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## CARIM-EAST – CREATING AN OBSERVATORY OF MIGRATION EAST OF EUROPE

Co-financed by the European Union

### *Legal Aspects of Labour Migration Governance in the Republic of Armenia*

Petros Aghababyan

CARIM-East Research Report 2012/03



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**CARIM-East**  
**Creating an Observatory of Migration East of Europe**

**Research Report**  
**CARIM-East AS 2012/03**

**Legal Aspects of Labour Migration Governance**  
**in the Republic of Armenia**

**Petros Aghababyan**

Head of Asylum issues Division - State Migration Service of the Ministry of Territorial  
Administration of the Republic of Armenia

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European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)  
Italy

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## **CARIM-East – Creating an Observatory East of Europe**

This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

*For more information:*

CARIM-East

Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 817

Fax: + 39 055 46 85 770

Email: [carim.east@eui.eu](mailto:carim.east@eui.eu)

Robert Schuman Centre for Advanced Studies

<http://www.eui.eu/RSCAS/>

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## **Introduction**

Since its independence in 1991, the Republic of Armenia has faced difficult challenges in its policies and legal framework for labour migration. In the last two decades many Armenians have left for overseas employment given the socio-economic situation at home. At the same time, Armenia has inspired a certain interest in foreigners who, themselves, have come to work in Armenia. Given these in- and outflows Armenia has experienced a raft of problems with legal regulations.

In spite of the topicality of these problems, they have not yet been comprehensively studied. Problems have, to some extent, been touched upon by a number of authors. But the research carried out to date is mainly socio-economic or deals with the policy aspects of labour migration. Legal regulations for internal and external migrations is conditioned by the fact that, as in other areas, a relevant normative basis is a necessary condition for implementing state policy. In the absence thereof, it is impossible to talk about state policy in a given area.

This study addresses the legal aspects of labour migration governance in the Republic of Armenia. It analyses the legal framework and institutional mechanisms for internal and external labour migration and examines legal problems related to regulating the in- and outflow of migrant workers. Certain conclusions and recommendations have been made, on the basis of research. These conclusions and recommendations can be used to improve the legal framework with a view to regulating labour migration in Armenia. In addition, they can also serve as a basis for further exploration in the field.

## **1. International legal framework**

### **1.1 Multilateral Agreements**

Except for the Private Employment Agencies Convention (C181), Armenia has ratified those major ILO conventions, which have had a direct impact on the whole process of labour migration: including Migration for the Employment Convention (C97) and the Migrant Workers Convention (C143).<sup>1</sup> Of particular importance for the employment of Armenian citizens abroad are Arts. 2-4 of the ILO C97 Migration for Employment Convention, obliging Armenia:

- to facilitate the departure of migrant workers,
- to maintain an adequate and free service to assist migrant workers , and in particular to provide them with accurate information, and
- to take all appropriate steps against misleading emigration and immigration information.

Armenia has not signed the UN Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families.<sup>2</sup> This is an important gap in labour migration regulations, as the convention covers the whole migration continuum: arrangements for departure, travel, arrival, stay, remunerated activities, exit and return. In response to its national report on human rights, presented 6 May 2010, at the eighth session of the Human Rights Council, Armenia was encouraged to ratify the

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<sup>1</sup> Armenia is party to C111 Discrimination (Employment and Occupation) Convention, 1958 (ratified in 1994), C98 Right to Organise and Collective Bargaining Convention, 1949 (ratified in 2003), C29 Forced Labour Convention, 1930 (ratified in 2004), C105 Abolition of Forced Labour Convention, 1957 (ratified in 2004), C182 Worst Forms of Child Labour Convention, 1999 Armenia (ratified in 2004). See further details in the CARIM-East database: <http://www.carim-east.eu/database/legal-module/?ls=1&ind=lami>

<sup>2</sup> See RA Government Session Record, Decision 51(Point 3.1.1), 29 December, 2011.

convention.<sup>3</sup> To this end, the 2012-2016 Action Plan for the implementation of the Concept for the Policy of State Regulation of Migration<sup>4</sup> envisages, *inter alia*, actions which should be implemented in order to accede to the convention.<sup>5</sup> The RA Ministry of Foreign Affairs, the Ministry of Labour and Social Affairs and the State Migration Service (hereafter: SMS) have been appointed as implementing bodies. It is planned that accession will take place 2012-2014. In this regard, the Head of the SMS issued in 2011 an Order 65/1-A, according to which the SMS will prepare documents providing proper justification for the Convention by 12 July of 2012, documentation that will be submitted to the RA Ministry of Foreign Affairs.<sup>6</sup>

## 1.2 Regional Agreements

All CIS countries signed<sup>7</sup> the Convention on the Cooperation on Labour Migration and the Social Protection of Migrant Workers in 1994 in Moscow.<sup>8</sup> Mutual recognition of diplomas, certificates, documents certifying degrees, titles, qualifications, work records and work experience records are among the most important provisions of the Convention. The reliable preconditions are, thereby, created for finding legal employment opportunities.<sup>9</sup>

