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The System of Migration Legislation in the Republic of Azerbaijan

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Introduction

The system of migration-related legislation in the Republic of Azerbaijan (further on RA) comprises the RA Constitution, international treaties concluded by RA, laws and by-laws.

Article 69 of the Constitution stipulates that foreigners have the same rights and fulfill the same duties as RA citizens, if not stated otherwise by the law or international agreement, ratified by RA.¹

RA has ratified numerous Conventions,² which notably include: the ‘Convention Relating to the Status of Stateless Persons’³, ‘Convention on the Reduction of Statelessness’⁴; the convention ‘On the Protection of the Rights of All Migrant Workers and Members of their Families’⁵ and the convention ‘On the Nationality of Married Women’⁶.

1. The legal status of foreigners

The key legal act in the area of migration is the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’⁷. The main purpose of this Law is to regulate public relations arising in connection with the legal status of foreigners and stateless persons on the RA territory. This law defines the following notions: “stateless person”⁸; “immigrant”⁹; and “foreign national”¹⁰. It also identifies foreigners and stateless persons permanently¹¹ or temporarily residing on the RA territory as well as foreign nationals and stateless persons temporarily staying on the RA territory¹². The Law provides for the possibility of granting political asylum to foreign nationals and stateless persons on the basis of the RA Constitution¹³, legal grounds for the expulsion of foreigners and stateless persons outside RA¹⁴.

¹ The RA Constitution (12.11.1995) entered into force on November 27, 1995 and was published in the official source, in the ‘Azerbaijan’ newspaper. The final amendments to the Constitution were introduced by way of the referendum on March 18, 2009.

² See the ratification status of international conventions on migration on: <http://www.carim-east.eu/database/legal-module/?s=1&ind=lami>

³ RA ratified this Convention on May 31, 1996.

⁴ RA ratified this Convention on May 31, 1996.

⁵ RA ratified this Convention on January 11, 1999.

⁶ RA ratified this Convention on May, 31, 1996.

⁷ The RA Law ‘On the Legal Status of Foreigners and Stateless Persons’ No. 41 (13.03.1996) entered into force following its publication in the official journal ‘The Collection of Legal Acts of the Republic of Azerbaijan’ No. 01, July 31, 1997. Final amendments were introduced by the RA law as of February 12, 2010 No. 952-IIIQD (these amendments were published in the ‘Azerbaijan’ newspaper on April 18, 2010 No. 82).

⁸ In accordance with Art. 2 of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’, a stateless person – individuals who are neither citizens of RA nor citizens of other countries.

⁹ In accordance with Art. 2 of the Law ‘On the Legal Status of Foreigners and Stateless Persons’, an immigrant – foreigners or stateless persons who have been granted permanent residence permit in RA in accordance with the procedure established by the RA Law ‘On Immigration’.

¹⁰ In accordance with Art. 2 of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’ foreigners – individuals who are not citizens of the Republic of Azerbaijan and are citizens of other countries.

¹¹ The procedure of applying for a permanent residence permit on the RA territory (immigration) is provided for by the RA Law ‘On Immigration’.

¹² Article 5 of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’.

¹³ Article 6 (Granting Political Asylum) of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’ and Article 70 (Right to Political Asylum) of the RA Constitution.

¹⁴ Article 27 of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’ as well as Art. 52 of the RA Criminal Code provide for an additional sanction following the main sanction established by the court.

The 2nd chapter determines rights, freedoms and duties of foreigners and stateless persons.¹⁵ In order to specify the provisions of this Law, the RA Presidential Decree ‘On the Implementation of the Law on the Legal Status of Foreigners and Stateless Persons’¹⁶ has been adopted.

2. Entry and exit

Issues related to the exit from and entry into the RA territory of foreigners and stateless persons are regulated by the RA Law on ‘Exit from the Country, Entry into the Country and about Passports’¹⁷. This Law provides for:

- visa as one of the grounds for the permission to enter and exit the RA territory¹⁸; types of these visas¹⁹ and the procedure relating to their issuance²⁰;
- conditions under which the entry or exit of foreigners is forbidden;
- the period of stay of foreigners who have arrived on the RA territory without a visa up to 90 days²¹;
- the legal status of individuals having left RA for permanent residence in another country;

The rate of the state duty for obtaining or renewing a visa is regulated in the RA Law ‘On State Duties’. It depends on the type of visa and number of entries into the RA territory²².

