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Legal regulation of repatriation in the Republic of Kazakhstan: theory and practice

This article examines the legal regulation of the Kazakhs return to their historic homeland. It is concluded that the main cause of immigration policy is the demographic situation. The problems arising from the adaptation of repatriates in the host community. Proved that the resettlement of ethnic Kazakhs from abroad to the Republic of Kazakhstan is a complex process. This process requires a balanced approach. It must take into account the financial and economic capabilities and interests of the republic, as well as international law. system of migration laws of the Republic of Kazakhstan is investigated. It is proved that the qualitative improvement of the legal framework is necessity for the successful implementation of the repatriation program.

Key words: migration, repatriation, legal regulation, migration law, oralmans, migration police.

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Қазақстан Республикасында репатриацияны құқықтық реттеу: теория және тәжірибе мәселелері

Осы мақалада қазақтардың тарихи отанына қайта оралудың құқықтық реттеу мәселелері қарастырылған. Репатриация саясатының негізгі себебі демографиялық жағдай екендігі туралы қорытынды жасалған. Қабылдайтын қоғамдастықта оралмандардың адаптациясы кезінде пайда болатын мәселелер зерттелген. Этникалық қазақтардың шетелден Қазақстан Республикасына қайта оралуы – күрделі құбылыс екендігі дәлелденген. Ол салмақталған тәсілдемені талап етеді. Ол республиканың мүдделері мен қаржы-экономикалық мүмкіншіліктерін, сондай-ақ халықаралық құқық нормаларын ескеруі тиіс.

Қазақстан Республикасының көші-қон заңнамасының жүйесі зерттелінген. Репатриация бағдарламасын сәтті жүзеге асыру үшін заңнама базасын сапалы түрде жетілдіру қажеттігі дәлелденген.

Түйін сөздер: көші-қон, репатриация, құқықтық реттеу, көші-қон заңнамасы, оралмандар, көші-қон саясаты.

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Правовое регулирование репатриации в Республике Казахстан: проблемы теории и практики

В данной статье рассматриваются вопросы правового регулирования возвращения казахов на историческую родину. Сделан вывод о том, что основной причиной политики репатриации является демографическая ситуация. Исследованы проблемы, возникающие при адаптации оралманов в

принимающем сообществе. Доказано, что переселение этнических казахов из-за рубежа в Республику Казахстан – это сложный процесс, требующий взвешенного подхода. Он должен учитывать финансово-экономические возможности и интересы республики, а также нормы международного права. Исследована система миграционного законодательства Республики Казахстан. Доказано, что необходимо качественное совершенствование законодательной базы для успешной реализации программы репатриации.

Ключевые слова: миграция, репатриация, правовое регулирование, миграционное законодательство, оралманы, миграционная политика.

Since independence, one of the most difficult issues was the problem of returning compatriots, at different times for one reason or another left their homeland. One reason for the State's interest in this issue is to improve the demographic situation in the country.

The main direction of state policy on migration in Kazakhstan – is the repatriation of ethnic Kazakhs from the CIS, Baltic and other foreign countries. Implementation of migration policy in the process of the Committee on Migration of the Ministry of Internal Affairs of the Republic of Kazakhstan.

The repatriation of Kazakhs in Kazakhstan is multifaceted and difficult one, has its historical roots and consequences of requiring enhanced learning. In the public literature in recent years expressed different views regarding the positive and negative aspects of the general repatriation of Chinese Kazakhs in Kazakhstan.

In our opinion, the repatriation of ethnic Kazakhs, a positive phenomenon for our country. The Kazakhs are an integral part of a single Kazakh ethnic group, and most of them have a high level of national consciences. Experience shows that many foreign Kazakhs, especially those living in China, Mongolia, Uzbekistan, have extensive experience in agriculture. Accordingly repatriated Kazakhs will great help in the development of agriculture in Kazakhstan, with their many years of experience in this area and under similar climatic conditions. One can not fail to take into account the mentality of Kazakhs. Kazakh Foreign kept the Kazakh language, which is important for the development of the Kazakh language in Kazakhstan.

