

CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

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Comparative study of labour migration in Carim-East Countries

Juris Gromovs

CARIM-East Research Report 2012/12

CARIM-East
Creating an Observatory of Migration East of Europe

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Comparative study of labour migration
in Carim-East Countries

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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/>

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Introduction

This comparative study has been done in the framework of the EU funded project “Creating an Observatory of Migration East of Europe” (hereafter “the CARIM-East project”).

At the moment the majority of CARIM-East Countries are affected by the outflows of their labour migrants to other countries including Member States of the CIS and the European Union. They face challenges in ensuring proper management of migration flows in line with international and regional legal standards and best practices. At the same time they must mitigate any negative aspects of migration such as brain drain, children and elderly left behind and flows of irregular migrants in their countries and others.

Since 1991 the CARIM-East region has become one of the main sources and destinations of labour migration. CARIM Countries adopted new legislation in order to deal with migration issues, including the signing of various bilateral and multilateral treaties. However the implementation of the national migration policies and relevant migration management mechanisms is also high on their agenda.

This comparative study builds on the individual country studies (hereafter “the reports”). These were conducted by the legal correspondents of the CARIM-East project to analyze a country specific legal and regulatory framework of labour migration management in terms of its effectiveness, flexibility, transparency and coherence. Each report summarizes the achievements of the countries, identifies problematic areas where further work is needed and related challenges, as well as making a number of recommendations.

Its elaboration was organized as following:

1. Seven national rapporteurs were in charge of elaborating the national reports on Moldova, Ukraine, the Russian Federation, Azerbaijan, Armenia, Georgia and Belarus in accordance with the above-mentioned goal and methodology. Therefore, the author of the comparative study, in accordance with his task relies on the accuracy of the data on legal regulation of the labour migration provided in the national reports on CARIM-East countries.

However the author also fully recognizes that the issue of labour migration has numerous dimensions. Therefore, the respective legal regimes of the countries form just one block in the migration management and development of said countries. Therefore, additional in-depth studies of various labour migration aspects may be initiated on the basis of findings in this study.

2. The conclusions of the national reports were discussed by the participants of the CARIM-East project, including the national rapporteurs and the author of this comparative study. This discussion took place at the conference “On the Impact of Labour Migration on the Country of Origin, held in Kiev (Ukraine), 26-27 April 2012. After the conference these reports were finalized and the comparative study builds on the final versions of these documents.
3. The author of the comparative study would like to warmly thank Mr. Sergo Mananashvili, the national rapporteurs and other members of CARIM-East project, for their cooperation and assistance during the elaboration of the comparative study.

1. International Framework for Labour Migration

1.1 Multilateral Agreements

It was concluded by the national rapporteurs that CARIM-East countries ratified a large variety of international and regional legal instruments on various aspects of employment, migration and human rights: please see the full information for ratification of these instruments on the Project site.

The national rapporteurs also looked into the issue of the ratification of the major international conventions on migration and/or migrants' rights:

- ILO Migration for Employment Convention (Revised), 1949 (Nr. 97);
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (Nr. 143);
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (referred further as the ICRMW)¹.

Table 1. Status of ratifications of major international conventions on migration and/or migrants' rights ("X"-ratified or acceded to, "N" - not ratified)

Country	ILO Convention nr.97	ILO Convention nr.143	ICRMW
Armenia	X	X	N
Azerbaijan	N	N	X
Belarus	N	N	N
Georgia	N	N	N
Moldova	X	N	N
Russian Federation	N	N	N
Ukraine	N	N	N

Based on the data in table 1, the majority of countries did not sign the ILO Migration for Employment Convention no. 97 and the ILO Migrant Workers Convention no. 143 (with the exceptions of Armenia, and in relation to ILO Convention no. 97 - Moldova). In addition the national report of Belarus indicates that the country did not sign the above-mentioned ILO Conventions. But it claims that the country took into account the fundamental principles and provisions of these conventions when it concluded international agreements and adopted national legal acts in labour migration.