The entry/exit procedure is carried out at the border checkpoints and is regulated by the RA Law ‘On State Border’²³.

3. Immigration

The subsequent Law in the area of migration is the Law ‘On Immigration’²⁴ which is closely related to the Law ‘On the Legal Status of Foreigners and Stateless Persons’, as it provides for the rules of

¹⁵ Chapter 2 of the RA Law ‘On the Legal Status of Foreigners and Stateless Persons’ provides for the following rights of foreigners and stateless persons: the right to inviolability. the right to move and select residence on the territory of the Republic of Azerbaijan. the right to work. the right to investment and entrepreneurial activity. the right to marriage and family relations. the right to rest. the right to protect health. the right to social security. the right to lodging. the freedom of conscience. the right to education. the right to take part in public unions. participation in elections and national voting (referendums). the attitude to military service. tax and customs levy from foreigners and stateless persons.

¹⁶ The Decree of the RA President ‘On Implementation of the Law on the Legal Status of Foreigners and Stateless Persons’ No. 805 as of August 5, 2008, published on August 7, 2008 in the ‘Azerbaijan’ newspaper No. 173.

¹⁷ The RA Law ‘On Exit from the Country, Entry into the Country and about Passports’ (14.06.1994) was published in the official journal, in the ‘Azerbaijan’ newspaper on September 23, 1994 No. 186, the latest amendments were introduced by the RA Law as of May 17, 2011 No. 109-IVQD and published in the ‘Azerbaijan’ newspaper on July 7, 2011 No. 145.

¹⁸ Article 12 of the RA Law ‘On Exit from the Country, Entry into the Country and about Passports’ stipulates that foreigners and stateless persons may enter RA and exit RA as specified by the Law, under the condition of passing through special checkpoints on the basis of personal passports and a permit – visa issued in accordance with international agreements.

¹⁹ Article 13 (Entry and transit visa) of the RA Law ‘On Exit from the Country, Entry into the Country and about Passports’

²⁰ Article 14 of the RA Law ‘On Exit from the Country, Entry into the Country and about Passports’

²¹ RA has bilateral agreements signed with the Islamic Republic of Iran on the visa-free regime between these two countries and with the Republic of Turkey on the visa-free entry of RA citizens into the territory of Turkey and simplified visa regime for the entry of citizens of Turkey into RA.

²² Article 16 of the RA Law ‘On State Duties’ (28.12.2001), the final amendments were introduced on March 18, 2011 No. 91-IVQD and were published in the official ‘Republic’ newspaper on April 22, 2011 No. 82.

²³ The RA Law ‘On State Border’ (09.12.1991) was published on January 15, 1992 in information of the RA supreme council. The latest amendments were introduced by the RA Law as of December 21, 2010 No. 38-IVQD and were published in the ‘Republic’ newspaper on February 18, 2011.

application for immigration²⁵, the rules of examination of and decision on applications for immigration²⁶. As regards entry and residence of immigrants on the RA territory, it is noteworthy that RA does not have practice of entry and residence of immigrants on the RA territory²⁷. Under the Law 'On Immigration', the status of an immigrant can be obtained by an individual legally residing on the RA territory for at least two years.²⁸ In order to implement provisions of this Law, the RA Cabinet of Ministers adopted 'The Procedure of Immigration Application Examination in RA'²⁹ which entered into force by subsequent Presidential Decree. This procedure introduces, among other things, the list of documents that should be presented by an individual applying for immigration³⁰. Following the decision by the State Migration Service on granting the immigrant status, immigrants shall be registered at the place of residence in accordance with the procedure adopted by the RA Law 'On Registration at the Place of Residence or Stay'³¹.

The issue of the respective documents to individuals granted the immigrant status as well as to foreign nationals and stateless persons residing on the RA territory is provided for by the Regulation 'On Special Documents of Stateless Persons Permanently Residing on the RA Territory and Foreigners Seeking to Reside on the RA Territory beyond 30 Days'. In accordance with this Regulation, stateless persons³² permanently residing on the RA territory may receive an identity card, stateless persons permanently residing on the territory of another state receive a document that allows permanent residence on the RA territory³³ and foreigners temporarily residing on the RA territory may receive a registration card³⁴.