Armenia ratified another CIS Convention on the Legal Status of Migrant Workers and Their Families from 2008. There is an opportunity then: to implement a common policy towards migrants legally working in CIS countries and members of their families; to establish cooperation among authorized bodies of the field; as well as to facilitate prompt information exchange. The convention defines the rights for legally-working migrants as well as those fundamental rights, which are provided both to them and their family members.<sup>10</sup> The convention envisages cooperation in medical insurance<sup>11</sup> and vocational training as well as in joint measures directed towards ensuring the return of the migrant workers after the expiry of the terms of their labour activity. Membership of the Convention should also promote equal treatment of migrant workers and citizens among those who are party to the Convention. It should also end discrimination against migrant workers and their family members, including forced labour and cases of inhuman and degrading treatment.<sup>12</sup> Although this Convention does not guarantee the direct access of Armenians to the labour markets of CIS countries, it indirectly creates favorable conditions for such access and labour activities.

Nevertheless, it is worth mentioning that in practice, the relevant agreements do not actually operate efficiently. And this is a distinctive feature for other conventions concluded within the framework of CIS. The reasons why such conventions have not proved operational cannot be covered here in any detail. But reasons include: imprecise formulation of the issues to be regulated by Conventions; and the lack of mechanisms for implementation.

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<sup>3</sup> See the Records of 8<sup>th</sup> session of the Universal Periodic Review (May 2010), <http://upr-epu.com/ENG/country.php?id=173>

<sup>4</sup> Approved by Governmental Decision 1593, 10 November 2011.

<sup>5</sup> RA Governmental Decision # 1593 on Approving 2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia, 10 November, 2012, Section 5, Point 5.4.4.

<sup>6</sup> See Order 65/1-A of the Head of SMS, Annex, Point 24.

<sup>7</sup> However, it has not been ratified by Georgia and Turkmenistan.

<sup>8</sup> Collection of the Republic of Armenia International Treaties. Treaties Signed Within the Framework of the Commonwealth of Independent States. RA MFA Official Bulletin N 3(11), 20.12.2004, pp.229-233.

<sup>9</sup> Art. 4.

<sup>10</sup> Part 2, Arts. 5-13.

<sup>11</sup> Part 2, Art. 17.

<sup>12</sup> Part 2, Art. 8.

### 1.3 Bilateral Agreements

#### *1.3.1 Bilateral Agreements with Georgia, RF, Ukraine and Belarus*

The Republic of Armenia has, to date, signed four bilateral Agreements on labour migration. They have been signed with various states in the territory of the former USSR: Georgia (1993), the Russian Federation (1994), Ukraine (1995) and Belarus (2000). These Agreements have almost the same titles and were signed between the Government of Armenia and the Governments of the other Contracting Parties. They refer to employment and the social protection of citizens (or permanent residents) of the contracting parties. . In the case of Georgia and the Russian Federation, the Agreements refer to persons performing labour activities on the basis of employment contracts. In the case of Ukraine and Belarus, the Agreements cover, in addition, persons and migrant workers employed on the basis of contracts concluded between the economic entities of the Contracting Parties.

Art. 2 of the aforementioned agreements refers to the competent authorities of the Contracting Parties and the Ministry of Labour and Social Issues in the Republic of Armenia as it is designated in Armenia. Moreover, the same Article stipulates working groups on the part of authorized bodies aimed at settling all issues arising in the course of the implementation of the Agreement. However, this working group functions only within the framework of the Agreement signed with Russian Federation, and it was established in the summer of 2010, fifteen years after the Agreement entered into force.

Each of the Agreements includes an article defining the age of employees in accordance with the provisions of the national legislation of the receiving party.

Art. 4 of the Agreement signed with Georgia stipulates that an employment contract is to be signed between employer and employee in accordance with the legislation of the employment state on the labour force. Moreover, these contracts are subject to registration in those organizations defined by the competent authorities. Favorable conditions are stipulated for employees in the case of the early termination of an employment contract through either the liquidation of an enterprise or staff reduction. In such cases, as far as possible, the competent state authority dealing with employment issues provides the employee with a relevant job for the period covered by the contract. If such a job placement is impossible, some privileges and reimbursements are granted to the employees in question. Such provisions are also envisaged in the Agreements signed with the Russian Federation (Art. 4), with Ukraine (Art. 9) and with Belarus (Art. 6). Furthermore, the Agreement with Ukraine defines that, in such a situation, an employee should be sent home at the expense of his or her employer.

Art. 6 of the Agreement with Georgia states that migrant workers are entitled to the same rights and bear the same responsibilities as native workers as set forth in the labour legislation of the receiving state: this includes labour relations, collective agreements, labour remuneration, working hours, rest time regime, labour protection and conditions etc. The record of service of the labour migrant is mutually recognized by both parties and taken into account in pension calculation. Agreements signed with other states also touch upon the rights and responsibilities of migrant workers, as well as issues pertaining to the record of service: Arts. 4 and 6 of the Agreement with RF, Arts. 7 and 9 in the Agreement with Ukraine and Art. 6 of the Agreement with Belarus. It is worth mentioning that the Agreement with Belarus does not presuppose any provision on the mutual recognition of the record of service.