In relation to the ICRMW the current situation shows that of all countries only Azerbaijan ratified this international instrument. Armenia intends to ratify the ICRMW in 2012-2014.

1.2 Regional Agreements

Some of the national reports (for example, the report on Belarus) reflected in much detail on theoretical and practical difficulties in the implementation of the regional agreements at the level of the CIS. This was particularly true of the following two instruments:

- the 1994 Agreement on cooperation in the field of labour migration and social protection for migrant workers and its Protocol on amendments to the Agreement on cooperation in the field of labour migration and social protection for migrant workers. It should be noted that this Agreement and its Protocol were not ratified by Georgia, Armenia and Azerbaijan.
- the 2008 Convention on the legal status of migrant workers and their families, adopted by CIS Member States. This legal instrument was not signed and ratified by Georgia and Moldova, while it did not enter into force in the Russian Federation.

The criticism of these CIS multilateral agreements was based on the following facts:

- they are based on the recognized principles of international migration law;

¹ The status of ratifications for the ICRMW was re-checked by author at the UN Treaty Collection data base available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en 19 June 2012.

- but at the same time they do not provide for the scope of rights of migrants which is necessary for free access to labour market. In order to apply the employment procedures and conduct the employment activities of foreign migrants, these instruments refer to the bilateral agreements of the national legislation of the destination country;
- there is no effective mechanism in implementation, application and the enforcement of the CIS legal instruments in the case of infringements over disputes. At the same time, the national legal provisions in the CIS member states are, at present, highly protective and restrict the access of foreigners to the labour markets.

Only in Georgia the restrictive character of legal provisions is not a problem.

1.3 Bilateral Agreements

All Carim-East countries have concluded bilateral agreements, covering the issues of the labour migration of their citizens. These agreements are different in their scope and contents, and only separate cases of implementation of such agreements were singled out as “success stories” by the national reports.

To name a few: the labour migration regime within the legal framework of the Union State of Russia and Belarus and the Italy-Moldova Agreement on Labour Migration and its Implementation Protocol of July 2011.

The comparative inefficiency of these agreements in practice and the need to analyze their impact was mentioned in a few reports: e.g. Belarus and Armenia.

2. Institutional Framework for Labour Migration Regulation in CARIM-East Countries

In most CARIM-East countries various ministries and agencies have certain parts of a labour migration management “portfolio”.

However, the national reports indicate that CARIM-East countries’ approaches to the institutional framework for labour migration regulation may be divided, in practice, into a few “combinations” of responsible and co-responsible institutions; with which other involved ministries and agencies are obliged to cooperate:

- a) Belarus the main actor is the Department of Citizenship and Migration, and the Ministry of Interior. In Azerbaijan the State Migration Service of Azerbaijan is the leading institution in labour migration.
- b) Armenia the State Migration Service and the Ministry of the Territorial Administration is the central authority +for the development and implementation of state policy on migration management. The State Employment Service, which is under the supervision of the Ministry of Labour and Social Issues, deals with employment, including the provision of information to Armenian citizens, which wish to work abroad. However, according to the national report, despite the existing Law on Foreigners a state competent authority responsible for granting work permits to foreigners In Armenia has not been appointed.

Finally in the Russian Federation the main responsible institution is the Federal Migration Service, which implements policy performs control, supervision and state-provided services in the area of migration.

- c) In Moldova the “One-Stop-Shop” is used for foreigners applying for work permits. The single point for the submission of applications for work permits is established in the Bureau of Migration and Asylum, which is a subdivision of the Ministry of Interior. It allows the applicant to address the Bureau, which shall ensure coordination with other public authorities. This explains the division of work between the Bureau and the National Employment Agency

under the Ministry of Labor, Social Protection and Family, which is responsible for the implementation of state policy in the labor migration domain. The Ministry actually issues the work permits under this system.

