

Legal basis of state regulation of migration processes in the Kyrgyz Republic in the context of global changes

Kubanychbek Isabekov*

PhD in Law
Kyrgyz-German “Naryn” LLC
720000, 13/1 Isakeev Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0006-0152-2064>

Khudaiarzhan Narmatov

PhD in Law, Associate Professor
Osh State University
723500, 331 Lenin Str., Osh, Kyrgyz Republic
<https://orcid.org/0009-0002-1336-4295>

Iskandar Yusupaliev

PhD in Law, Associate Professor
Osh State University
723500, 331 Lenin Str., Osh, Kyrgyz Republic
<https://orcid.org/0009-0009-2616-6088>

Bagdagul Mamasharip

Senior Lecturer
Osh State University
723500, 331 Lenin Str., Osh, Kyrgyz Republic
<https://orcid.org/0009-0008-2864-3207>

Nazira Tenizbek

PhD in Law
International University of Kyrgyzstan
720001, 255 Chui Ave., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0005-6416-9045>

Abstract. The relevance of this study lies in the need to consider in detail the legal basis for state regulation of migration processes in the Kyrgyz Republic in connection with the possible development of the migration crisis in the Middle East and Europe. The purpose of the study is to investigate the legislation of the Kyrgyz Republic regarding the full and proper consolidation of legal norms aimed at regulating migration in accordance with the state's migration policy based on national interests, international standards, and current migration trends. The following general scientific and special methods were used to conduct the research: formal legal analysis, dogmatic method, synthesis, deduction, and generalisation. In the course of the study, the basis of national legislation in the field of migration regulation was considered. In accordance with the key elements, three aspects of legislative regulation of migration processes in the Kyrgyz Republic were also identified. These included such aspects as: constitutional, international and national legislation. Based on the findings, it was determined that the legal regulation of migration processes in the Kyrgyz Republic, considering a large array of regulatory sources, is currently being developed and reformed. Some legislative acts do not contain legal consolidation of state protection of the rights of citizens of the Kyrgyz Republic located outside

Suggested Citation

Article's History: Received: 09.12.2023 Revised: 02.03.2024 Accepted: 28.03.2024

Isabekov, K., Narmatov, K., Yusupaliev, I., Mamasharip, B., & Tenizbek, N. (2024). Legal basis of state regulation of migration processes in the Kyrgyz Republic in the context of global changes. *Social & Legal Studios*, 7(1), 37-45. doi: 10.32518/sals1.2024.37.

*Corresponding author



the state. Mechanisms for providing such support to migrant citizens were also not identified. It was concluded that attention should be paid to the development of a well-thought-out migration policy of the state, since the further vector of development of the migration legislation of the Kyrgyz Republic depends on political decisions

Keywords: legislation; labour declaration; departure for work; international documents; political decisions

Introduction

In the 2020s, interest in the topic of population migration has resumed in the international arena due to the economic consequences of the COVID-19 pandemic, the destructive element caused by climate change and armed conflicts – unfavourable events that have become the main factors that have affected the activation of migration processes. Despite some distance from global migration centres, Kyrgyz Republic also falls under the influence of international migration processes. According to the data of the state body implementing the state's migration policy, at the moment more than 750 thousand residents of Kyrgyzstan are located in other countries, which, according to the director of the Department of Foreign Migration of the Ministry of Foreign Affairs of the Republic of Kyrgyzstan, T. Kaimazarov, is also conditioned by problems with employment in rural areas and the lack of prospects for career growth of the younger generation (There are over..., 2021). He also focuses on the attitude of young people to labour migration, and the possibility of improving their status in society by obtaining stable employment and a decent salary. In turn, according to the information of the National Statistical Committee, more than 20% of the surveyed citizens, age group over 50 years old, are in a situation where their children are abroad (Concept of Migration..., 2021).

G. Muhametjanova and G.A. Adanır (2023) devoted their study to migration issues in Kyrgyzstan. They considered the psychological health of children of migrant workers who face a long absence of one or both parents in the country. Unfortunately, the topic of migration, despite its significance, is not sufficiently disclosed in the scientific community, but some researchers still pay attention to it in the light of other events. A. Sayakbaeva *et al.* (2021) conducted a study that, among other things, focuses on the impact of the COVID-19 pandemic on migration processes in Kyrgyzstan. According to researchers, the pandemic had a negative impact on migration processes, as it led to a reduction in migration by 21.1%, which negatively affected the social and economic situation in the Kyrgyz Republic due to lack of jobs. In turn, M.O. Akhmetkaliev (2022) studied the impact of the general situation with illegal migration due to the pandemic and closed borders in the world on the policy of the government of the neighbouring state of Kyrgyzstan, the Republic of Kazakhstan in the relevant sphere. The researcher drew attention to the fact that during the period of introduction of restrictive measures to prevent the spread of the virus, a significant increase in illegal border crossing with the use of fake documents or illegal obtaining the right to leave, acquired in the course of transactions with criminals through online communications, and in production and sale of which employees of state structures are involved. Migration issues in Kyrgyzstan have also received attention from F.M. Critelli *et al.* (2021). The study examined the experience of labour migration of twenty families and drew conclusions about the economic conditionality of decisions to leave for work. A number of interviews with members of migrant families discussed the impact of labour migration on the lives of these families.