However, the adaptation of repatriates in Kazakhstan society constrained by negative factors. There are lack of knowledge of Russian language, lack of skills, lack of education, ignorance of the law, psychology, mentality and culture of the local population.

The resettlement of ethnic Kazakhs from abroad to the Republic of Kazakhstan – is a complex process that requires a balanced approach taking into account the financial and economic opportunities

and interests of the republic, as well as international law. In this regard, it is extremely important improvement of the internal legal framework for the successful implementation of the program admission and resettlement of displaced persons on the basis of their rights and legitimate interests in accordance with the Constitution of the Republic of Kazakhstan.

Persons Kazakhs coming from CIS countries are best suited as a category of persons in the economically and culturally. In addition, in the framework of the CIS signed several documents related to various social problems (pensions, the organization of education, employment, etc.). Acquisition and loss of citizenship is also facilitated.

Legal basis for legal regulation of repatriation were laid out in the Declaration of State Sovereignty on October 25, 1990, the Constitutional Act of Independence of December 16, 1991, the first Constitution of sovereign Kazakhstan dated January 28, 1993, the current Constitution of the RK on August 30, 1995.

Of particular importance is the Declaration. It was proclaimed the following: The Supreme Soviet of the Kazakh Soviet Socialist Republic, expressing the will of the people of Kazakhstan, seeking to create decent and equal living conditions for all citizens of the Republic, considering the paramount task of consolidating and strengthening the friendship of the peoples living in the Republic, recognizing the Universal Declaration of Human Rights and the right of nations to self-determination, aware of the responsibility for the fate of the Kazakh nation, based on the determination to create a humane and democratic state of law, proclaims the sovereignty of the Kazakh Soviet Socialist Republic and adopts the present Declaration [1].

In the constitutional law on December 16, 1991 in Art. 7 is fixed: «The Republic of Kazakhstan has its own citizenship. For all Kazakhs were forced to leave the territory of the Republic and living in other states, recognizes the right of a citizen of the Republic of Kazakhstan, along with the citizenship of other states, unless it contradicts the laws of the

State of which they are. The Republic of Kazakhstan regulate migration processes. The Republic of Kazakhstan creates conditions for the return to its territory of persons forced to leave the territory of the republic periods of mass repression, forced collectivization, as a result of other hostile political actions, and their descendants, as well as for the Kazakhs living in the territory of former Soviet republics» [2].

The Constitution of 1993 and 1995 are fixed, such inalienable human rights and freedoms as the right of free movement within the territory of Kazakhstan and the free choice of residence, the right to leave the Republic and its citizens – the right to freely return to the Republic.

The first piece of legislation that directly regulates the legal status of migrants was the Law of RK «On Immigration» on June 26, 1992, which at that time was the legal basis of regulation and institutional trust – ensure resettlement of ethnic Kazakhs in the republic, creating the necessary conditions of life in the new place for the refugees, for individuals and families, – possibility of rotating to their homeland [3].

The purpose of this law was to organize the resettlement of Kazakhs from abroad, which was planned to establish a special department of immigration, as well as the formation of the National Immigration Fund. It also established annual immigration quota.

For the regulation of migration processes in Kazakhstan in the 1990s made the following regulations: The Law of the Republic of Kazakhstan «On Citizenship» on December 20, 1991, [4] Presidential Decree «On the Legal Status of Foreign Citizens in the Republic of Kazakhstan» dated June 19, 1995, [5] President of the Republic of Kazakhstan «On the procedure for granting political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan» dated July 15, 1996, [6] President of the Republic of Kazakhstan on the procedure for dealing with the citizenship of the Republic of Kazakhstan «dated September 27, 1996, [7] etc.