Only Art. 7 of the Agreements with Georgia and RF, having almost the same content, define pension provision issues for the migrant workers and their families. The procedures on reimbursement for damages, for mutilations, professional diseases and other work related injuries are to be regulated by separate Agreements. However, there has not yet been an Agreement signed in this regard. In the case of Ukraine, pension provisions are subject to regulation by separate Agreement. Such Agreements do not exist either. Art. 13 of the Agreement defines in detail procedures for reimbursement from damages related to performing the job or other injuries to the health of migrant workers. The aforementioned issues are enshrined in very general terms in Art. 10 of the Agreement with Belarus.



With the exception of Belarus, where labour activities are allowed for only one year, there are no time limits. Agreements with Belarus and Ukraine also define that the entry into the countries in question needs the relevant certificate of health, while the other two Agreements do not stipulate any such provision.

All the aforementioned Agreements incorporate provisions ensuring the recognition of documents (or their ratified copies) issued on the territory of another Contracting Party without legalization. The Agreements signed with Belarus and Ukraine also relate to: the issues related to remittances to be sent by migrant workers to the places of their permanent residence in accordance with prescribed procedure (Arts. 11 and 15); the transportation of personal belongings and tools (Arts. 12 and 8); taxation on earnings (Arts. 11 and 10 accordingly); and the repatriation of the body of deceased migrant workers (Art. 13 in both cases), etc.

In this summary of the above-mentioned Agreements, it is worth mentioning, that favorable conditions for entry into the labour markets of Georgia, Russia, Ukraine and Belarus are defined for the citizens of Armenia. They are entitled to the same employment rights as the citizens of these states (labour relations, remuneration, working hours, safe conditions of employment, etc.), and a very significant part of the agreements is devoted to social security issues. Nevertheless, in practice these Agreements have not been operational. The absence of joint working groups (except for the working groups functioning within the framework of the Agreement signed between Armenia and RF) with the task of settling issues from the implementation of the Agreements; and the lack of subsequent implementing Agreements are vivid proof of this. The competent authorities have not yet identified the organizations where the concluded employment contracts should be registered.

### *1.3.2 Bilateral relations with the Russian Federation*

As stated above, the joint Armenian-Russian working group, which was envisaged by the Intergovernmental Agreement signed in 1994, was established on 1 July, 2010. It is chaired, on the Russian side, by Mr. Anatoli Kuznetsov, the Deputy Head of the Federal Migration Service of RF, and, for Armenia, by Mr. Gagik Yeganyan, Head of the State Migration Service of Armenia. Apart from co-chairmen, the working group consists of representatives of various stakeholder bodies (the Ministry of Labour, State Employment Service, Ministry of Foreign Affairs, etc.). The working group has an approved charter as well as a working plan adopted for each subsequent year. Two meetings of the group were held: in Moscow 1-2 July of 2010 and in Yerevan on 18-19 June 2011. At the last meeting, the Russian delegation handed over to the Armenian delegation a Draft (put together by Russia) for an Intergovernmental Agreement on the regulated recruitment of Armenian workers for employment in the Russian Federation. According to the surveys, the absolute majority of seasonal migrant workers from Armenia choose Russia when they work abroad. Around 60,000-80,000 Armenians leave for the Russian Federation in early spring and return in late autumn each year.<sup>13</sup> Up to 70 percent of long-term migrant workers are anchored in the Russian Federation and their numbers with family members amount to more than 700,000. Remittances received from the Russian Federation stand at 70-80 percent of transfers sent to Armenia and up to 1.5 billion US dollars in some years.<sup>14</sup> All this is evidence of the significance of the intergovernmental Agreement on labour migration with the Russian Federation. The Draft Agreement envisages favorable conditions for RA citizens to engage in employment in the Russian Federation. This is particularly true of Art. 5 of the Agreement which stipulates the creation of immigration support centers aimed at assisting RA citizens in the places of their permanent residence. Assistance would include vocational training, re-training and raising the skills levels, Russian language classes and a familiarization with Russian legislation in order to find a job in the Russian Federation. Art. 6 of the Draft envisages the establishment of centers

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<sup>13</sup> Advanced Social Technologies, NGO; "International Business Reports 2006-2009".

<sup>14</sup> "Report on Human Development", UNDP, Armenia, 2009.

dealing with medical examination to conduct medical examination for RA citizens within Armenia and to issue health certificates which will be recognized in the Russian Federation. Eventually, information centers providing information on employment opportunities in the Russian Federation will also be created under the draft agreement.

In summary, the draft is directed towards the facilitation of the entry of the RA citizens into the Russian Federation's labour market. It even allows certain administrative functions to be performed in Armenia before departure for work abroad.