Another group of researchers consisting of E.T. Hofmann and G. Chi (2022), drew attention to the influence of the practice of stealing brides on the processes of migration to Kyrgyzstan. The material and migration aspects of life of such households and the tendency of women to use migration to avoid or get rid of situations of this kind were considered in detail. It is worth considering research by A. Murzakulova (2022), which details the role of agriculture, which is not given enough attention in migration policy, on the Kyrgyz economy and emphasises the existing relationship between migration and the crisis in the agricultural sector. Attention should also be paid to the studies conducted on the legislative consolidation of the state migration policy. Thus, M. Reviglio (2023) draws attention to the practice of migration agreements with the countries of the EU and the application of “soft law” norms in them, which are used to move from legal force to legal efficiency.

The study of migration processes is of great importance for the legal consolidation of their regulation, both on a global scale and in specific conditions for the states under consideration. Migration legislation in many countries is a direct reflection of the state's migration policy, which is also typical for Kyrgyzstan. Thus, the main purpose of the study is to structure and investigate the legislation of the Kyrgyz Republic in the field of migration law as a way to consolidate the migration policy of the state.

Materials and methods

To investigate the features of legislative consolidation of the migration policy of the state in the Kyrgyz Republic, such general logical methods as analysis, synthesis, deduction, induction, and generalisation were used. The study examined the main sources of migration law in Kyrgyzstan, which include: the Constitution of the Kyrgyz Republic, international agreements and the national legislative framework represented by the laws of the Kyrgyz Republic, such as the Law of Kyrgyz Republic “On External Migration”, the Law of Kyrgyz Republic “On External Labour Migration”, the Law of Kyrgyz Republic “On Internal Migration”. The study was conducted as follows: first, laws and regulations were considered, the scope of regulation of which relates to the Migration Law of the Kyrgyz Republic, then they were divided into appropriate groups, each of which was comparable to a certain aspect of fixing the legal regulation of migration laws processes in Kyrgyzstan. After that, their main features and key factors influencing migration processes in the state were highlighted. The materials obtained were also used in the final part of the study.

The formal legal method was used to specify the features of legislative consolidation of migration processes from general information about socio-economic factors affecting their activation and development. Moreover, the formal legal analysis was applied in a more detailed consideration of the various aspects through which the migration policy of the state finds its manifestation, including through the adoption or ratification of relevant regulations. The synthesis was

used to combine the features of legislative consolidation of norms aimed at state regulation of migration processes in the Kyrgyz Republic identified in the process of analysing them. The synthesis was also used to generalise the features of constitutional and international aspects, and the aspect of national legislation. The deduction was used for a more detailed study of the features identified in the synthesis process that are characteristic of the legal regulation of migration processes by the state in Kyrgyzstan. Data on these features were obtained in the process of applying other methods and structured using their subsequent grouping. The dogmatic method was used to form a general opinion about the features of state regulation of migration processes, information about which was obtained during the synthesis. The dogmatic method was also used in a similar generalising conclusion concerning the features of constitutional, international aspects and aspects of national legislation highlighted in the course of synthesis.

The generalisation was used to structure all the features found concerning the legal basis of state regulation of migration processes in the Kyrgyz Republic, information about which was obtained using other methods. In addition, the generalisation was used for a general consideration of the absolute majority of features specifically for each of the aspects of legal consolidation of the migration policy of the state, implemented through the adoption or modification of the relevant norms and provisions of the Constitution and laws of the Kyrgyz Republic, and the ratification of international documents.

Results

For the effective implementation of state regulation of migration processes, a well-thought-out and weighted migration policy is necessary, the main provisions of which will be consolidated in migration legislation. In turn, the norms of migration law, which are properly consolidated in legislation, will create a legal basis for implementing migration policy in accordance with the national interests of citizens of Kyrgyzstan. Thus, during the period of independence, the Kyrgyz Republic has developed an extensive legislative framework that creates legal bases for the state to regulate various types of migration. The official documents defining the strategy of Kyrgyzstan in the migration sphere include: the Constitution of the Kyrgyz Republic, those of the international documents ratified by Kyrgyzstan aimed at regulating the labour rights of citizens, and national legislation.

The Constitution of the Kyrgyz Republic establishes the basic rights and freedoms of all citizens of Kyrgyzstan, and norms aimed at countering discrimination based on gender, nationality and other characteristics. In addition to the above-stated Basic Law of the Kyrgyz Republic, it establishes the economic rights of a person aimed at ensuring that an individual can meet their life needs and stay under the protection of the state. The Constitution puts these rights in a priority equal to the ideals of freedom and independent man. The provision of labour rights depends on the economic situation of the state and the needs of citizens. Therefore, the norms that consolidate the labour rights of citizens (Articles 19, 28, 42, 44 of the Constitution of the Kyrgyz Republic) should be perceived more as principles defining the basis for interaction between the state and the individual in the field of economic rights, rather than as a specific right of the individual and the corresponding obligation of the state Law of

the Kyrgyz Republic..., 2021. These rights include: the right to work, the right to choose a profession and the nature of occupation, the right to labour protection and ensuring safe conditions for carrying out labour activities, and the right to receive compensation for work, not less than the subsistence minimum established by law (Article 42 of the Constitution of the Kyrgyz Republic of the drew conclusions about the economic conditionality of decisions to leave for work). It should also be noted that a fairly large number of economic rights are regulated by the norms consolidated in the Constitution of the Kyrgyz Republic, that is, the norms of laws and sub-laws. Thus, the Civil Code of the Kyrgyz Republic (1996), along with detailed disclosure of constitutional rights in the field of economic relations, also provides for special economic rights of participants in such relations. It is the protection of social and economic human rights that is one of the most important obligations of the state, its departments and civil servants, which is consolidated in Article 44 of the Constitution of the Kyrgyz Republic. In accordance with this norm, the state takes care of the professional qualification of citizens, its provision and improvement, and the economic freedom of citizens and promotes voluntary social insurance.