The National Employment Agency has also certain competences in the employment of the Moldovan citizens abroad. The private employment agencies are to coordinate collaboration contracts with mediator/foreign employers and they shall register the draft employment contracts of Moldovan citizens for work abroad with the National Employment Agency.

- d) In Georgia the Civil Registry Agency, which is the legal entity of public law under the Ministry of Justice, is responsible for the issuance of residence permits for foreigners for employment purposes. There are no public institutions which would be tasked to deal with the issues of the employment of Georgian citizens overseas.

3. Legal Aspects of Overseas Employment in CARIM-East Countries

3.1 Main Features of the Legal Framework

The practice of CARIM-East countries is very diverse on this subject. Legislation on the employment of citizens abroad is to be found in Belarus and Moldova. In the case of Armenia the relevant draft law was elaborated, but has still not been adopted upon the completion of this comparative study. To some extent the requirements for employment are mentioned in legislation from Ukraine and the Russian Federation, while a few articles of Azerbaijan's legislation mention this issue. Finally, as with labour immigration legislation legal provisions on the employment of citizens abroad do not exist in Georgian migration system at all.

Some of the national reports clearly indicate the need for such specific legislation. For example, this is so in the case of Azerbaijan and Armenia, in Armenia there is a Draft Law. The national report from Georgia indicates, regarding overseas employment, that this issue could be regulated by the state only if there are clear benefits for citizens.

Finally, it should be noted that, the issue of the legal regulation of emigration is more sophisticated and wider than the scope of the current study. As a rule it should be directly linked to the implementation of such emigration policies, as has been previously adopted at the political level. Such emigration policies may differ in their scope and approaches:

For example, this kind of legislation may be rather neutral and may regulate the minimum of requirements for legal employment abroad (recruitment, deregistration in the country upon departure etc.).

Alternatively, this kind of legislation may ensure the active promotion of emigration by establishing complicated sets of rules:

- The facilitation of the receipt of travel documents,
- The establishment of special resource centres in order to consult persons, who wish to migrate for employment purposes;
- Provision of special courses for the pre-departure training of persons who intend to work abroad,
- The application of social protection programmes even to those persons, who do not work in the country, at the conclusion of special bilateral agreements with countries of destination;
- Decreasing remittance costs;
- Facilitation of emigrants' investments in their country of citizenship;
- Provision of special repatriation insurance etc.

3.2 Organization of Recruitment

First, it should be noted that the ILO Private Employment Agencies Convention of 1997 (No.181), which lays down the main provisions for private employment agencies was ratified only by Georgia and Moldova: this Convention includes their responsibility for infringements of law, in relation to all categories of workers and all branches of economic activity (with the exception of recruitment and the placement of seafarers).

Second, the national reports show that the legal requirements for private employment agencies vary from country to country. In Georgia private employment agencies may apparently be established without a special license. Therefore, despite the ratification of the 1997 ILO Convention by the country this international instrument does not appear to be implemented at the level of the national legal regulation.

In Moldova the private employment agency has to be licensed and in addition, it must coordinate with the National Agency of Employment its collaboration contract with mediator/foreign employer. It must also draft the individual employment contracts for clients. In Belarus and Ukraine the legal and natural persons, who acquired the licenses, may provide for the services of the employment facilitation of citizens abroad.

In Armenia employment abroad as a licensed activity for recruitment agencies is envisaged, at present, at the level of the Draft Law on Regulation of Overseas Employment. It follows from the national report that the State Employment Service of Armenia provides, at least partially, the employment consultation services for the persons seeking the job in country or overseas.

In the Russian Federation private employment agencies are the main players on the market of the recruitment of persons for work overseas. They shall be the licensed legal persons, but otherwise their activities are mainly regulated by the general provisions of civil law. It is mentioned in the report of Russian Federation in this regard that there is a need to adopt a special law, which would specially regulate the issue of the establishment and the operations of the agencies. The rapporteur suggests that “the Model Law on Operations of the Private Employment Agencies”, which was adopted by the Inter-Parliamentary Assembly of the CIS Member States 28 October, 2010 could serve as the template.

