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THE PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF THE REALIZATION OF THE RIGHT TO DECENT WORKING CONDITIONS FOR LABOR MIGRANTS

This article presents a study conducted on contextualizing the phenomenon of migrant workers as well as on analyzing the legal framework of the labor migration rights and the gap between the implementation and exercising of those rights in theory and on practice. It also examines cases of abuses of migrant workers and violations of their labor rights as well as highlights the possible outcomes of such activities. The given material will help to understand the existing situation and underlying reasons and consequences of the given issues. The article uses an in depth descriptive analysis approach using gathered information from firsthand and secondhand sources as well as human rights based approach – conceptual framework for the human development process, which is normatively based on the international human rights norms, and aimed to protect and promote human rights. This study argues that labor migration is essential for the globalization and development, however, it is also a significant challenge for human rights and social justice principles due to the limited legal framework for labor migration. It also claims that rights of migrant workers are an integral part of the general human rights system, and require a clear legal framework and principle of non-discrimination for the further personal development along with the peaceful progress of the entire society.

Key words: human rights, labor migrants, violation of migrant workers' rights, labor rights.

Problem statement. Labor migration and labor mobility are becoming an increasingly complex problem. Many countries, due to poor functioning of the labor market and a weak management system, are unable to cope with this situation, which leads to illegal migration, under-utilization of personnel, and incompatibility of qualifications with existing vacancies, discrimination, exacerbating inequality as well as exploitation.

Although, there is number of treaties, conventions and other legal instruments for the promotion and protection of rights of workers as human rights, there is still lack of efficiency of the implementing those rights on practice. Moreover, migrant workers are particularly vulnerable to the violations of their human rights and freedoms both at work and in their daily life. National protection mechanisms are often unused or ineffective where irregular migrants suffer abuse, because of fears that arrest or removal will be the result if the migrant reports them to the authorities, however migrants are entitled to protection of their fundamental rights regardless of their immigration status, or whether they have been legally admitted to a country. In the absence of proper regulation of issues related to human rights violations of migrant workers, labor migration can

exacerbate the shortage of decent work for migrant workers, and cause adverse and long-term socio-economic consequences in the countries of migrants' origin and destination.

This article is dedicated to study violations of migrant workers' rights by using human rights based approach. As a concept, this approach ensures the meaningful and systematic inclusion of the most vulnerable in societies. A rights based approach to development is a framework that unites principles, norms, standards as well as aims of the international human rights system and works up into the plans and processes of development (Kirkemann, 2007, 13). The rights based approach suggests an integrated view of sustenance (economic and social rights) and freedoms (civil and political rights) as complementary; each one is essential for the full realization of the other. For instance, if the labor migrant rights to work, fair remuneration and accessible work conditions as well as the right to not to be discriminated are upheld, then he or she can access healthcare and education, and that will result in achieving development.

The rights-based approach to development encourages a redefinition of the nature of the problem and aims of the development enterprise into claims,

duties, and mechanisms that can promote respect and adjudicate the violation of rights. The shift from needs to rights as well as from charity to obligations also assumes an amplified consideration of accountability. And the last, but not the least, the rights based approach advocates for equality and non-discrimination, participation and inclusion, accountability and respect for the rule of law and accepting the universality and indivisibility of human rights.

This study aims to analyze the reasons and outcomes of human rights violations of the labor sphere by drawing attention to the “protection” gap between the implementation and enjoyment of labor rights by migrant workers in theory and how they are actually upheld and exercised on practice. Meanwhile, limitations of the legal framework of the labor migration are also examined. To materialize this, the article adopts a descriptive analysis approach, using gathered information from the research to develop an understanding to the offered paradigms and to support the argument. It starts by analyzing the notion of migrant worker and legal framework of the labor migration rights. Then the article moves on to examine the abuses of the migrant workers and violation of their labor rights as well as its possible outcomes. All the information is collected through firsthand and secondhand resources.

Literature review. Many researchers have paid significant attention to the problem of violation of migrant workers’ rights, but their studies were conducted from different perspectives.

Martin S. and Abimourched R. study the effectiveness of the normative framework for protecting migrants’ rights and the obstacles it may face. Meanwhile, Bashir Md., Saeng B., Kyung K. argue that despite the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), global events continue to indicate that inhuman treatment has continued to make lives of migrant workers unbearable in different parts of the globe. They provide an in-depth insight into the human rights sanctuary within the convention that engages in an article by article analysis of this convention.