The Draft Agreement was not passed on to Armenia through diplomatic channels. The State Migration Service sent it to the various Ministries and other governmental institutions for comments, and some of these bodies looked on the Draft negatively. This has to be put into perspective. At present, there is extremely negative public opinion with regard to the activities of the Federal Migration Service of the Russian Federation in Armenia. The mass media is full of articles which suggest that this organisation encourages emigration from Armenia.

### *1.3.3 Bilateral Agreement with Qatar*

There has been some progress in exporting labour from Armenia to the Persian Gulf, particularly to the State of Qatar. An Agreement on the Inclusion of Armenian Labour Force in the State of Qatar was initiated in June 2011. Interest was also expressed by the United Arab Emirates in launching relevant negotiations.

The agreement with the State of Qatar has an asymmetric format and it refers only to the export of labour from Armenia. Concrete mechanisms are defined in the Agreement to this end: the Ministry of Labour of the State of Qatar will present to the Armenian State Migration Service the recruitment applications from employers in the State of Qatar for the employment of Armenian workers. The SMS will endeavor to meet such applications with the means and resources available to it. The Qatari employer, either on his own or through a representative or through a recruitment office authorized by the Ministry of Labour of the State of Qatar, has to follow up. They must then complete all the procedures required for the selection of workers and their journeys from the Republic of Armenia to the State of Qatar.

The SMS is to take the necessary measures to ensure medical examination procedures, obtaining passports and travel permission for the workers desiring to work in Qatar. The SMS should also provide such workers with information on work conditions and living standards there. Employers bear all travel expenses of workers from the Republic to work in the State of Qatar, their return expenses from Qatar at the end of their employment as well as the workers' two-way travel expenses during leave periods. The conditions and terms of employment for Armenian workers in Qatar are defined by an individual employment contract concluded between the employee and the employer. During employment in Qatar Armenian specialists will be able to deepen their professional skills, since advanced technologies are applied there. At the same time, Qatari legislation regulating issues related to employee return after contract expiry as well as practices applied are rather strict. According to the information provided by the SMS, the official visit of the Minister of Labour of the State of Qatar to Yerevan and the signing of the Agreement was anticipated for May of 2012

### *1.3.4 Agreements with EU Member States*

Currently, negotiations with France and Bulgaria, are under way for bilateral agreements on labour migration. The agreements in question will serve as an alternative to the illegality in which migrant workers might find themselves in a foreign country with all undesirable consequences. There is no progress in signing procedures with those countries, though the texts of the agreements are already

known.<sup>15</sup> For instance, the draft agreement with Bulgaria is symmetrical and refers to both the employment of the Armenian labour force in Bulgaria and \_that of Bulgarian workers in Armenia. The agreement would apply to the citizens of the Parties to the Agreement who have work permits for the other country. A number of such employees would be defined in accordance with the labour demand of the labour markets of the Contracting Parties. Initially, employment contracts would be concluded for one year, renewable for additional three years. For the employment of seasonal workers the draft agreement envisages nine months. Agencies operating on the territory of the contracting parties, which concluded contracts on providing services with companies operating on the territory of the other contracting party, would be able to place their employees for up to 12 months if the employees were issued with the relevant permits by the authorized state bodies where services would be provided. The draft agreement also defines the recruitment procedure, the working conditions and social benefits of migrant workers. In particular, there are provisions on the remuneration of the employees, their rights and their obligations. Besides, the draft agreement incorporates provisions on the return of migrant workers.

## 2. Main principles of the national legal framework regulating labour migration

According to Art. 32 of the constitution “everyone shall have the freedom to choose his/her occupation.” “Everyone” here refers to RA citizens, the citizens of foreign countries and stateless persons. In Art. 1 of the constitution, Armenia is characterized as a social state. One of the meanings of “social state” is the guarantee of opportunities for both RA citizens and for each adult person legally residing on Armenian territory to ensure their family a minimum living by earnings through work. Such an opportunity is available only if the right to work is granted. However, Art. 32 of the RA Constitution stipulates only “the freedom to choose his/her occupation,” not the right to work itself. At the same time, the freedom to choose an occupation excludes forced labour.

The freedom to choose an occupation does not mean that the state has no obligation with regard to the right to occupation. The RA National Assembly adopted the Law on the Employment of Population and Social Protection in the Case of Unemployment on 24 October 2005. This law regulates the employment of the RA population and the state policy principles of social protection in the case of unemployment, the state warranties on free choice in work and employment and on social protection among the unemployed.<sup>16</sup> According to Art. 3(2) of the Law, RA citizens, foreign citizens living in the RA, and stateless persons have the right to choose between employment and unemployment, excluding the cases prescribed by RA laws. In accordance with Arts. 6 and 7 of the Law, foreign citizens living in the RA and stateless persons are granted equal rights to be considered as job seekers or unemployed and to exercise the rights prescribed by Armenian legislation. The right to employment is closely related to the right to entrepreneurial activity. Art. 33.1 of the Constitution gives equal rights to both RA citizens and foreigners for freedom of enterprise, at least those enterprises not prohibited by law. The content of this right is clarified in the Civil Code of Armenia, whose Art. 2 reads as follows: “Entrepreneurial activity is independent activity by a person conducted at their own risk pursuing as a basic purpose the extraction of profit from the use of property, sale of goods, doing work, or rendering of services.”