4. Labour migration

A considerable number of people arrive on the RA territory to work. The right to work is guaranteed by Article 35 of the RA Constitution, which provides for everyone's right for a free choice of activity and prohibits coercion to work³⁵. In accordance with Article 53-1 of the RA Code of Administrative Offences, engaging somebody in forced labour is an administratively punishable deed, and coercion to such labour is a penal act in accordance with Article 144-2 of the Criminal Code.

(Contd.) _____

²⁴ The RA Law 'On Immigration' No. 592 (22.12.1998) entered into force following official publication in the official source 'The Collection of Legal Acts of the Republic of Azerbaijan' as of March 31, 1999, the latest amendments to the law were introduced by the RA Law as of June 30, 2009 No. 858-IIIQD and published in the official 'Azerbaijan' newspaper No. 163 as of July 28, 2009.

²⁵ Article 4 (application for immigration) of the RA Law 'On Immigration'.

²⁶ Art. 5-7 of the RA Law 'On Immigration'.

²⁷ Article 4 of the Law 'On Immigration'.

²⁸ Article 4 of the RA Law 'On Immigration'.

²⁹ 'The Rules of Immigration Application Examination in RA' No. 773 were signed and entered into force on August 24, 2002 and were published in the official source: 'The Collection of RA Legal Acts' as of August 31, 2002.

³⁰ Chapter 3 of 'The Rules of Immigration Application Examination in RA'.

³¹ The RA Act 'On Registration at the Place of Residence or Stay' No. 55 (04.04.1996) was published in the official 'Azerbaijan' newspaper No. 181 on September 20, 1996, the final amendments were introduced by the RA Act as of February 1, 2010 No. 951-IIIQD and published in the official 'Azerbaijan' newspaper on March 19, 2010 No. 62.

³² In accordance with this Regulation, a stateless person permanently residing on the RA territory is a person that has received the status of a stateless person before January 1, 1992.

³³ Chapter 2 of the Regulation 'On Special Documents of Stateless Persons Permanently Residing on the RA Territory and Foreigners Seeking to Reside on the RA Territory beyond 30 Days'.

³⁴ Paragraph 3 of the Regulation 'On Special Documents of Stateless Persons Permanently Residing on the RA Territory and Foreigners Seeking to Reside on the RA Territory beyond 30 Days'.

³⁵ Article 35.3 of the RA Constitution that stipulates that Nobody can be forced to work

Legal relations in the area of labour migration are regulated by the RA Law 'On Labour Migration'³⁶. Provisions of this Law regulate labour migration of foreigners to RA³⁷ and labour migration of RA citizens abroad³⁸. Article 1 of this Law gives the definition of the labour migration quota³⁹, while relevant conditions and rules relating to it have been defined in the Regulation 'On Determination of Quotas for Labour Migration', adopted by the Decision of the Cabinet of Ministers on 4 June 2009.

Information on foreign nationals and stateless persons granted permission to carry out paid labour activity on the RA territory is submitted by the Ministry of Labour and Social Protection to the automated information and search system 'Entry-Exit and Registration'⁴⁰. In accordance with the Law 'On Labour Migration' foreigners and stateless persons are entitled to work on the RA territory only on the basis of a special permission issued by the State Migration Service. The majority of individuals arriving on the RA territory to work arrive on a tourist visa and stay for work despite the fact that the Law 'On Tourism' does not provide them with the right to carry out paid activity on the RA territory⁴¹.

5. The 'single window' principle

Prior to the establishment of the State Migration Service, the issuing of the respective documents to stateless persons and foreign nationals was within the scope of competence of various state authorities. To improve the process of migration management and simplify the procedure of granting permission to foreign nationals and stateless persons arriving on the RA territory, the RA President adopted on 4 March 2009 the Decree 'On Application of the 'Single Window' Principle in Migration Management'. It vested the State Migration Service with the authority to implement the single window principle. However, the mentioned legal act does not cover all the individuals arriving in RA. For example, individuals arriving on the RA territory without a visa and individuals staying on the RA territory for a period specified in a visa have to lodge their applications on the registration at the law enforcement authorities⁴².