There are also some researches done by international organizations regarding analyzing legal frameworks for protecting rights of migrant workers, and of them is International Organization for Migration, which provided an overview of the implementation of labor migrants’ rights as well as examined the capacities of the countries for implementation of those rights with particular attention to the institutional framework and monitoring instruments and institutions. As for global level it takes under consideration existing UN

and ILO conventions and protection mechanisms as well as policies and standards of the Council of Europe and European Union that are relevant to the labor migrants.

Some researches mainly focus on examining real cases of the violations of labor migrants’ rights, and, thus, Sonmez S., Apostopoulos Y, Tran D., and Rentrop Sh. examine the situation with different groups of migrant workers that are represented by construction workers, domestic workers, and trafficked women and children focusing on the impact on related health ramification and disparities. International organizations do not stay aside regarding studies done by focusing on real cases, and Human Rights Watch using a case study of UAE analyses how visa sponsorship system make migrant workers be dependent on employers and how the exclusion of domestic workers from labor law protections leaves labor migrants at risk of abuse. It also highlights the barriers that prevent abused labor migrants from obtaining remedies that include deficiency or even absence of shelters, failures of justice systems as well as penalties for “hidden” workers.

There are some studies conducted in terms of analyzing mechanisms for protection rights of labor migrants, and one of them is done by Voronina N., who studied mechanisms for the protection of the rights of labor migrants through their analyses at the level of legislative, executive and judicial power. Another work concerning mechanisms for promoting rights of migrant workers is done by Froissart Chloe, who studies NGOs agendas as a mechanism and their activities as a tool for defending migrant workers’ rights that is done by in-depth analysis of the mobilization of such organizations as well as by assessing their short-term impacts.

Those studies developed in their researches number of both theoretical and practical aspects of analyzing situation of labor migrants rights and level of their violations. However, these rights have not been a subject for studying from human rights perspective, and violations of rights of migrant workers have not been recognized and studied as violations of their human rights.

Objective of this article is to study violations of the labor migrants’ rights and their possible outcomes as well as to examine the efficiency of the legal framework of the labor migration rights as a tool for further economic and social development.

Main discussion. For the reason of promoting the political freedom and economic development, both the United Nations and regional multilateral bodies have established a range of human rights. The Czech jurist Karel Vasak considers this as an evolutionary

process, starting with “first-generation” civil and political rights, like freedom of opinion and speech; to “second generation” economic and social rights, such as rights to work, education, and health, and so on (Vasek, 1982). Human rights are conceptualized in this study as fundamental entitlements to all human beings by virtue of being a human. Human rights are universal, inalienable, inherent, indivisible and interrelated, and violation of a human right means that the enjoyment and/or realization of that particular right are made impossible.

Human right to work recognizes work as some activity to which each and every person is entitled. This right includes the right to take part in servicing and producing activities as well as the right to participate in benefits accumulated during these joint activities to that extend, which guarantees an adequate standard of living, and thus, this right also ensures that no one is excluded from such economic area. Meanwhile, the kind of work that individual does depends on the education and training as well as access to resources, and the crucial characteristic of work is that it allows individuals to earn their living both as a wage-employed or self-employed person.

It should be also mentioned that there is an important element of choice and freedom in such economic performance to earn one’s living, and the right to work therefore included not only the idea of work being distributed in a way that allows everyone to participate, but also that individual’s preference in the way of earning one’s living is the human right guarantee as well.

Talking about migrant workers, it is impossible not to mention the UN, whose role in the development and improvement of the institute of labor migration is inestimable. From the very beginning of its activities, the UN has faced labor issues, including labor migration, and the International Labor Organization created in 1919 became one of the important organs of the United Nations.

Among the documents adopted within the framework of the United Nations, it is necessary first of all to single out documents relating to human rights in general, also affecting the rights of persons engaged in labor activities abroad. International legal documents and the standards enshrined in them are minimal for the observance of human rights, that is, national laws may contain such norms that provide for a wider range of human rights protection or establish such procedures that significantly enhance the protection of human rights. These include the Universal Declaration of Human Rights (adopted and proclaimed on December 10, 1948); Declaration on the Human Rights of Individuals Who are not

Nationals of the Country in Which They Live (adopted on December 13, 1985); International Covenant on Civil and Political Rights (adopted on December 16, 1966) and the International Convention for the Protection of All Rights of Migrant Workers and Members their families (adopted on December 18, 1990).