The RA Labour Code provisions apply to the foreigners as well. Art. 2 of the Code defines how the objective of labor legislation is to establish state guarantees for labor rights and freedoms for any persons, i.e., RA citizens, citizens of a foreign country, stateless persons, to contribute to the creation of favorable labor conditions and to protect the rights and interests of both employees and employers.

An analysis of the legislation regulating such areas as education, social issues, healthcare and culture illustrates that they do not refer to labour migration. They do not incorporate any provision that may have,

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<sup>15</sup> The negotiations on the Agreement started in 2009, however, it has not been signed yet.

<sup>16</sup> RA Law on Employment of the Population and Social Protection in Case of Unemployment

even indirect, impact on the issues in question. From the analysis made, it follows that RA legislation as a whole does not regulate the issues related to the emigration of RA citizens for labour purposes.

### 3. Institutional Framework

The State Migration Service<sup>17</sup> is the central authority responsible for the development and implementation of state policy on migration management. It also coordinates government bodies dealing with migration issues in policy development and the drafting of legal acts. SMS is also responsible for granting asylum to foreign citizens and stateless persons. The SMS develops and implements programs in accordance with the integration policy adopted by the state in respect to refugees forcibly displaced from the Republic of Azerbaijan in 1988-1992. It also develops and implements the relevant programs aimed at combating illegal migration. In addition, the SMS is the main body responsible for the implementation of readmission agreements, and it is actively involved in drafting agreements, writing conclusions/comments, as well as dealing with implementation<sup>18</sup>.

Armenia has a state designated body for labour issues – the State Employment Service of Armenia, which operates under the supervision of the Ministry of Labour and Social Issues of the Republic of Armenia. It provides employment services on behalf of the Republic of Armenia.<sup>19</sup> The Agency performs a number of functions with a view to achieving its objectives and fulfilling tasks and carries out its activities within the framework of RA legislation. The following functions performed by the Agency in accordance with Art. 15 of the law on employment of the population and social protection in case of unemployment are especially worth mentioning:

- to get information on vacancies and on expected structural changes and other arrangements that may result in dismissals by employers as well as by the respective bodies of foreign countries in accordance with the legislation of the Republic of Armenia,
- to nominate job seekers to employers in the case of suitable vacancies,
- to carry out programs targeted to the regulation of internal and the external mobility of the workforce, to facilitate job seekers in choosing a suitable job, and providing the employers with the specialists with needed vocations and qualifications based on the results of analytical surveys and forecasts,
- within the limits of its competence, to provide information and consultation on carrying out activities in foreign countries and to those who wish to take vocational training abroad etc.

Due to the absence of legal mechanisms, state bodies have not undertaken measures to assess the skills and qualifications of migrant workers.

## 4. Overseas employment of Armenian citizens

### 4.1 Licensing of private employment agencies

Art. 4(1) of the RA Law on Licensing provides that “protection of the rights and lawful interests of individuals” are among the principles of licensing. The regulation of overseas migration is directly linked to such issues as rights infringements and the interests of Armenian citizens in this area. Hence, it is of enormous importance. In this regard, the reference should be made to Art. 13 of the CIS Agreement on Cooperation on Labour Migration and Social Protection of Migrant Workers signed on

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<sup>17</sup> Official web pages: [www.smsmta.am](http://www.smsmta.am) and [www.backtoarmenia.am](http://www.backtoarmenia.am)

<sup>18</sup> The SMS has no function in matters of residence permits, visa or border management.

<sup>19</sup> RA Government Decision N-1823 on Approving the Charter of the State Employment Service of Armenia of the RA Ministry of Labour and Social Affairs of 14 November, 2002, Point 1.

15 April, 1994, in Moscow,<sup>20</sup>. which stipulates that the Parties to the Agreement should undertake the necessary measures to prevent migrant job placement by intermediate organizations which do not possess permission from the designated authorities. The same idea is envisaged in Art. 16 of the Agreement in the migration field concluded on 17 June, 1995 between Armenia and Ukraine.

#### **4.2 Measures to promote the recognition and accreditation of skills and qualifications**

In 2005, Armenia joined the Bologna process. In the same year it ratified the Lisbon Convention on the Recognition of Qualifications Concerning Higher Education Area in which staff and students could easily move and have fair recognition of their qualifications. However, the subject of the recognition and accreditation of skills and the qualifications of the migrants are not stipulated in national legislation.