Finally, the need to strengthen supervision in terms of private employment services is also mentioned in other reports, for example, for Ukraine and Azerbaijan.

3.3 Providing Information, Assistance or Training Prior to Departure

It seems that only Belarus stipulated in its legal framework (in law No. 225-3 On External Labour Migration) a requirement for state institutions and private employment agencies to inform (mainly on legal issues) the citizens, who wish to emigrate for the employment purposes.

In Moldova the relevant information is provided by the National Agency of Employment and its branch offices. There is a special website and a call center, which offers telephone assistance and consulting on problems regarding access to employment services. The beneficiaries are the jobseekers present in the country as well as those present abroad. It should be noted that, on the basis of the Implementation Protocol of Italy-Moldova Agreement on Labour Migration of July 2011, the vocational courses and Italian language courses may be provided with a view to:

- train Moldovan workers for their possible employment in Italy;
- train Moldovan workers for their possible employment by Italian enterprises that function in the Republic of Moldova;
- train Moldovan workers for the promotion of self-employment and the launch of some entrepreneurial activities in Moldova.

In Armenia legal assistance to citizens leaving for employment abroad is organized on a daily basis by the State Migration Service, including a “hot phone line”. Within the framework of cooperation with the ILO and the IOM a number of booklets were published: information guidelines for those leaving for certain countries including the Russian Federation, the United Arab Emirates, Qatar, Turkey, Germany, Greece and Iran. These activities are not regulated at the legislative level and are project-based.

Some country reports indicate that said countries do not conduct any pre-departure measures in order to better prepare their citizens for employment abroad (Azerbaijan, Georgia, Ukraine and the Russian Federation). In the Russian Federation the Federal Migration Service may consult citizens upon request. However, the report suggests that in emigration citizens receive most of the information from other sources (private employment agencies, mass media and others). The report on Azerbaijan suggests, meanwhile, that the lack of such measures facilitates deliberate fraud and infringements of rights of the would-be emigrant workers by the employment agencies.

3.4 Legal Measures Facilitating Reduction of Costs relating to Overseas Employment

No such legal measures are reported for Azerbaijan, Armenia, Georgia, Moldova, the Russian Federation, Ukraine and Belarus. Some of the reports suggest that the current legislation could be improved in terms of simplifying the employment of citizens abroad (for example, in the case of the Russian Federation).

3.5 Role of Judicial Bodies in Implementing the National Legal Framework on Overseas Employment

With the exception of the Russian Federation and Moldova, the national rapporteurs did not identify the relevant judicial case law on labour emigration issues: for example, on appeals of potential immigrants on negative decisions of the state institutions. Therefore, it could be claimed that in the absence of case law the assessment of labour migration legislation enforcement was limited to the examination of the legal regulations of institutional frameworks and the practice of state institutions.

For Moldova it was noted that there is no case law in the area of labor emigration. The examples of cases include criminal activities such as private employment agencies recruiting Moldavian citizens, without a license, or recruitment and use of labor force abroad and transportation of persons who are kept in “slavery”. It was noted that the courts apply the provisions of international treaties if there are disagreements between the national legislation and the provisions of the international treaties to which the Republic of Moldova is a party. Sometimes, the provisions of EU law, which are not binding to Moldova at present, are applied: these are referred to as “good practices”.

It was noted in the national report for Russia, that the role of the judiciary in the application of the legal provisions on labour emigration is not, at present, very significant. There are certain court decisions on prohibitions on certain citizens leaving the country for employment purposes due to previous access of these persons to state secrets. As was pointed out by the rapporteur, case law (precedent law) in this area is not yet well developed due to the fact that the doctrine of precedent (in the sense of the common law system) does not exist in Russia. However certain decisions of the Supreme Court and the Supreme Commercial Court of the Russian Federation are important, as they clarify the issues of judicial practice, which contain the elements of case law.