Labor rights are rooted in the International Bill of Human Rights, i.e. in the Universal Declaration of Human Rights in the Article 23 that state that *“Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work; everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection; and everyone has the right to form and to join trade unions for the protection of his interests”* (UDHR, Article 23). In Articles 4 and 5 it also states that nobody shall be held in slavery or servitude and such trades shall be prohibited (Article 4) and that nobody shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). Another part on this Bill that is International Covenant on Economic, Social and Cultural Rights in Article 7 ensures fair wages and equal remuneration for work of equal value, decent living, safe and healthy working conditions and equal opportunities to be promoted as well as rest, leisure and reasonable limitations of working hours along with periodic holidays and remuneration for public holidays (ICESCR, Article 7). Meanwhile, Article 8 ensures the right to form and join trade unions, right of trade unions to establish national and federations and confederations, right of these unions to function freely as well as the right to strike that is exercised according to the laws of the particular state (ICESCR, Article 8).

Migrant workers are entitled to human rights by virtue of being humans, and they do not become less human beings when they step across a border. However, these rights are not clarified sufficiently yet, and thus are not recognized and respected fully by states. While migration is an empowering process and experience, it is clear that the lack of migration governance that is based on human rights approach at international, regional and national levels is leading to violations of migrant’s rights, and hereby migrants can become vulnerable to human rights violations and in irregular situations they are to be vulnerable to discrimination, exploitation and marginalization, and often they have to work and live

“in shadows”, they are afraid to make complains and are denied in their freedoms and human rights.

Migrants – people, who live and work outside their country of origin – are especially vulnerable to human rights violations. In industry and agriculture, they often work in appalling conditions, and those working in families face many violations on their part. Trafficking for forced labor is a global problem, and Human Rights Watch investigates human rights violations that occur when states try to contain or redirect flows of migrants, refugees and asylum seekers by placing adults and children in overcrowded filthy filtration centers, sometimes for an indefinite period. A great number of migrants seeking rescue from crime, poverty and environmental disasters cannot count on the guarantees that refugee status provides. Ultimately, all migrants need to be treated with dignity (HRW, 2017).

There are 3 main groups of migrants: (i) official migrants, (ii) undocumented migrants, and (iii) other migrants in need of protection.

Official migrants are people who enter a country other than their country of usual residence or citizenship, after receiving permission to enter from the country to which they came.

Undocumented migrants do not have a residence permit giving permission to stay in the country to which they came. Such migrants entered the country illegally or their entry permit expired.

Other migrants in need of protection: stateless persons, victims of human trafficking, unaccompanied children and persons who have been denied asylum and who seek protection under international law. However, the above differences are not strict and unchanged. A migrant can simultaneously fall into two categories (for example, an asylum seeker and a victim of trafficking) or move from one category to another (an undocumented migrant in country A and an asylum seeker in country B) (Ktistakis, 2013, 7).

Migrants often face discrimination on the basis of race, national, religious, ethnic origin and identity and as a result they may be subjected to physical violence and other rights violations, regardless of their legal status. These forms of discrimination exacerbate the xenophobia to which migrants are often exposed as non-citizens. The choice of the victim and the nature of the encroachment do not depend on whether the person is concerned as a refugee, legal immigrant, member of national minority or undocumented migrant. Some labor migrants face discrimination during the prolonged process of getting work permit or entering the country based on their race, national or ethnic origin or religious identity.

Migrant women often face additional assaults on human rights based on gender. They can not only be discriminated against due to their position as non-citizens, but also face various forms of discrimination on the basis of gender. Women are forced to perform low-paid and non-prestigious work in the least protected segments of the world economy. The gender wage gap is 77%, and it is women who do most of the unpaid care work, and many of them face verbal abuse, physical or sexual abuse, sexual harassment or rape in the workplace (IGU, 2016).

Considering that the basis of migration is mainly economic motives, and also taking into account the risks and discrimination that irregular migrants may face in terms of working conditions, their labor rights are of particular importance, including the right to work and those related to circulation in the workplace. Labor rights in the broad sense, are provided in the International Covenant on Economic, Social and Cultural Rights (ICESCR), Committee on the Elimination of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Labor Organization (ILO) treaties as well as in regional human rights treaties.