#### **4.3 Providing information and assistance prior to departure**

Within the last years a hot line was made available in the SMS to provide legal counseling to persons leaving for overseas employment. Within the framework of cooperation with the ILO and the IOM a number of booklets – information guidelines for those leaving for Russian Federation, United Arab Emirates, State of Qatar, Turkey, Germany, Greece and Iran – were published. The reception of migrants leaving for employment abroad is organized at the premises of the SMS on a daily basis. It is necessary to emphasize that these issues are not regulated on a legislative basis, and such support was provided within the framework of separate projects implemented jointly with various organizations. Similar services were provided and currently are delivered through other projects implemented by different organizations /Eurasia Foundation (2007-2008), the Czech organization of People in Need (2009-2011), and the ILO (2009-2012). The ILO, within the framework of the project noted here, established three resource centers, which later on were transferred to the State Employment Service of Armenia for operation.

The European Commission and the ten Member States of the European Union expressed their interest in facilitating the entry of Armenian citizens to the European labour market. This was done with a Joint Declaration on a Mobility Partnership between Armenia and the EU, which was signed on 27 October 2011 in Luxemburg. The promotion of legal migration, including legal employment and circular migration, is one of the four points emphasized in this document. It is important for Armenia and EU states now to take concrete step in this direction: however, to date, nothing has been done.

#### **4.4 The role of judicial bodies**

The surveys carried out within the framework of this study indicate that there were no judicial proceedings concerning the infringement of the rights of the migrants leaving for employment abroad. Judicial bodies play a passive role here, since the law enforcement practices regarding this field have not been formatted. In response to our questions to the RA Judicial Department, we were informed that there were no claims submitted to the courts of related to the restoration of infringed rights in the field of labour migration. Consequently, there were no hearings of such cases in the courts. This may be conditioned by the following facts. A legislative framework here is absent and the rights of migrant workers as well as the legal guarantees for their realization are not defined. Human-rights infringements are not recorded and people do not lodge claims with the courts. Therefore, case law has not been formulated in this regard either. The judicial bodies may play a more active role if the legal regulation of the issues regarding the in- and outflow of migrant workers is introduced.

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<sup>20</sup> Armenia joined this agreement in 1996.

#### **4.5 Draft law on the regulation of overseas employment of Armenian citizens**

Already in 2002 the former Department on Migration and Refugees (currently SMS) developed a Draft Law on Regulation of Overseas Employment aimed at regulating the problems faced in this field. The preliminary version of the Draft had been revised several times. What is more, it had been revised taking into account the comments and recommendations provided by: the ILO; other state stakeholders; as well as the conclusions made at a relevant workshops jointly organized with the Council of Europe and held in Yerevan.

The authors of the Draft Law have been mainly pursuing 2 objectives in adopting the Law in question.

The first objective is the provision of legal guarantees to protect the rights and interests of migrant workers and the second one is to examine the labour markets of foreign countries.

The Draft Law offers specific solutions directed towards the protection of the rights and interests of migrant workers, particularly:

- It considers employment abroad as a licensed activity for recruitment agencies engaged in such activities.
- The recruitment agencies engaged in implementing overseas employment should conclude contracts with migrant workers, where the preferences of the citizens are to be incorporated: preferred country, occupation, remuneration, terms etc. The contract should serve as a legal guarantee for signing employment contracts with foreign employers. Moreover, the migrant worker makes the final payments to the licensed employment agency for services provided to him or her only if the overseas employment meets the preferences stipulated in their employment contract. If the migrant worker refuses to take up employment abroad, which meets preferences enshrined in his or her contract, then he/she should cover all the expenses for job searching and for signing a contract.
- The licensed agency should also sign contracts with foreign employers or their authorized representatives, who are willing, through the mediation of these agencies, to employ migrant workers from Armenia.
- An essential part of the responsibility for overseas employment lies with the employer in the foreign country. Therefore, the employment contract should be concluded between the employer and the migrant worker, where all basic and essential employment conditions should be covered.
- Persons wishing to engage in overseas employment may receive free orientation information on overseas employment and foreign employers. This is particularly true in relation to the general situation in the labour market of the country of destination: immigration regimes, geographical location, political system, climate, customs etc. The list of information to be provided is defined by the RA Government. Defining the obligation to provide free information is conditioned by the current practice applied in providing services in this field. The visits of the potential migrant workers to the offices of the employment agencies should be enough to bring them profit, and, currently, there is no shortage of such visits, since the right to occupation is among the fundamental human rights, and overseas employment is perceived as one way, if not the only possible way to exercise this right. Socio-economic realities create “soft conditions” for such agencies, and it is possible to enjoy a “not poor” existence by doing nothing or, at the best, by providing inadequate services in regard to employment abroad.
- Apart from the aforementioned steps directed towards the protection of the rights and the interests of the migrant workers, an important role is intended for state authorized bodies. Thus, citizens may submit their signed or unsigned agreement to a foreign employer to the state designated body to get information on whether the given contract ensures the protection of their rights and interests or not.

To achieve the second objective, i.e. examining the labour markets of foreign countries, the Draft Law defines the legislative and the organizational actions to be implemented by: the RA Government; the state body authorized for management of overseas employment, RA diplomatic representations and consular services with a view to regulating overseas employment. Such measures range from a study of supply and demand in the labour markets of the foreign countries and the conditions of job placement applied to foreign nationals there to the conclusion of international intergovernmental agreements on the governance of overseas employment.