The main international document ensuring the labour rights of citizens to which Kyrgyzstan joined is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). The convention establishes fundamental norms concerning the functions and tasks of the state in the process of regulating legal and illegal migration. These norms include the principle of equal treatment with migrants, the need to combat illegal crossing of borders by migrants of other states, and the principle of compliance with basic human rights in the process of implementing the migration policy of the state. In addition, Kyrgyzstan ratified other international legal documents guaranteeing the protection of the rights of migrant workers: convention of the International Labour Organisation No. 97 "On Migrant Workers" of 08.06.1949, Convention of the International Labour Organisation No. 105 "On the Abolition of Forced Labour" of 25.06.1957, International Covenant on Civil and Political Rights of 16.12.1966, United Nations Convention Against Transnational Organised Crime (2000) together with the Protocol Against the Illegal Importation of Migrants by Land, Sea and Air. It was the fundamentally changed migration situation and the accession of the Kyrgyz Republic to international treaties in this area that required the development of new legislation, which has become the subject of lively discussions and research in recent years. In accordance with the obligations adopted during the ratification process, the norms of the above-mentioned international documents are implemented in the national legislation of Kyrgyzstan.

The Kyrgyz Republic has created a fairly complete regulatory framework for migration that meets international standards, primarily the Law of the Kyrgyz Republic No. 61 "On External Migration" (2000). The main objectives of this law are to protect the interests and rights of migrants, control the processes of external migration, stabilise the general migration situation in Kyrgyzstan, and prevent illegal migration in the state. A special feature of this law is that it is aimed at regulating the order of entry and exit from Kyrgyzstan not only for foreign citizens, but also for residents of Kyrgyzstan (Section III). Unfortunately, this law does not contain any necessary terminology in Article 1, for

example: “temporarily residing foreign citizen”, “migration card”, “permanent residing foreign citizen”, “temporarily staying foreign citizen”. Research aimed at studying the rights of foreign citizens in Kyrgyzstan, including the right to freedom of movement and employment, is significantly limited by provisions that provide for a procedural, temporary or administrative framework. The Law of the Kyrgyz Republic No. 61 “On External Migration” is flawed in that it does not set out the procedure for guaranteeing not only material but also medical or housing security for foreign migrants and the procedure for issuing an invitation to enter the Kyrgyz Republic.

Attention should also be paid to the Law of the Kyrgyz Republic No. 4 “On External Labour Migration” (2006). In this law, the legislator characterises external labour migration as voluntary and returnable. Unfortunately, it may also be illegal, but this document does not address the problems of such external labour migration, because they can be solved using international law. The Law of the Kyrgyz Republic No. 133 “On Internal Migration” (2002) regulates public relations in the sphere of internal migration in the Kyrgyz Republic and defines the legal and organisational structure of internal migration processes and the need to provide decent living conditions at a new place of residence and/or places of residence of citizens who are internally displaced persons (Article 11). The Law of the Kyrgyz Republic is No. 1296-XII “On the Legal Status of Foreign Citizens” (1993) establishes the rules for the legal stay of foreign citizens in Kyrgyzstan. The Law of the Kyrgyz Republic No. 55 “On Preventing and Combating Human Trafficking” (2005) is also important, reflecting the norms of international treaties. In connection with the mentioned laws, which also provide additional consolidation, regulation and approval of constitutional norms, it should be added that Part 1 of Article 52 and Part 1 of Article 31 of the Constitution of the Kyrgyz Republic establish the right of citizens to freedom of movement, independent determination of their place of residence, and the right to leave the territory of Kyrgyz Republic freely. The studies by N.Kh. Kumskova (1982) and G.V. Kumskov (2002) were devoted to issues of migration, including internal and external.

In addition, the migration legislation of Kyrgyzstan includes regulations adopted at the government level. First of all, this is: Decree of the Government of the Kyrgyz Republic No. 639 (2006); Decree of the Government of the Kyrgyz Republic No. 754 (2006). Moreover, Order of the Government of the Kyrgyz Republic No. 419-p (2017) defines a quota for economic sectors and regions for labour migration, fixing the maximum number of labour migrants arriving in the Kyrgyz Republic. The impact of illegal labour migration on the level of crime in the host states is comprehensively investigated by T.T. Shabolotov (2006).

Separately, it is worth considering the Law of the Kyrgyz Republic No. 175 “On State Guarantees for Ethnic Kyrgyz moving to the Kyrgyz Republic” (2007). The Kyrgyz who arrived in their historical homeland had to face the fact that they had no housing, no land plots, and no guaranteed employment. Therefore, their adaptation has become the first priority for the state. The first step in the field of legislation was the adoption of the Decree of the President of the Kyrgyz

Republic No. 264 “On Measures to Provide Support to Ethnic Kyrgyz Returning to Their Historical Homeland” (2001). In order to implement the Decree of the Government of the Kyrgyz Republic No. 217 “On Approval of Measures to Provide Support and Assistance to Ethnic Kyrgyzstan who Returned to Their Historical Homeland and Living Abroad” (2002) (currently invalid according to the resolution of the government of the Kyrgyz Republic of 19.10.2006 No. 737), which identified the main and priority areas of support and assistance, and the list of ministries and departments involved in their implementation. The problem of refugees and immigrants among academic literature. In order to create conditions for legal and safe migration, the need for more responsible regulation of migration processes by the state was recognised, according to the National Development Strategy of the Kyrgyz Republic for 2018-2040 (2018), approved by the Decree of the President of the Kyrgyz Republic No. 221 “On the National Development Strategy of the Kyrgyz Republic for 2018-2040” (2018).