Following the adoption of the Law «On Migration» from December 13, 1997 for each ethnic Kazakhs granted the status of oralman. The Kazakh government has set up the Migration Department under the Ministry of Labour and Social Welfare, which is the consequence was converted to the Agency for Migration and demographic policy. Since 1995, the state budget was introduced a special item of expenditure for repatriation activities.

In 1998 a new phase of state-regulation

repatriation relations in the Republic of Kazakhstan. The basis for the further development of the country's laws, including immigration, has become the country's Presidential Address to the People of Kazakhstan «Kazakhstan – 2030: Prosperity, security and the welfare of all of Kazakhstan.» In this Letter emphasized that the rank of top national security priority should be put forward by a strong demographic and migration policies [8].

In December 1997, the Law of RK «On migration». The purpose of the law is to regulate social relations in the field of migration, the definition of legal, economic and social foundations of migration processes, as well as creating the necessary conditions of life in a new place for individuals and families returning to their homeland [9]. Was significantly expanded conceptual framework, introduced new articles, greatly extending the provisions of the Law «On Immigration» from 1992.

From a theoretical point of view the change of the notion «repatriation» in the Act. So, as amended on December 13, 1997 in Art. 1 shows the concept of repatriation as the repatriation of prisoners of war, displaced persons, refugees, immigrants, repatriates. But in the edition of January 12 2007 repatriated been treated as voluntary or involuntary return of citizens of the RK to their homeland.

On the basis of this law Kazakh immigrants first received the official status of the immigrant – oralmans. Thus, the immigrant (oralman) and categories of persons of native nationality, are victims of political repressions, as well as their descendants. As amended by the Law «On Migration» on December 20, 2002 oralmans referred not only to victims of political repressions, and foreigners and stateless persons of Kazakh nationality, residing at the time of acquisition of the sovereignty of the Republic of Kazakhstan abroad and arrived in Kazakhstan for permanent residence.

September 5, 2000 approved the Concept of Migration Policy of the Republic of Kazakhstan according to which should be provided full support for resettlement and local reception of repatriates and their adaptation to local accommodation. It should create conditions for successful adaptation of repatriates in the local social environment, to carry out activities for the psychological rehabilitation of people surviving in armed conflict. All of the above at the disposal has been identified as the most binding of migration policy priorities to address repatriates in Kazakhstan [10, p.40].

In 2005, statement to the Third World Kurultai of Kazakhs in Astana, President Nursultan Nazarbayev

said that among the countries of the Commonwealth of Independent States, Kazakhstan – the only state that systematically deals with the repatriation of the scattered overseas compatriots around the world and highlights for this solid budget, and throughout the planetary community, it is – one of three [11].

The Message of the President of the Republic of Kazakhstan to the people of Kazakhstan on March 1, 2006 «Strategy of Kazakhstan's 50 most competitive countries in the world». Kazakhstan on the threshold of a new leap forward in its development, the need to develop the modern concept of migration policy has been put forward as the main priorities of Kazakhstan's progress in the most competitive and dynamically developing countries of the world. With respect to adaptation activities repatriates stated: «Our focus should be more on the creation of conditions for surface preparation in special centers, and integration of repatriates in our society. If you train them in the profession, language, as is customary in other countries, they quickly become accustomed to new conditions» [12].

In accordance with the objectives put forth in the Presidential Address to the people of Kazakhstan in 2006, and the Action Plan for 2006-2008. industry to implement the Programme of the migration policy of the Republic of Kazakhstan for 2001-2010. was developed concept of the migration policy of the Republic of Kazakhstan for 2007-2015. [13], which identified promising areas of ethnic migration policy over the medium term.

The concept is aimed at improving the quality of existing and development of new mechanisms for the management of migration processes in Kazakhstan. The purpose of the Concept defined mitigate the adverse effects of migration flows in the preservation and development of national identity and security by minimizing the formation of selective and illegal migration.

The conceptual novelty in the management of migration processes in the present period can be called designated in the document the need for a selective migration policy.