4. Legal Aspects of Migrants' Employment in the CARIM-East Countries

4.1 Main Features of the Legal Framework

In the case of legal regulation of its own citizens employed overseas, the approaches of the Carim-East countries differed greatly: but most Carim-East countries adopted the necessary legal acts for the employment of immigrant workers.

The number of acts and their scope vary significantly from country to country. Some common or individual features may be listed in this chapter as examples:

Legislation on employment of foreigners

All countries, except Georgia, have a detailed framework for the employment of foreigners. In Georgia there is also clear need for adoption of the labour migration legislation, which would define procedures for access of foreign migrant workers to the Georgian labour market.

It is necessary to note that at present Georgian legislation regulates the issuance of residence permits for employment purposes: but as such it does not regulate labour migration. The ultraliberal approach in the employment of foreign migrant workers prevails in practice.

Use of quotas for foreign workers

Use of quotas for foreign workers is reported in the cases of Moldova, Ukraine, Belarus, the Russian Federation and Azerbaijan. This kind of approach is normally in line with the relevant provisions of international and EU law. However, as stated in many national reports the principles of setting these quotas, their calculation and application in practice, as well as monitoring by the state authorities should be clearly set in the national legislation.

It should be noted that the issue of the effectiveness of quotas in CARIM-East countries goes beyond the legal framework analysis and could be additionally studied as the policy instrument for managing labour migration.

Labour market test

Legal requirements on the labour market test exist in Belarus and the Russian Federation. According to the legislation while granting the work permits to foreign citizens, the demands and needs of the national labour market should be taken into account by the responsible public authorities.

In Armenia the legal measures exist in the Law on Foreigners, but, according to the national report, at present they are not applicable as governmental bylaws need to be adopted for their implementation.

No legal provisions exist in Ukraine, Georgia, and Moldova. It should be noted that the national reports in fact suggest, that it would improve the situation in labour markets if such a test were introduced into the legislation of Georgia and Moldova.

In the case of Azerbaijan the labor market test as such is not mentioned in the national report. However, it is stated that in practice access to the labour market for foreigners is very restricted by the existing legal provisions and administrative requirements (such as the need to pay a high fee for work permit, frequent rejections of the applications for the work permits, application of quota system etc.)

4.2 Problems of practical implementation

Most of the countries also concluded that there are certain deficiencies at the level of practical implementation of the policies and laws in labour migration. Such deficiencies may at least be partially caused by the contents of the provisions of legislation in issue. The list of such deficiencies and relevant needs for improvement is comparatively long. Therefore, due to the limitations in the size of this study, all of them may not be listed here. The interested persons are advised to consult the national reports of the relevant countries in order to get acquainted with detailed descriptions of particular individual problems in terms of legal and/or institutional framework.

A few examples may be provided here:

- In Azerbaijan most foreign citizens, who entered the country for employment purposes, work without the necessary individual work permit and, sometimes, even without the permit to legally reside in its territory on a temporary basis. Thus such workers may become the victims of labour exploitation.
- In Armenia the relevant provisions of the Law on Foreigners on the principle of national preference and the requirement of a work permit are not in operation due to the need to adopt the implementing bylaws.
- In Georgia there is the non-existence of the strategic immigration policy planning document and the need to establish a Unified Migration Database in line with the Law on the Legal Status of Aliens.
- Moldova needs to improve legislation on various aspects of immigration: rights of foreign students working in accordance with EU standards; need for revision of the conditions for granting a permit for the purpose of work for foreigners staying for 5 or more years in the country; and exclusion of an immigration quota, amendments to the Penal Code in order to prevent and combat the exploitation for labour purposes and others.
- Need to improve the legal regulation of foreign migrants' status in the Russian Federation, including the prevention of the legal conflicts in the provisions of various legal acts on the rights and obligations of foreign citizens, as well as simplifying the complicated administrative procedures for their employment.
- Adoption of a clear future course for state immigration policy in relation to the employment of foreigners in Ukraine; without this we may see a negative impact on the development of proper legal regulation of foreign citizens on the labour market.
- The legislation of Belarus provides for the guarantees to foreign citizens, who worked and died while working, lost capacity to work or suffered from occupational diseases. However, at present, the special mechanism for the payment of guaranteed benefits to foreign citizens, has not yet been established.