Sources of Migration Law of the Kyrgyz Republic differ in an impressive number of regulations aimed at governing migration processes in Kyrgyzstan. Their analysis showed that national legislation can hardly be called sufficiently complete and effective, despite the fact that some of these laws were subject to reform. First of all, this affected the structure of laws and bills concerning the emigration of citizens, and the immigration of stateless persons and foreigners to Kyrgyzstan. Various norms, including those concerning control over the work activities of foreigners and stateless persons, are repeated. For example, three key laws, such as the Law of the Kyrgyz Republic No. 61 “On External Migration” (2000), Law of the Kyrgyz Republic No. 4 “On External Labour Migration” (2006) and Law of the Kyrgyz Republic No. 133 “On Internal Migration” (2002), contain reference rules, a large number of declarative and generalised provisions. In particular, the laws do not de facto contain the norms necessary for effective protection of the rights of migrant citizens, and the provisions obliging the authorised body to help and protect their rights do not find real application due to the lack of practical tools to implement the external migration policy of the state, from the actual lack of resources of the authorised body. Unfortunately, the mentioned laws do not consolidate the rights of migrants to a pension and social insurance, but only refer them to the legislation of the country in which the migrant works or to the norms of international agreements.

It should also be noted that the main problem of state regulation of migration processes in Kyrgyzstan is its inefficiency. In turn, the low efficiency of a regulatory agency in the field of migration processes can occur not only due to shortcomings in legislation or migration policy, but also due to the unstable operation of such agencies. Unfortunately, the implementation of migration policy in Kyrgyzstan over the years has been characterized by frequent transfer of powers between departments, which negatively affects their productive work and the performance of basic functions, due to the lack of continuity and sufficient time to test and develop new approaches to organizing migration policy (Table 1).

Table 1. State agencies of the Kyrgyz Republic that received full powers in the migration sphere in the period 1993-2021

| Year | Agency |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1993 | Department for Population Migration under the Ministry of Labour and Social Security of the Kyrgyz Republic |
| 1999 | State Agency on Migration and Demography under the Government of the Kyrgyz Republic |
| 2001-2005 | Department of Migration Service under the Ministry of Foreign Affairs of the Kyrgyz Republic |
| 2005-2009 | State Employment Migration Committee of the Kyrgyz Republic (later transformed into the Migration Department of the Ministry of Labour and Employment of the Kyrgyz Republic) |
| 2010 | Ministry of Labour, Migration and Youth of the Kyrgyz Republic |
| 2011 | Department of Migration of the Ministry of Foreign Affairs of the Kyrgyz Republic |
| 2012 | Ministry of Labour, Migration and Youth of the Kyrgyz Republic |
| 2015 | State Migration Service under the Government of the Kyrgyz Republic |
| 2021 | Ministry of Labour, Social Security and Migration |

Source: compiled by the author

An analysis of the conceptual documents submitted for public discussion, in particular, the new Concept of migration policy of the Kyrgyz Republic for 2021-2030, approved by the Decree of the Government of the Kyrgyz Republic No. 191 “On Approval of the Concept of Migration Policy of the Kyrgyz Republic for 2021-2030” (2021), provides an opportunity to critically evaluate the state’s plans for the next decade, based on which the problems of migration legislation will most likely not be solved quickly enough. It can be noted that the concept document defines an understanding of the economic and demographic problems of the Kyrgyz Republic, and limited options for choosing countries for emigration. In addition, based on the analysis of the document, it can be argued that the country’s position, which is aimed exclusively at transferring labour resources to other states, remains unchanged. State regulation of migration flows is primarily aimed at the movement of the population outside of Kyrgyzstan. Despite the stated benefits for the state from external migration, such as the introduction of citizens of the Kyrgyz Republic to the global labour market, their involvement in a technologically more developed society and familiarisation with the standardisation of production processes, the Concept does not mention the issues of returning human resources to the country. It should also be noted that in the state migration policy of Kyrgyzstan, it is necessary to reflect a long-term strategy and programme of its implementation aimed at turning labour migration into a real incentive to improve the standard of living of citizens through the socio-economic growth of the Republic of Kyrgyzstan. In general, the current state of the legal system of Kyrgyzstan is characterised by significant instability, and it itself is in the process of development. The incompleteness of this process is clearly manifested in the context of migration law, which is met with significant inconsistency not only because of the different quality of sources, but also because of the uncertainty of its fundamental principles – the migration policy of the state, which makes effective law-making difficult.