As mentioned above, the Draft has been in circulation since 2002, and it has been the subject of numerous discussions over the last ten years. Twice it was presented to the RA Government and included in its agenda for discussion. If, in the early stages, the state bodies did not agree with the need to adopt the Law by expressing negative opinions in this sense, since 2008 they have changed their standpoints, since the Draft has been revised several times. A number of researchers<sup>21</sup> have even used the justifications drafted by the SMS with regard to the need for the adoption of the Law in their research.

Thus, the non-adoption of the Draft Law is mainly conditioned by an overall cautious attitude on the part of high-ranking authorities involved in political decision-making. This kind of an attitude is based on the concern that the adoption of the Law could be perceived by the general public as encouragement for emigration from Armenia.

#### **4.6 Major challenges**

The major challenge here is the lack of legislation. Employment abroad is unregulated and has not been incorporated into the framework of legal regulations to ensure the protection of the rights and interests of RA citizens.

Due to a lack of job places, a lot of citizens migrate for labour purposes. The unregulated state of this area means a situation where the majority of migrants evade the exit and entry procedures prescribed by the legislation of the sending and the receiving countries. In doing so they end up in an irregular situation and create problems for themselves, for local authorities and for the Republic of Armenia. There are also cases when, under the cover of organizing employment abroad, individuals and organizations, cheat credulous citizens of their money and either disappear or they transport these citizens abroad. Armenians then find themselves without any guarantees for a job and they are stranded in an uncertain, vague and difficult situation. In this situation, the legal regulation of the issues concerning overseas employment is of vital necessity.

### **5. Access of foreign nationals to the Armenian labour market**

The RA Law on Foreigners adopted in 2006 by the National Assembly is a key legal act regulating the employment of foreigners in Armenia. The fourth chapter of the Law is devoted entirely to the employment of foreigners in the Republic of Armenia.<sup>22</sup>

A definition of “Migrant Workers” is not stipulated by the Law. Moreover, foreign workers are not classified by the Law according to their qualifications, specific sectors of employment or, indeed, by the nature of their employment (paid or self-employed, seasonal, etc.).

According to Art. 22(1) of the Law, foreigners are entitled to manage their professional skills, to choose profession and also employment type. The Law on Foreigners guarantees the

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<sup>21</sup> See, for example, H. Kobelova, A. Mazmanyanyan, A. Yeremyan, “Assessment of the Migration Legislation in the Republic of Armenia”, OSCE, 2007.

<sup>22</sup> See Arts. 24-29 of the RA Law on Foreigners.

principle of equal rights among those involved in labour relations stipulated by the RA Labour Code. This is true irrespective of their sex, race, national origin, language, citizenship and other reasons not connected with their employee's practical skills.<sup>23</sup>

It is remarkable that the Law envisages favorable treatment with regard to some categories of foreigners, depending on their legal status. So the holders of temporary, permanent and special residence permits, refugees and a number of other categories of foreigners can work in Armenia without work permits.<sup>24</sup> A foreign citizen recognized as a refugee by the Armenian Government receives a residence permit without time limits. Granting refugee status automatically implies permission to work and recognized refugees are not required to apply for a work permit as other foreigners are. The RA Law on Refugees and Asylum (Chapter 2) establishes basic rights of asylum seekers and recognized refugees, including the right to employment.<sup>25</sup> Asylum seekers, recognized refugees and persons granted asylum in the Republic of Armenia are allowed to seek employment within the RA under the same conditions as citizens of the RA. At the same time, RA legislation provides for some restrictions: an asylum seeker or recognized refugee cannot fill positions in state and local self-government bodies, since RA legislation prescribes how only citizens of Armenia can apply for such jobs, while recognized refugees or asylum seekers are either foreign citizens or stateless persons.

There is no established quota system for migrant workers.

## 5.1 Work permit

Employers have the right to conclude an employment contract (service contract) with foreign employees. They also have the right to use their labour based on the work permits granted to foreigners by the authorized body.<sup>26</sup> When granting work permits to foreign citizens, the needs of the RA labour market should be taken into account. The RA Government, upon adoption of a relevant Decision, should, in its quest to assess the needs of the labour market, establish a time-limit for an employer to fill the available vacancies from among RA citizens. The state employment services must nominate candidates meeting the requirements to fill the vacancy, within the established time. If they fail to do so the employer may find a foreign employee who meets the requirements and they can apply to the authorized state body to get a work permit for a specific employee for a specific period of time. To obtain a work permit as well as to get its term extended, state duty is levied on the employer to the amount prescribed by the RA Law on State Duty.<sup>27</sup> This Law envisages six grounds for the denial of work permits<sup>28</sup>. A foreigner has the right to appeal the decision in granting a work permit to the court within five days of the denial<sup>29</sup>. If an employer does not provide a migrant worker with a job for which he/she was granted the work permit, then the employer will cover all the return expenses of the migrant worker and his/her family, as well as expenses related to their reaching the State of origin: namely, transportation and living expenses, as well as expenses of carriage and of personal property.<sup>30</sup> The Code on Administrative offences (Art. 201) defines sanctions for the employer (in the case of a legal entity, their executive directors) if they employ foreigners without a work permit or without appropriate resident status. The employer is punished with a fine of 100-150 minimum salaries.