4.3 Legal Measures to Prevent and Sanction Illegal Labour Activities of Aliens

According to the national reports either criminal law or administrative misdemeanor law sanctions, or both should be applicable to the employer who employs illegal migrants in all CARIM-East countries, with the notable exception of Georgia. In Georgia, as noted by the rapporteur, labour immigration is completely liberalized, thus making illegality irrelevant.

However, as much as the available data suggests, none of the countries has sanctions for employers. These could be harmonized or made similar to regional standards: the ones which were set by EU Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 which provide for minimum standards on sanctions and measures against employers of illegally staying third-country nationals².

² Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying in a third- country, Official Journal of the European Union, L 168, 30/06/2009, pp. 24 -32.

4.4 Legal Measures to promote the recognition and accreditation of migrant workers' skills and qualifications

First it should be noted that based on the Agreement on cooperation in the field of labour migration and social protection for migrant workers of 1994 the diplomas of CIS countries should normally be recognized in the CIS Member States. These are covered by this study without additional legalization procedures.

In Ukraine, Armenia, Azerbaijan and Georgia there are no legal requirements for the assessment of skills and qualification of the migrant worker. However, at the same time it is noted in the national report of Ukraine that the burden of proof of relevant education or professional qualification is imposed on the employer.

There are detailed legal rules on the recognition of diplomas and professional qualifications in Belarus, Moldova and Russia; Russia besides the CIS Agreement of 1994 has also special bilateral agreements on the simplified recognition of diplomas with numerous countries, including Albania, Romania, China, Mongolia and Chad.

4.5 Role of Judicial Bodies in Implementing the National Legal Framework on Employment of Immigrants

The majority of national reports indicate that there was no case law on labour immigration issues identified in the CARIM-East countries. The report on Moldova is an exception, although the information provided suggests that most court cases there deal with illegal immigration and asylum issues, not with labour migration. However, some exceptional cases are interesting including, for example, the refusal by authorities in issuing a resident permit because of a positive HIV/AIDS test. There were several cases where immigrants won cases in the Supreme Court of Justice, as the obligations contained in the Law no. 200 on the regime of foreigners in the Republic of Moldova, Law no. 23³ Regarding the Prophylaxis of HIV/AIDS infection and Law no. 180 on Labour Migration⁴ these were considered to be discriminating and against international standards. So it is mandatory for the authorities to modify legislation in order to protect the human rights of migrants.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions: Steps Undertaken by the CARIM-East countries to Improve National Legal Frameworks on Labour Migration

It should be noted that the modernization of legislation, which regulates labour migration, started a while ago in the CARIM-East countries. The legislation on labour migration has the elements, which originated from requirements of international treaties and/or EU law.

Modernization of the regulation of national labour migration legislation in the CARIM-East countries was brought about by many factors, of which the majority can be classified in the following categories:

³ Law No. 23 regarding prophylaxis of HIV/AIDS infection 16 February 2007 published in Monitorul Oficial No. 54-56 20 April 2007. Article 24 refers to restrictions when traveling where choosing residence. Paragraph (2) sets that "The person who was not subjected to HIV tests obliged to address within 10 days to the specialized institution after arriving to the Republic of Moldova for performing the test."

⁴ The Law on Labour Migration sets the list necessary for obtaining the right to work and resident right to work including the medical certificate in the established form and medical certificate that confirms absence of HIV/AIDS disease.

