually recognized for their citizens. Wide social rights and guarantees are also envisaged.

Agreements within the Common Economic Space envisage that labor activities of the citizens of the member states in the territory of contracting parties can be carried out without corresponding permits.

1.3 Cooperation with countries that are not part of the CIS

Expansion of the possibility to exercise freedom of movement between Belarus and countries outside the CIS is envisaged in bilateral treaties⁶. However, most of them do not encourage circular migration,

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(concluded in Moscow on 28.04.2011); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Moldova on guarantees of citizens’ rights in the field of retirement benefits (concluded on 12.09.1995); Agreement between the Government of the Republic of Belarus and the Government of Ukraine on guarantees of citizens’ rights in the field of retirement benefits (concluded on 14.12.1995); Agreement on procedure of retirement coverage of the military servicemen and their families and state insurance of the military servicemen of the CIS member states (concluded on 15.05.1992).

⁵ Decision of the Supreme Council of the Community of Belarus and Russia of 22 June 1996 No. 4 “On equal rights of citizens to employment, labor compensation and other social and labor rights”; Treaty between the Republic of Belarus and the Russian Federation “On equal rights” of 25 December 1998 (entered into force on 22 July 1999); Agreement on cooperation in counteracting illegal labor migration from third states of 19 November 2010 (St. Petersburg); Agreement on legal status of migrants workers and members of their families of 19 November 2010 (St. Petersburg).

⁶ Agreement between the Government of the Republic of Belarus and the Government of Hungarian Republic on reciprocal trips of citizens using diplomatic and official passports (entered into force on 14 July 2002); Agreement between the Government of the Republic of Belarus and the Government of the Socialist Republic of Vietnam on reciprocal visa-free official trips (entered into force on 25 November 1993); Agreement between the Government of the Republic of Belarus and the Government of the Republic of India on reciprocal visa-free official trips (entered into force on 14 May 1993); Memorandum between the Republic of Belarus and Islamic Republic of Iran on visa-free trips based on diplomatic and official passports (entered into force on 14 April 1995); Agreement between the Government of the Republic of Belarus and the Government of the People’s Republic of China on reciprocal visa-free official trips (entered into force on 1 March 1993); Agreement between the Government of the Republic of Belarus and the Government of the People’s Republic of China on reciprocal group tourist trips (entered into force on 1 March 1993); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Turkey on reciprocal visa-free trips based

as they cover facilitation of business, diplomatic and tourist trips. Only few of them provide for full elimination of visas and are concluded with countries with which migration exchange (including circular migration) is minimal.

1.4 International treaties on local border traffic

In 2010 Belarus concluded international treaties with Poland, Latvia and Lithuania on simplified local border traffic for border residents⁷.

Under international treaties, border residents from Belarus will visit border territories of Poland, Latvia and Lithuania and residents of border territories of neighboring states will visit border territories of Belarus without visas based on local border traffic permits⁸, provided that they have public, cultural or family reasons or justified economic reasons for that. Unfortunately, international treaties with Poland and Lithuania are yet to enter into force.

We believe that agreements on local border traffic will give a powerful impetus to circular migration in the border territories. However, taking into account that only some of them have already

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on diplomatic, official or special passports of 14 December 1993 (entered into force on 14 February 1994); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Cuba on reciprocal visa-free trips of citizens (entered into force on 10 March 1999); Agreement between the Government of the Republic of Belarus and the Federal Government of the Federal Republic of Yugoslavia on cancellation of visas of 4 March 1999 (entered into force on 10 February 2000); Agreement between the Government of the Republic of Belarus and the Government of the Slovak Republic on visa-free trips of owners of diplomatic and official passports (entered into force on 8 February 2003); Agreement between the Government of the Republic of Belarus and the Government of the Republic of Argentina on visa-free trips based on diplomatic and official passports of 28 October 2004; Agreement between the Government of the Republic of Belarus and the Government of the Federal Republic of Brazil on cancellation of visa-regime for owners of diplomatic, service (official) passports of 26 October 2004; Agreement between the Government of the Republic of Belarus and the Government of the Syrian Arab Republic on visa-free trips based on diplomatic and official passports of 24 August 2005; Agreement between the Government of the Republic of Belarus and the Government of the South African Republic on cancellation of visas for owners of diplomatic and service or official passports of 28 August 2006; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Venezuela on cancellation of visas in diplomatic, service or official passports of 8 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Venezuela on cancellation of visas in national passports of 8 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Arab Republic of Egypt on visa-free trips based on diplomatic, service and special passports of 27 June 2005; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Poland in reciprocal trips of citizens concluded by exchange of notes on 20 December 2007; Agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on introducing amendments and addenda to the Provisional agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on reciprocal trips of citizens of 26 November 2002 concluded by exchange of notes on 20 December 2007; Agreement between the Government of the Republic of Belarus and the Government of Latvian Republic on reciprocal trips of citizens concluded by exchange of notes on 31 January 2008; Agreement between the Government of the Republic of Belarus and the Government of the Democratic People's Republic of Korea on visa-free trips for owners of diplomatic and service passports of 19 December 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Korea on reciprocal cancellation of visas for owners of diplomatic and service (official) passports of 5 November 2007; Agreement between the Government of the Republic of Belarus and the Government of the Republic of Peru on cancellation of visas for owners of diplomatic, special and (or) official passports signed on 29 January 2010.