Everyone has the right to an opportunity to earn a living by work which he or she freely chooses or to which freely agrees. However, migrant workers may face violations of their rights of different forms and on different stages that can vary from ill-treatment, lack of basic workplace protections and rights, long working days, unpaid or irregular payments and poor safety conditions to threats and intimidations from the employer, confiscation of documents as well as sexual assault, rape and even death. However, there are major violations of human rights of working migrants that include slavery and servitude, forced labor, child labor and human trafficking.

Slavery and servitude. The prohibition of slavery and servitude became one of the first standards in the field of human rights protection, which received worldwide recognition in international law. A number of treaties prohibit slavery, mainly — the 1926 Slavery Convention, which defines slavery as “*the position or condition of a person in respect of which some or all of the powers inherent in the right of property are exercised*” (Slavery Convention, Art. 1.1). The European Court of Human Rights recently ruled that slavery takes place in cases where there is an exercise of genuine property rights, and the situation of the person in question is reduced to the position of the “object”. The court considers that the servitude leads to especially grave forms of deprivation of liberty, as well as to the obligation

to perform — under the influence of coercion — a certain service, and is associated with the concept of slavery (Van Droogenbroeck vs Belgium).

Forced labor is understood as any work or service required from a person under threat of punishment for which this person did not voluntarily offer his or her services. Forced labor can also occur in some cases where an employee voluntarily agrees to do the job due to economic constraints. Similarly forced and compulsory labor includes debt bondage, withdrawal of passport and unlawful imprisonment (ICJ, 2016, 309).

Child labor. The effective prohibition of child labor is an obligation of all ILO member States. ILO standards provide that a child may not be involved in work until the age of completion of compulsory schooling, and, in any case, not earlier than fifteen years. National legislation may provide for certain deviations from this general principle, for example, in the case of artistic activity (C138, Art. 4 and 8).

States are obliged to protect all children, including through sanctions and regardless of their status, from all forms of economic exploitation and from doing any work that could endanger the health and physical, mental, spiritual, moral and social development of the child. Worst Forms of Child Labor Convention No. 182 of 1999 provides the obligations to the states to prohibit and eliminate certain forms of labor in relation to children under the age of 18 (C182, Art. 3):

- All forms of slavery or practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom, forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;
- Using, recruiting or offering a child to engage in prostitution, production of pornographic products or in pornographic performances;
- Use, recruit or offering a child to engage in illegal activities, in particular for the production and sale of drugs, as defined in relevant international treaties;
- Work that, by its nature or the conditions in which it is performed, may harm the health, safety or morals of children.

Human trafficking includes recruitment, harboring or transporting people for the exploitation, by using violence, deception or coercion, and forcing them to work against their will, i.e. it is a process enslaving people, coercing them into a situation with no way out, and as a result exploiting them. Forms of exploitation of trafficked people include forced prostitution, forced labor, forced begging, forced criminality, domestic servitude, forced marriage, and forced organ removal (AntiSlavery, 2018).

However, the majority of people are trafficked into labor exploitation. A lot of those who falls victim of trafficking wanted to escape poverty, improve their life situations, and to support their close ones. Usually they receive an offer of a well-paid job opportunity abroad; sometimes they borrow some money from their traffickers in advance to pay for arranging the job and travel expenses as well as to cover accommodation expenses. However, when they arrive to their destination, they find out that the work position they applied for does not exist, or the conditions are totally different. But it's too late, their documents are often taken away and they are to work until their debts are paid off. This refers to situations when people are forced to do work for little or even no payments, and usually under threat of punishment. There are a number of means through which a person can be usually coerced, including:

- use of violence or intimidation
- accumulated debt
- retention of identity papers
- threat of exposure to immigration authorities

There is also number of situations of human rights abuses of work-related nature taking place outside of the usual labor environment. For instance, unwilling domestic servitude exploits employees in private residencies, obscuring such abuses from public. Meanwhile, sex trafficking initially may be agreed on by the worker, however later on it may result in debt bondage or forced labor. As for child soldiering, it may involve child's illegal recruitment in serving as armed combat in either military forces that are sponsored by governments or in rebel groups.