Discussion

According to A. Desmond (2023), the most critical years for the migration process in Europe were 2015 and 2018, which provoked a new round of dissent within the EU. The researcher points out that migration processes in Europe

were also completely frozen during the COVID-19 pandemic, and around the world, in order to stop the spread of the virus. However, in 2020, Italy and Malta used restrictions for ambiguous purposes, as similar prerequisites were observed in 2018, even before the pandemic. Thus, these two states closed their ports to persons rescued at sea, arguing that it is impossible to provide safe living conditions and the need to comply with national interests in the field of non-proliferation of the virus. The second opponents of migration processes in 2017-2020 were Poland, Hungary, and the Czech Republic, which also justified their anti-migrant policies with national interests, despite calls to maintain a unified approach to the problem of migrants in EU politics, the main feature of which can be identified as the desire for equal settlement of migrants on the territory of the entire union (Shopina *et al.*, 2020).

Attention should also be paid to the features of migration legislation of the EU member states, in particular Germany, France, and Denmark. Thus, the issues of legislative consolidation of the state’s policy in the field of migration processes considered by C. Hruschka and T. Rohmann (2023), who reviewed Germany’s migration policy for the period 2014-2021. The study raised the issue of the “refugee crisis”, analysed the legislative decisions and initiatives of the government of the Federal Republic of Germany in the field of migration and what consequences they had directly for migrants. In turn, E. Fontanari (2022) examined the growing challenges for integrating new migrants through government programmes and services, including the *Ausbildungsduldung*. In the study, attention is focused on the fact that the government strives to achieve a balance between effective regulation of migration processes in Germany and full provision of other economic needs of the country, which creates contradictions related to the need to limit the flow of migrants and the need for relatively cheap working power, compared to German employees. Another study conducted by B. Yarar and Y. Karakaşoğlu (2022) was aimed at considering a more specific migration – the migration of scientists, more known as the “brain drain” to Germany from a number of disadvantaged countries. The study also indicates that autocratic and militaristic regimes provoke the outflow of specialists due to their full control of scientific activities, which negatively

affects the technological development of the countries in which such regimes operate (Yaroshenko *et al.*, 2021).

In turn, the issues of migration law in France have received attention from T. Alsamara and L. Mouatarif (2023), who examined international instruments and national legislation of the French Republic aimed at regulating migration processes with a view to legally consolidating the right of migrants to mental health and the creation of appropriate working and living conditions that do not create additional psychological discomfort to that associated with moving to another country, forced or deliberate. Another group of researchers, consisting of A. Laubeuf and L. Sorlat (2022), emphasised that from the standpoint of French migration legislation, migrants under the age of 18 are considered children and have the right to receive the status of unaccompanied minors if they do not have a legal representative. In turn, the status of an unaccompanied minor, as indicated in the study, provides special state support until the person is 21 years old. Despite the legislative consolidation of this status, the *de facto* state cannot yet fully resolve the issue of migrant children on the streets of France (Spytska, 2023). Attention should also be paid to the study by M. Panizzon (2022) aimed at examining migration agreements within the EU, one of which is the French Agreement on the Joint Management of Migration Flows. The study also focuses on differences in labour markets and their legislative regulation by EU laws, which arise due to France's desire to simplify some formal aspects of migrant employment.

Migration processes in Denmark are also characterised by specific features of the legal regulation of migration processes by the state. Some of them were considered by M.R. Nielsen and S.S. Jervelund (2023), in particular, the issues of actual access to medical services for individuals migrating to Denmark. Thus, according to the results of a survey of 1,711 migrants, 21% of respondents paid attention to the following general problems related to medicine: limited access to high-quality medical care, the main factors of which were: finances – 39%, language barrier and lack of sufficient understanding of the principles of the Danish healthcare system – 37%. Moreover, it was found that access directly depends on the type of residence permit, which indicates, in the opinion of researchers, the need to soften the rules governing access to the healthcare system, which cannot be disagreed with. Another study conducted by K. Vitus and F. Jarlby (2022), was devoted to the implementation of appropriate border control and integration of immigrants into society. It is also indicated that Danish migration policy aims to reduce the flow of refugees and to effectively integrate migrants into society on an equal footing with Danish citizens, but there is a certain discrepancy in the legislative framework of immigration laws, which creates conditions for the precarious situation of arrivals and the politicisation of the Danish migration process as a whole (Kulchytskyi, 2023). Attention should also be paid to the study by S. Adamo (2022), which considered the Danish migration legal system and its integration mechanisms. Conclusions were drawn that initiatives to integrate immigrants are at the intersection of public and private law with the manifestation of characteristic features of administrative law, which is especially evident when considering specific agreements between migrants and municipalities that they accept.

It is important to note that the decisive role in the development of a new state concept in the field of regulation of migration processes in Kyrgyzstan should be occupied by European experience, especially in detail should be considered errors in migration policies and their causes: incorrect approach to the situation, erroneous determination of priorities or inconsistency of legislation. Among the positive aspects characteristic of the migration process of EU member states, it is necessary to highlight the following: a higher level of social support for migrants, a higher quality of national legislation, a state interest in including migrants in the economic life of the state, ensuring their access to the labour market (Vasechko, 2023). It will also be important to review and recognise the imperfect state of the existing system of legal regulation of migration processes in the Kyrgyz Republic.

National policy in relation to migration should become a mechanism for working with different public interests, that is, it should rely on the coordination of positions of various departments of the country, business, non-governmental organisations, and associations of emigrants themselves (Abikenov *et al.*, 2019). Exceptional significance for the development of subsequent concepts aimed at regulating migration processes is the analysis of existing problems and data collected by studying the dynamics of legislation in the field of migration, assessing the effectiveness of the established practice of applying laws and the difficulties encountered in the migration process. In turn, the analysis of migration legislation from the standpoint of the effectiveness of its application in law enforcement practice should be carried out on a regular basis, not less than once every two years, and in extreme cases – within a reasonable time.