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<sup>23</sup> Art. 22(1).

<sup>24</sup> Art. 23 of the Law on Foreigners.

<sup>25</sup> RA Law on Refugees and Asylum, Art. 21.

<sup>26</sup> Art. 22(2) of the Law on Foreigners.

<sup>27</sup> RA Law on Foreigners, Art. 24.

<sup>28</sup> Ibid, Art. 25.

<sup>29</sup> Ibid., Art. 26.

<sup>30</sup> Ibid., Art. 26.



These provisions from the relevant Articles of the Law on Foreigners and the Code of Administrative Offences do not work fully in practice: the government has still to designate a body responsible for the issue of work permits. Likewise, the government has not taken any decision on establishing a time-limit for an employer to fill available vacancies with Armenian citizens before engaging foreign nationals. In this regard, reference should be made to Art. 68(4) of the RA Law on Legal Acts where it is written that: “if the fulfillment of a requirement of a norm provided for in a legal act may be achieved only by the adoption of another legal act provided for by that legal act, or its fulfillment is directly conditional upon the adoption of another legal act, the legal act shall be operative in respect of that norm upon the entry into force of the other appropriate legal act.” Hence, all those provisions of the Law on Foreigners on the principle of national preference and the requirement of a work permit (Arts. 22-26, 28) are not applicable until the Government adopts relevant implementing decisions.

## **5.2 Employment contracts**

In Art. 27, the Law on Foreigners covers employment contract issues to be concluded between the employer and foreign employee. An employment contract (service contract) is concluded only for the period of validity of the work permit as envisaged by labour legislation in the Republic of Armenia. If the employer terminates his activity, the foreigner has the right to sign a new employment contract with another employer for the remaining period of the work permit. This right can be exercised if at least three months are left till the end of the period covered by the work permit and if the new employer has obtained permission from the state authorized body.

It is important that with a view to supplying accurate information to foreign workers the Law on Foreigners demands free assistance and services from the state authorized body as well as consultation aimed at combating misleading information.<sup>31</sup> The authorized body in question is obliged to provide free consultation to a foreigner on the provisions of the employment contract concluded between the employer and the foreigner prior to his or her entering the Republic of Armenia. The body in question must also verify their actual compliance after entering the Republic of Armenia.<sup>32</sup>

## **5.4 Entry and stay conditions**

Temporary and permanent residence permits are granted to foreigners by the state authorized bodies of the RA Police, while special residence permits are granted by the RA President. According to Art. 24 (Part 1) of the Law on Foreigners, decisions on granting and denying work permits are made by the authorized body in accordance with procedure and over the period of time prescribed by the RA Government. However, there is a problem here: the “authorized” body has not yet been appointed by the RA Government, so the provisions established by the Law in question are not applied in practice.

According to the Law on Foreigners, a foreigner holding a work permit is granted a temporary residence permit or it is extended for the term indicated in the work permit.

## **5.5 Other measures of legal character with an impact on labour immigration**

Analysis of the legislation regulating such areas as education, social issues, healthcare and culture illustrates that they do not refer to labour migration. They do not incorporate any provision that may have even an indirect impact on the issues in question.

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<sup>31</sup> Art. 29(2).

<sup>32</sup> Ibid.

## **5.6 The role of judicial bodies**

The analysis of the judicial bodies made during this research, shows that there were no judicial proceedings in the courts related to the employment of foreigners in the Republic of Armenia. The judicial bodies in question have a passive role in this field. In response to our questions to the RA Judicial Department, we were informed that there were no claims submitted to the courts of different instances related to the infringement of the rights in this field, and consequently there were no hearings of such cases in the courts. Case law has not been formulated here.

## **Recommendations**

- To revise bilateral agreements on labour migration signed with Georgia, Ukraine, the Russian Federation and Belarus with a view to making them applicable in practice.
- To adopt the RA Law on the Regulation of Overseas Employment
- To make efforts aimed at establishing cooperation on circular migration with individual states of the European Union
- To study the international legal framework and approaches implemented in practice for the mutual recognition of professional qualifications and diplomas as well as taking steps in this direction
- To create resource centers in Yerevan and Marzes (administrative divisions) for providing consultations to persons leaving for employment abroad
- To carry out information campaigns aimed at public opinion, which is favourable to state interference in the issues related to employment abroad and which does not perceive such interference as emigration promotion.
- To define the state competent authority responsible for granting work permits to foreigners
- To adopt by-laws proceeding from the fourth chapter of the RA Law on Foreigners.