In accordance with the Action Plan for 2008-2010. to implement the concept of migration policy of the Republic of Kazakhstan for 2007-2015. envisaged the development of adaptation and integration of immigrants in Kazakh society, the development of a rational mechanism for settlement of immigrants in the interests of the demographic and socio-economic development of regions, the regional labor market, on a regular basis for monitoring and evaluation of migration and other activities [14].

In 2009 launched the program «Nurly Kosh», designed in 2009-2011 [15]. It involves an increase in quotas for the reception. Acceptance of repatriates and internal migration in addition to the program «Nurly Kosh» regulate the following valid documents: Territorial Development Strategy of Kazakhstan till 2015 [16], the State Programme for Rural Development of the Republic of Kazakhstan for 2004-2010 [17].

Finally, in 2011 in the Republic of Kazakhstan adopted a new law «On Migration» [18]. The new law provides for differentiated allowances depending on the region settling repatriates, additional factors are set to the base rate. In particular, in the northern regions of the country repatriates will receive benefits 2.4 times higher than in the south.

Ethnic Kazakhs themselves have entered the territory of the Republic of Kazakhstan and staying on the territory of our country, file an application for inclusion in the immigration quota for repatriates in the management of migration police of the Territorial Department of the Interior. A resident outside the Republic of Kazakhstan with the proposed place of residence in Kazakhstan – in missions abroad. Overseas after receiving the Commission's consent to the inclusion in the quota, will assist in the resettlement of ethnic Kazakhs. However, foreign institutions MFA has not provided for this full-time employees.

Under the new law oralmans included in the immigration quota, can receive lump sum payments and money for housing only after admission to the citizenship of the Republic of Kazakhstan on presentation of identity documents, including adult family members, except members of the family non-ethnic Kazakhs. And in case of failure included in the immigration quota for repatriates from the acquisition of citizenship of the Republic of Kazakhstan and the lump sum funds for housing are not accrued and (or) not paid.

This is a legal norm, according to lawmakers, will eliminate the receipt of benefits and compensation for false documents. As recognized in the immigration service before 2011, such facts were not uncommon. According to the Migration Police Committee of the RK Ministry of Interior, in 2010 in Almaty, Atyrau, Pavlodar and South Kazakhstan regions revealed 64 facts on the allocation of grants worth more than 42 million KZT to persons who do not even enter the country or received benefits twice in different regions. For similar facts in the past three years, 10 criminal cases [19].

Under the new Act, oralmans benefits will be paid only for the established place of residence

and, if traveling abroad or from the Republic of Kazakhstan – should be returned to the budget.

These measures will help reduce tension in areas experiencing a surplus of labor. Earlier, before the adoption of this law, place of residence arriving compatriots were determined solely by their desire, making it difficult to state regulation. As a consequence, up to 60% of the repatriates were concentrated in four areas – Almaty, Zhambyl, South Kazakhstan and National Unity, which is already experiencing considerable demographic pressure.

Thus, the Act aimed at all the Kazakhs, regardless of the status oralman who arrived in the Republic of Kazakhstan for permanent residence in the historic homeland. Among those who have taken over the years of independence of Kazakhstan citizenship of the Republic of Kazakhstan, 98% are repatriates.

Legal scholars, practitioners, and the migrants themselves are unanimous in their opinion that the

development of relevant sub-legal acts. Thus, to date, the Committee of Migration Police are developed and approval procedure of the Government of the draft decisions on the approval of the immigration quota for 2012-2014 repatriates, the rules included in the immigration quota for repatriates, rules of payment of lump sum benefits, differentiated according to regions and settlements including costs for primary adaptation, travel to their homes and possessions, and the allocation of funds for housing or receiving preferential credit loan for the construction, rehabilitation or acquisition of housing.

The analysis shows that the evolution of legislation in the area of repatriation is based on the priorities of migration policy at the present stage of development of Kazakhstan's statehood, as well as to address the problem areas that arise in the course of legal practice, further optimization of the legislation in the field of migration and improve the content migration process.

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