Conclusions

In the course of studying the migration legislation of the Kyrgyz Republic, three aspects of legislative consolidation of state policy in the sphere of migration processes were studied and the features of each of them were highlighted. The constitutional aspect, the actual basis of which is the Constitution of the Kyrgyz Republic, was characterised by the consolidation of norms-principles and labour rights of citizens. The international aspect, a key international act of which is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by UN General Assembly Resolution 45/158 of 18.12.1990, played a significant role in the process of implementing international standards in national legislation of the Kyrgyz Republic. In turn, the consideration of the aspect of national legislation, which is based on the laws of the Kyrgyz Republic, allow fully assessing the state of affairs in the field of migration law. Thus, in the course of research, it was found that the legal basis for state regulation of migration processes in Kyrgyzstan has a number of shortcomings, especially in the aspect of national legislation. In particular, this refers to the lack of effectiveness of regulatory norms in the laws of the Kyrgyz Republic, which do not fix clear mechanisms for protecting the rights of migrant citizens outside the Kyrgyz Republic. Attention should also be paid to the lack of actual capabilities of the agency, which is authorised to regulate migration processes, and to the incorrect approach to the preparation of conceptual documents, the provisions of which are aimed at stating the existing situation. The conceptual documents also do not consider the

real causes or international factors, and gaps in national migration legislation that have led to difficulties in regulating migration processes by the state.

It should be noted that the legal basis for state regulation of migration processes in the Kyrgyz Republic is formed, but the quality and effectiveness of national legislation remains questionable and requires more careful development and reform than it was previously carried out. An open field for further research is equally all sources of Migration Law of the Kyrgyz Republic, and key political initiatives, such as the Law of the Kyrgyz Republic “On State Guarantees for

Ethnic Kyrgyz People Moving to the Kyrgyz Republic” dated 26.11.2007 No. 175. The research conducted in these areas will help to more clearly characterise the historical and modern experience of state regulation of migration processes in Kyrgyzstan.

Acknowledgements

None.

Conflict of interest

None.

References

- [1] Abikenov, A., Idrysheva, S.K., Zharbolova, A.Z., Apakhayev, N., Buribayev, Y.A., & Khamzina, Z.A. (2019). [The problems of effectiveness and implementation of the international legal norms of the states of the Eurasian Economic Union \(EAEU\). *Bulletin of the Georgian National Academy of Sciences*, 13\(1\), 175-181.](#)
- [2] Adamo, S. (2022). “Please sign here”: Integration contracts between municipalities and foreigners in Denmark. *Journal of International Migration and Integration*, 23, 321-342. [doi: 10.1007/s12134-021-00834-0.](#)
- [3] Akhmetkaliev, M.O. (2022). [Improving public policy in the field of illegal migration in the context of global challenges: Master’s project for the degree of Master of Public Administration.](#) Nur-Sultan: NSGP of the Academy of Public Administration under the President of the Republic of Kazakhstan.
- [4] Alsamara, T., & Mouaatarif, L. (2023). Mental health of migrants under international legal texts and clinical practice: What is the role of culture? *The Pan African Medical Journal*, 44, article number 98. [doi: 10.11604/pamj.2023.44.98.37058.](#)
- [5] Civil Code of the Kyrgyz Republic. (1996, May). Retrieved from <https://cbd.minjust.gov.kg/3-1>.
- [6] Concept of Migration Policy of the Kyrgyz Republic for 2021-2030. (2021). Retrieved from https://migranty.org/wp-content/uploads/2021/06/06.04.21.ru_koncepcija-migracionnoj-politiki-kr-na-2021-2030-gg..pdf.
- [7] Critelli, F.M., Lewis, L.A., Yalim, A.C., & Ibraeva, J. (2021). Labor migration and its impact on families in Kyrgyzstan: A qualitative study. *Journal of International Migration and Integration*, 22, 907-928. [doi: 10.1007/s12134-020-00781-2.](#)
- [8] Decree of the Government of the Kyrgyz Republic No. 191 “On Approval of the Concept of Migration Policy of the Kyrgyz Republic for 2021-2030”. (2021, May). Retrieved from https://online.zakon.kz/Document/?doc_id=38444299&show_di=1.
- [9] Decree of the Government of the Kyrgyz Republic No. 217 “On Approval of Measures to Provide Support and Assistance to Ethnic Kyrgyz Who Returned to Their Historical Homeland and Living Abroad”. (2002, April). Retrieved from <https://cbd.minjust.gov.kg/53351>.
- [10] Decree of the Government of the Kyrgyz Republic No. 639 “On Approval of the Regulations on the Procedure for Carrying out Labor Activities by Foreign Citizens and Stateless Persons on the Territory of the Kyrgyz Republic and the Regulations on the Procedure for Carrying out Activities for the Employment of Citizens of the Kyrgyz Republic Abroad”. (2006, April). Retrieved from <https://cbd.minjust.gov.kg/57770?cl=ru-ru%26mode%3Dtekst>.
- [11] Decree of the Government of the Kyrgyz Republic No. 754 “On Approval of the Price List for the Issuance of Permits for the Right to Conduct Activities Related to the Attraction of Foreign Labor to the Kyrgyz Republic and the Employment of Citizens of the Kyrgyz Republic Outside its Borders”. (2006, October). Retrieved from https://continent-online.com/Document/?doc_id=30325836#pos=0:240.
- [12] Decree of the President of the Kyrgyz Republic No. 221 “On the National Development Strategy of the Kyrgyz Republic for 2018-2040”. (2018, October). Retrieved from <https://cbd.minjust.gov.kg/430002>.
- [13] Decree of the President of the Kyrgyz Republic No. 264 “On Measures to Provide Support to Ethnic Kyrgyz Returning to Their Historical Homeland”. (2001, August). Retrieved from <https://cbd.minjust.gov.kg/3510>.
- [14] Desmond, A. (2023). From migration crisis to migrants’ rights crisis: The centrality of sovereignty in the EU approach to the protection of migrants’ rights. *Leiden Journal of International Law*, 36(2), 313-334. [doi: 10.1017/S0922156522000759.](#)
- [15] Fontanari, E. (2022). Germany, year 2020. The tension between asylum right, border control, and economy, through the imperative of deservingness. *Migration Studies*, 10(4), 766-788. [doi: 10.1093/migration/mnac019.](#)
- [16] Hofmann, E.T., & Chi, G. (2022). Bride kidnapping and gendered labor migration: Evidence from Kyrgyzstan. *Journal of Ethnic and Migration Studies*, 48(11), 2493-2514. [doi: 10.1080/1369183x.2021.1931062.](#)
- [17] Hruschka, S., & Rohmann, T. (2023). Excluded by crisis management? Legislative hyperactivity in post-2015 Germany. *International Migration*, 61(3), 12-24. [doi: 10.1111/imig.12926.](#)
- [18] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (1990, December). Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/migrant.shtml.
- [19] Kulchytskyi, V. (2023). Role of intellectual property in the development of the state’s innovation potential. *Law. Human. Environment*, 14(3), 23-45. [doi: 10.31548/law/3.2023.23.](#)
- [20] Kumskov, G.V. (2002). [Patterns and features of the development of migration processes in the conditions of market transformation of the economy.](#) Bishkek: Kyrgyz-Russian Slavic University.
- [21] Kumskova, N.Kh. (1982). [Patterns of population movement in Kyrgyzstan.](#) Berkeley: University of California.
- [22] Laubeuf, A., & Sorlat, L. (2022). [Care and support centers for migrant children in France.](#) *La Revue du Praticien*, 72(9), 978-981.