⁷ Treaty between the Government of the Republic of Belarus and the Government of the Republic of Poland on rules of local border traffic of 12 February 2010 (Warsaw); Agreement between the Government of the Republic of Belarus and the Government of Latvian Republic on procedure of reciprocal trips of residents of local border areas of the Republic of Belarus and Latvian Republic of 23 August 2010 (Riga); Agreement between the Government of the Republic of Belarus and the Government of Lithuanian Republic on procedure of reciprocal trips of residents of local border areas of the Republic of Belarus and Lithuanian Republic of 20 October 2010 (Minsk).

⁸ Local border traffic permit is a document giving owner the right of multiple entry, exit and stay only in the local border territories.

entered into force (late 2011 – early 2012), it is too early to make conclusions about their actual impact on migration.

1.5 Conclusions

Analyzing international agreements of Belarus in the field of migration through the prism of their impact on circular migration, we should note that existing system of international legal regulation consists mainly of bilateral agreements, while most favored nation treatment is provided for only within the Union of Russia and Belarus. Agreements vary a lot; hence one should point out the absence of a balanced system of international legal regulation, even at the CIS level. Besides, the norms of above-mentioned agreements do not directly stimulate temporary or circular migration, and legal procedures stipulated therein have the following deficiencies: unbalanced quota system, references to national legislation that in most cases envisages complicated bureaucratic procedures for international migration. Above-mentioned factors, as well as ‘transparency’ of borders in the post-Soviet space and complexity of participation in temporary migration programs (bureaucratic procedures and the need to bear material costs that are significant for migrants) create conditions for illegal migration and contribute to the rise of crime.

2. National legislation

2.1 Circular migration of Belarusian citizens

The existing visa-free system of movement among most CIS countries makes a significant contribution to circular migration. Meanwhile, the remaining obstacle in this respect is the requirement to obtain special employment permits at each new entry. This problem has been resolved only within the Union of Russia and Belarus and within the Common Economic Space. Under the impact of these factors circular migration of Belarusian citizens is directed exclusively towards Russia. Kazakhstan is not a popular destination for circular migration due to distance, cultural differences, and language barrier.

In other directions mainly non-return and other types of migration of Belarusian citizens occur. It should be noted in this regard that unfortunately, Belarusian legislation in the field of migration does not create stimuli for circular migration of Belarusians and does not envisage a system of incentives to encourage Belarusian migrants to return to their home country. Migration policy also does not offer efficient measures to stimulate re-emigration, such as customs benefits for returning migrants bringing in property and means of production acquired abroad; development and adoption of special emigrant programs to stimulate the return of emigrants from abroad and assist in their employment in the country; creation of favorable climate for the use of foreign currency to purchase goods, land and production equipment; fostering of business and social ties with workers who went abroad; establishment of special funds to accumulate financial means for medical care, housing and other needs of Belarusian migrants coming back to the home country.

The fact that Belarusian legislation does not provide measures for stimulating labor migration of citizens having professions that are not in demand in the home country and of workers with low qualification can be considered as a further obstacle for circular migration. These persons could be involved in circular migration and they could come home after having acquired new experience and qualification abroad or after the change of labor market situation in Belarus (creation of new jobs).

2.1.1 Double citizenship

A Belarusian citizen cannot be simultaneously acknowledged as a citizen of a foreign state⁹. It should be noted that persons who earlier had the citizenship of Belarus, according to the article 53 of the Law No. 105–Z, have a right to obtain permanent residence permit. In the context of non-acknowledgement of double citizenship by the state, obtaining permit for permanent residence by former Belarusian citizens, no doubt, encourages circular migration of these persons between the country of their citizenship and Republic of Belarus. However, the above-mentioned legal provisions are relevant only for those cases when Belarusian citizens underwent procedure of exit from Belarusian citizenship before obtaining foreign citizenship. At present there is a widespread practice when citizens of Belarus, having obtained citizenship of another state, do not inform relevant Belarusian authorities about that and do not renounce to Belarusian citizenship. Thereby, they can enter Belarus based on their Belarusian passport as citizens of Belarus, as according to the legislation in force Belarusian citizens cannot be restricted in their civil rights due to the possession of another citizenship.¹⁰

Under the valid legislation, unemployment benefits are paid only in the territory of Belarus, which undoubtedly encourages circular migration, as this stimulates migrants to return to the country after expiration of the foreign contract.

2.2 Regulation of circular migration of foreigners to Belarus

2.2.1 Circular migration and regimes of stay

Law No. 105–Z defines the regimes of stay of foreigners in Belarus (article 38). Foreigners can temporarily stay (no longer than 90 days), temporarily reside (no longer than 1 year) or permanently reside in Belarus. In our point of view, these regimes encourage different types of migration of foreigners to Belarus.

Status of temporary stay is the basic one for foreigners (article 39 Law No. 105-Z). Regime of temporary residence in Belarus is more comfortable in terms of period of stay and hence more favorable for circular migrants (article 48 Law No. 105-Z).