6. Illegal migration

In order to counteract illegal migration on the RA territory, legislation provides for certain measures applicable to foreigner nationals and stateless persons staying illegally on the RA territory. So the RA Code of Administrative Offences provides for administrative removal from RA of foreign nationals who have violated rules of stay on the RA territory⁴³. These individuals have to leave the RA territory within the period defined in the decision on administrative removal. The execution of the decision on

³⁶ The RA Law 'On Labour Migration' (28.09.1999) was published in the official source 'The Collection of Legal Acts of the Republic of Azerbaijan' on January 31, 2000, and the latest amendments were introduced by the RA Law as of June 30, 2009 and published in the official 'Azerbaijan' newspaper on July 22, 2009. (This Law defines legal, economic and social grounds for labour migration in RA and regulates labour migration relations).

³⁷ Chapter 2 of the RA Law 'On Labour Migration'

³⁸ Chapter 3 of the RA Law 'On Labour Migration'

³⁹ Article 1 of the RA Law 'On Labour Migration'

⁴⁰ The decision on the automated information and search system 'Entry-Exit and Registration' No. 744 (22.04.2008) was published in the official source in the 'Azerbaijan' newspaper on 23.04.2008 No. 85.

⁴¹ Article 1 of the RA Law 'On Tourism' (04.06.1999) was published in 'The Collection of RA Legal Acts' on July 31, 1999, the latest amendments were introduced by the RA Law as of June 5, 2007 No. 374-IIIQD and were published in 'The Collection of RA Legal Acts' in 2008.

⁴² The regulation on implementation of the RA Act 'On Registration by the Place of Residence or Stay'

⁴³ Article 339 of the RA Code Of Administrative Offences.

administrative removal is carried out by the RA Ministry of the Interior⁴⁴. The Code of Administrative Offences also provides for the procedure of reimbursement of expenses related to removal of individuals⁴⁵.

Forced removal from RA as an additional form of punishment is provided for by the RA Criminal Code (further on RA CC). Article 52 RA CC stipulates that forced removal may be imposed on foreign nationals following their punishment for serious crimes and especially serious crimes⁴⁶.

Even if in practice one may come across cases when foreign nationals and stateless persons residing illegally on the RA territory seek to leave the territory of the country voluntarily⁴⁷, this practice has no legal endorsement.

As regards readmission, currently Azerbaijan does not sign readmission agreements. Such an attitude can be explained by fact that Azerbaijan is in the process of development of public policy in this area, and after its adoption it is expected to start signing readmission agreements.

Conclusion

It is noteworthy that there are some problems in legislation that have to do with compliance of legislative norms with international Conventions signed by RA. For example, Azerbaijan ratified the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons, yet the norms of national laws are still not in compliance with them. And despite the fact that Azerbaijan ratified the Convention 'On the Nationality of Married Women' which provides for a simplified procedure of acquiring citizenship by a foreign national who is a spouse of a citizen of one of the Contracting States, the RA Law 'On Citizenship' does not provide for any simplified procedures for women married to an RA citizen.

A problem related to implementation of the RA Law 'On Immigration' that still exists to the present day is related to the fact that this law does not provide for the possibility of granting the immigrant status to foreigners applying for it from abroad. In accordance with the RA Law 'On Immigration', it is mandatory that a foreigner or a stateless person who wants to receive the immigrant status on the RA territory shall reside on the RA territory for at least 2 years. This procedure violates provisions of international acts concluded by RA.

A single Migration Code, the draft of which is currently being developed, is supposed to eliminate the existing contradictions between the norms of the laws that regulate relations within the area of migration.

As regards general characteristics of RA migration-related legislation, it is noteworthy that the main goal of legislative bodies when adopting acts in the area of migration is to guarantee security of the state and society, and this goal is pursued by the authorities entitled to decide on migration-related issues.

⁴⁴ Article 457 of the RA Code Of Administrative Offences.

⁴⁵ Article 457.3-457.5 of the RA Code Of Administrative Offences.

⁴⁶ Article 52 of the RA Criminal Code.

⁴⁷ There is a special programme of the International Organization for Migration which provides for material aid offered to individuals who are victims of crimes. The International Organization for Migration may cover expenses related to the return of such an individual to the territory of his/her own state.