- [23] Law of the Kyrgyz Republic No. 1296-XII “On the Legal Status of Foreign Citizens”. (1993, December). Retrieved from <http://cbd.minjust.gov.kg/act/view/ru-ru/772>.
- [24] Law of the Kyrgyz Republic No. 133 “On Internal Migration”. (2002, February). Retrieved from <https://cbd.minjust.gov.kg/1090>.
- [25] Law of the Kyrgyz Republic No. 175 “On State Guarantees for Ethnic Kyrgyz Moving to the Kyrgyz Republic”. (2007, July). Retrieved from <http://cbd.minjust.gov.kg/act/view/ru-ru/202209>.
- [26] Law of the Kyrgyz Republic No. 4 “On External Labor Migration”. (2006, January). Retrieved from <http://cbd.minjust.gov.kg/act/view/ru-ru/1792>.
- [27] Law of the Kyrgyz Republic No. 55 “On Preventing and Combating Human Trafficking”. (2005, March). Retrieved from <https://cbd.minjust.gov.kg/1650>.
- [28] Law of the Kyrgyz Republic No. 59 “On the Constitution of the Kyrgyz Republic”. (2021, January). Retrieved from <https://cbd.minjust.gov.kg/112215?cl=ru-rup1>.
- [29] Law of the Kyrgyz Republic No. 61 “On External Migration”. (2000, August). Retrieved from <https://cbd.minjust.gov.kg/350>.
- [30] Muhametjanova, G., & Adanır, G.A. (2023). Migrant parents and psychosocial effects of parents’ absence on children left behind in the Kyrgyz Republic. *Vulnerable Children and Youth Studies*, 18(1), 10-18. doi: 10.1080/17450128.2022.2159099.
- [31] Murzakulova, A. (2022). *Applying a rural development lens to migration policy in Kyrgyzstan*. Retrieved from https://www.osce-academy.net/upload/file/policy_brief_9.pdf.
- [32] National Development Strategy of the Kyrgyz Republic for 2018-2040. (2018, November). Retrieved from <https://invest.gov.kg/wp-content/uploads/2019/07/12-National-Development-Program-of-KR-2018-2040.pdf>.
- [33] Nielsen, M.R., & Jervelund, S.S. (2023). Experiences of access to healthcare among newly arrived immigrants in Denmark: Examining the role of residence permit. *Scandinavian Journal of Public Health*. doi: 10.1177/14034948231173473.
- [34] Order of the Government of the Kyrgyz Republic No. 419-p “On Introducing Amendments to the Order of the Government of the Kyrgyz Republic Dated February 3, 2017 No. 27-p”. (2017, February). Retrieved from <http://cbd.minjust.gov.kg/act/view/ru-ru/216014?cl=ru-ru>.
- [35] Panizzon, M. (2022). Adjudicating labor mobility under France’s agreements on the joint management of migration flows: How courts politicize bilateral migration diplomacy. *Theoretical Inquiries in Law*, 23(2), 326-373. doi: 10.1515/til-2022-0021.
- [36] Reviglio, M. (2023). The shift to soft law at Europe borders: Between legal efficiency and legal validity. *Global Jurist*, 23(1), 23-41. doi: 10.1515/gj-2022-0040.
- [37] Sayakbaeva, A., Akylbekova, N., & Taalaibek, T. (2021). *Impact of the COVID-19 pandemic on the socio-economic development of Kyrgyzstan*. *Reforma*, 3(91), 6-12.
- [38] Shabolotov, T.T. (2006). *External labor migration in the Kyrgyz Republic in the context of the global migration process*. Bishkek: Kyrgyz-Russian Slavic University.
- [39] Shopina, I., Khomiakov, D., Khrystynchenko, N., Zhukov, S., & Shpenov, D. (2020). Legal and organizational support in leading countries, NATO and EU standards. *Journal of Security and Sustainability Issues*, 9(3), 977-992. doi: 10.9770/jssi.2020.9.3(22).
- [40] Spytyska, L. (2023). Principles of delinquent behavior correction program creation for youth detention centers. *Human Research in Rehabilitation*, 13(2), 188-199. doi: 10.21554/hrr.092301.
- [41] There are over 750 thousand Kyrgyz migrants abroad. (2021). Retrieved from <https://24.kg/obschestvo/208694/>.
- [42] United Nations Convention against Transnational Organized Crime. (2000, November). Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml.
- [43] Vasechko, V. (2023). Features of exercising the right to education for persons granted temporary protection in European Union member states. *Scientific Journal of the National Academy of Internal Affairs*, 28(2), 71-80. doi: 10.56215/naia-herald/2.2023.71.
- [44] Vitus, K., & Jarlby, F. (2022). Between integration and repatriation – Frontline experiences of how conflicting immigrant integration policies hamper the integration of young refugees in Denmark. *Journal of Ethnic and Migration Studies*, 48(7), 1496-1514. doi: 10.1080/1369183X.2021.1873112.
- [45] Yarar, B., & Karakaşoğlu, Y. (2022). “Scholars at risk” in Germany: Forced migration and agency in forced migration decision-making. *Journal of Refugee Studies*, 35(4), 1616-1637. doi: 10.1093/jrs/feac044.
- [46] Yaroshenko, O.M., Lutsenko, O.YE., & Vapnyarchuk, N.M. (2021). Salary optimisation in Ukraine in the context of the economy Europeanisation. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 224-237. doi: 10.37635/jnalsu.28(3).2021.224-237.