The extend and scale of human rights abuses in the international workplace joint with complex nature of the global supply chains, gives the ability to the companies that rely on third-party manufacturers and distributors to unintentionally assist and facilitate in forced labor and human trafficking. Meanwhile, the failure to find out and fight human rights violations in such supply chains may result in:

- enforcement actions by state authority:
- company whose suppliers violate applicable laws and regulations, may face financial sanctions and penalties or even imprisonment
- lawsuits and other legal action: company may face lawsuits from workers of the suppliers claiming on unpaid compensations, indecent work conditions, injuries, death, etc.

reputation damage: media coverage of human rights violations by the company suppliers may affect its reputation that may result in sales decrease.

interruptions in the activities: violations of human rights may lead to the suspension or shutdown of

the production by local authorities or may result in strikes and protests of the workers.

Conclusion

At the beginning of the 21st century, international labor migration from an instrument of the world labor market objectively turned into a structural element of the global economy, complementing the interdependence of globalization inherent in states with its new form — migration, becoming in many respects the only resource of their economic development. It is precisely the migration interdependence that turned labor migration into an object of active interstate cooperation and transferred the streamlining of labor migration from the national level to interethnic - bilateral, regional, and global.

Although, there is a number of legal mechanisms and instruments of promoting and protecting rights of migrant workers in the international human rights law through general norms of non-discrimination and equality, rights like freedom of movement, labor rights and group rights like women's and children's ones, there are also some gaps remaining in the process of their implementation and enjoyment on practice including countries' reliance on temporary workers and states' reluctance to agree on legally binding mechanisms and tools.

Labor migration is an essential component of the development and globalization, and at the same time it is a big challenge for human rights as well as social justice principles. The legal framework of labor migration is very limited; meanwhile the sphere of migration management does not support the existing demand of the migrant labor. Such ineffectiveness of the countries migration management becomes evident in the increase of criminal and illegal reshuffle employment of migrants. As a result, government strengthens the police measures against such illegal activities, and this leads to the mass marginalization of the migrant workers and to the violations of their basic human rights and freedoms.

This study states that the rights of migrant workers are an integral part of the general human rights system and require a clear legal framework. It also argues that as human rights are inalienable, interdependent and interrelated – then the ability to exercise these rights in the workplace is a pledge that workers will be able to enjoy many of their other rights like economic, social, cultural, and other rights; labor rights effect the level of enjoyment of number of other human rights, like the right to education, health and culture. Thus, the realization of the labor rights is important not just for the provision of income, but also for the personal development and dignity along with the peaceful progress of the society as a whole,

however, as all socio-economic rights, for the full and fair enjoyment of the labor rights they also requires very important dimension that is principle of non-discrimination. This includes non-discrimination in recruitment process, in remuneration and promotion opportunities as well as in the treatment of aliens.

In the labor process, not only material and spiritual values are created to meet the needs of people, but also workers themselves develop, acquiring new skills, revealing their abilities, replenishing and enriching their knowledge as well as new ideas, advanced technologies, high-performance labor tools, new types of products, materials, and energy are emerged, that lead to development needs.

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Захист прав людини в контексті реалізації права на гідну працю трудовими мігрантами

Стаття присвячена контекстуалізації феномену трудових мігрантів та аналізу правової бази прав трудової міграції, а також дослідженню прогалів між запровадженням та реалізацією цих прав у теорії та на практиці. Також розглянуто приклади жорстокого поводження з працівниками-мігрантами та порушення їх трудових прав і висвітлюються можливі результати таких дій. Матеріал допоможе зрозуміти існуючу ситуацію та основні причини й наслідки цих проблем. У статті використовуються метод описового аналізу, що базується на інформації, зібраній з первинних та другорядних джерел, а також метод, заснований на концепції прав людини, – концептуальна основа процесу розвитку людини, яка нормативно базується на міжнародних нормах з прав людини і спрямована на захист та просування прав людини. Ця стаття стверджує, що трудова міграція посідає важливе місце у глобалізації та розвитку, однак через обмежену правову базу також є серйозним випробуванням на шляху захисту прав людини та принципів соціальної справедливості. Крім того, визначено, що права трудових мігрантів є невід’ємною частиною загальної системи прав людини і вимагають чіткої юридичної основи та принципу недискримінації задля подальшого розвитку особистості та мирного прогресу суспільства в цілому.

Ключові слова: *права людини, трудові мігранти, порушення прав трудових мігрантів, трудові права.*

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