It should be stressed that regime of stay depends on the purpose of entry. If a person plans to carry out labor activities or study in Belarus, then he or she based on documents submitted obtains a corresponding type of visa and his or her regime of stay and legal status are determined accordingly. For instance, labor migrants and foreigners planning to be entrepreneurs can enter Belarus under labor contracts for the period of up to one year (part 1 article 48 Law No. 105-Z). A foreigner can change his or her legal status of stay in Belarus without exiting it (if there are legal grounds for that indicated in Law No. 105-Z).

As for circular migration, one should note that under valid legislation neither temporarily staying, nor temporarily residing foreigners can automatically receive permits for repeated (multiple) entry; there are no privileges for repeated entries of foreigners. That is why development of circular migration of foreigners to Belarus is hindered by the fact that for every repeated entry and every repeated employment a foreigner needs to collect relevant documents and obtain permits once again. Exception is made for citizens of Russia and Kazakhstan (as a result of above-mentioned international norms that determined special conditions of entry, employment and stay for this category). However, citizens of Russia and Kazakhstan are weakly represented in circular migration to Belarus, as salary level in these countries is higher than in Belarus.

⁹ Part 1 article 11 Law No. 136-Z “On citizenship of the Republic of Belarus” of 01.08.2002 (amended on 04.01.2010).

¹⁰ Part 2 article 11 Law No. 136-Z “On citizenship of the Republic of Belarus” of 01.08.2002 (amended on 04.01.2010).

In this respect at the contemporary level of migration legislation development, legal provisions that at least expand legal grounds for entry of foreign migrants to the country are exceptionally important for circular migration of foreigners to Belarus. In this context one can mention a positive development, namely giving an opportunity to physical persons (citizens of Belarus) to invite foreign workforce¹¹. Now a physical person from Belarus can act as employer, using labor of immigrant workers on the basis of labor contracts (article 1 of the Law No. 225-Z “On external labor migration”). This novelty of Belarusian legislation can have a significant impact on development of circular migration of Russian and Kazakh migrants (in case of favorable economic dynamic in Belarus). Carrying out household work, circular migrants get an opportunity to stay outside the home country for a short period of time, without increasing the scale of permanent migration.

2.2.2 Impact of permanent residence permits on circular migration of foreigners to Belarus

On the one hand, latest changes in national legislation regulating relations in the field of migration can have a positive influence on circular migration¹². Starting from 6 June 2012 foreigners having valid permanent residence permits in Belarus do not need Belarusian entry or exit visas (article 27 Law No. 105-Z “On legal status of foreign citizens and stateless persons in Belarus”).

Certain preconditions for circular migration of foreigners are included in article 53 of the Law No. 105-Z that lists the grounds giving right to obtain permanent residence permit in Belarus. This right can be used by persons who 1) are employees and specialists that Belarus needs; 2) have exceptional abilities and talent or distinguished merits before Belarus, achievements in science, technology, culture and sports; 3) are foreign investors who invested at least 150 thousand euro in the Belarusian economy; 4) are ethnic Belarusians or their direct relatives in ascending line: children, grandchildren, great-grandchildren born outside contemporary territory of Belarus. Permit for permanent residence in Belarus allows foreigner to have and exercise the same labor rights as citizens of Belarus and freely cross the border of Belarus in any direction.

At the same time, it should be noted that Belarusian government does not seem to be interested in circular migration of foreigners who obtained permits for permanent residence. Quite the contrary, it encourages settled lifestyle, which can be explained by lack of workers in certain sectors of economy. Thus, a containing factor for circular migration of foreigners is the fact that *de jure* status of a foreigner permanently residing in Belarus is not sufficiently stable. Permanent residence permit can be annulled, if a foreigner spends more than 183 days over a calendar year outside Belarus (part 3 article 57 Law No. 105-Z).

3. Conclusions and recommendations

Despite the absence of direct references to circular migration in legislation, the legal system contains a number of norms that directly or indirectly relate to it. However, taking into account the importance of this type of temporary international migration, it is necessary to take measures to promote such migration to and from the country. On the positive side, there are no provisions in Belarusian legislation that would forbid or directly counteract circular migration. There are no restrictions on the number of entries, no periods of banned entry for foreign migrants of any categories, except for delinquent foreigners and other categories that had been legally deported or expelled.

¹¹ Decree of the President of the Republic of Belarus of 19.04.2012 No. 197 “On introduction of addenda and amendments to the Decree of the President of the Republic of Belarus of 26 April 2010 No. 200” (modification of subparagraphs 12.17-12.22 of the Decree No. 200 – “On administrative procedures carried out by the state bodies and other organizations upon citizens’ requests”).

¹² On 6 June addenda and amendments to the Law of the Republic of Belarus of 4 January 2010 No. 105-Z “On legal status of foreign citizens and stateless persons in the Republic of Belarus” entered into force.

We believe that migration policy of Belarus ought to include measures aimed at developing circular migration for Belarusian citizens and foreigners both to the CIS countries and other states. For that one should rely on positive experience of the EU member states and countries of North America.