Правові основи державного регулювання міграційних процесів у Киргизькій Республіці у контексті глобальних змін

Кубаничбек Сатіндієвич Ісабеков

Кандидат юридичних наук
Спільне киргизько-німецьке ГОО “Нарин”
720000, вул. Ісакеєва, 13/1, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0006-0152-2064>

Худаяржан Базарбаєвич Нарматов

Кандидат юридичних наук, доцент
Ошський державний університет
723500, вул. Леніна, 331, м. Ош, Киргизька Республіка
<https://orcid.org/0009-0002-1336-4295>

Іскандар Камалович Юсупалієв

Кандидат юридичних наук, доцент
Ошський державний університет
723500, вул. Леніна, 331, м. Ош, Киргизька Республіка
<https://orcid.org/0009-0009-2616-6088>

Багдаул Мамашаріп

Старший викладач
Ошський державний університет
723500, вул. Леніна, 331, м. Ош, Киргизька Республіка
<https://orcid.org/0009-0008-2864-3207>

Назіра Тенізбек

Кандидат юридичних наук
Міжнародний університет Киргизстану
720001, просп. Чуй, 255, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0005-6416-9045>

Анотація. Актуальність цього дослідження полягає у необхідності детально розглянути правові основи державного регулювання процесів міграції в Киргизькій Республіці у зв'язку з можливим розвитком міграційної кризи у країнах Близького Сходу та Європи. Мета дослідження – вивчити законодавство Киргизької Республіки щодо повного та належного закріплення правових норм, спрямованих на регулювання міграції відповідно до міграційної політики держави, заснованої на національних інтересах, міжнародних стандартах та сучасних міграційних тенденціях. Для проведення дослідження було використано такі загальнонаукові та спеціальні методи: формально-юридичний аналіз, догматичний метод, синтез, дедукція та узагальнення. У процесі дослідження було розглянуто базу національного законодавства у сфері регулювання міграційних процесів. Відповідно до ключових елементів також було виділено три аспекти законодавчого регулювання міграційних процесів у Киргизькій Республіці. До них були віднесені такі аспекти, як: конституційне, міжнародне та національне законодавство. За результатами проведеного дослідження визначено, що нині правове регулювання міграційних процесів у Киргизькій Республіці, з урахуванням великого масиву нормативно-правових джерел, перебуває у стадії розробки та реформування. Деякі законодавчі акти не містять правового закріплення державного захисту прав громадян Киргизької Республіки, які перебувають за межами держави. Механізми забезпечення такої підтримки для громадян-мігрантів також не було виявлено. Були зроблені висновки, що слід приділити увагу розробці продуманої міграційної політики держави, оскільки від політичних рішень залежить подальший вектор розвитку міграційного законодавства Киргизької Республіки

Ключові слова: законодавство; декларація про працю; виїзд на заробітки; міжнародні документи; політичні рішення