- a) The demands of the national labour markets, the outflow of CARIM-East countries' own citizens to other countries and the need to effectively respond to them;
- b) As part of the broader process in the improvement of the institutional and legislative framework for migration management in CARIM-East countries;
- c) As one of the key requirements for visa facilitation and/or visa liberalization regime with the 25 EU Member States⁵, Norway, Iceland and the Swiss Confederation;
- d) Implementation of the requirements for a wide range of international and regional migration-related treaties, which were or which are going to be ratified by CARIM-East countries.
- e) Despite the skepticism of some countries (principally Georgia) labour migration needs to be regulated for the development and for immigrants' well-being, but also in order to prevent illegal immigration.

It should be noted in this regard that with the exception of Belarus, the rest of CARIM-East countries are in the midst of either visa liberalization or visa facilitation dialogues with the European Union.

The Russian Federation, Ukraine, Moldova and Georgia have already established visa facilitation regimes with the European Union. The negotiations for such agreements with Armenia and Azerbaijan started in respectively February and March 2012. Moreover the Russian Federation, Ukraine and Moldova actively negotiate the establishment of visa free regimes, with Moldova successfully moving to the second phase of fulfilling the EU-Moldova action plan for visa liberalization. Both visa facilitation and visa liberalization processes require the harmonization of national legislation and practices in line with EU legal provisions in the area of migration, including labour migration issues.

However, whatever the main catalysts of changes in labour migration – be they internal or external ones – the speed of reforms has been striking. It also caused: discrepancies between the national laws and by-laws; insufficient preparedness of the civil servants and judiciary to apply the newly adopted legal rules; as well as difficulties in their interpretation. This seems to be rather common for all countries, with the exception of Belarus.

5.2 Recommendations for Future Actions in the Area of Labour Employment

The recommendations of this comparative study are based on assessments of the national situations in labour migration, both in relation to employment overseas and labour immigration.

In some cases the needs, to which these recommendations respond, were directly identified in the national reports. In other cases they were formulated by the author of the comparative study on the basis of the data that was provided in the national reports.

A significant number of the recommendations are common and applicable to all the CARIM-East countries. Some of the recommendations may be not applicable to all the CARIM-East countries (the specific needs to be addressed are directly stated in the texts of the relevant national reports).

Therefore, based on the above, it is recommended that:

- a) **Countries examine, on an individual basis, the necessity of ratifying ILO Migration for Employment Convention of 1949, ILO Migrant Workers Convention of 1975 and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families for those CARIM-East countries, which have not yet done so.**
- b) **Countries monitor the current bilateral agreements in labour migration in order to define the level of their efficiency, the impact of their implementation and to identify any**

⁵ The United Kingdom and Ireland do not participate in the implementation of the EU Common Visa Policy.

deficiencies. Based on the results of such monitoring and, if considered necessary – countries in issue may re-negotiate these agreements in order to improve the situation of labour migrants –their citizens.

- c) **To ensure the coherence of national regulation on labour migration by eliminating discrepancies between legal acts of different hierarchies, which are in force.**
- d) **To streamline the procedures for the legal employment of foreigners.**

This recommendation summarizes a large variety of different problematic issues, which were reported by the CARIM-East countries. These issues often vary from country to country and only a few main issues were indicated in Part 2.1.1. above as examples. For instance, in the case of Armenia, the need to define, in legislative terms, the state competent authority responsible for granting work permits to foreigners was stated in the national report; the Law does not specify, what should be understood as the “competent authority” and thus this provision may not be implemented in practice.

Streamlining may be conducted by reducing the legal and administrative obstacles for the access of foreigners to the market. This might be done by introducing one-stop-shop procedures for the receipt of the work permits and other instrumentals, depending on the particular situation in the country. The same relates to the issues of clarifying the institutional framework for labour migration management in the country in question.

- e) **To more actively involve the judiciary in the application of migration legislation, at least on the issues, which are related to the appeals of the decisions of the state institutions responsible for decision-making in the field of labour migration.**

Such recommendations go in line also with the relevant conclusions of the case law of the European Court of Human Rights on many issues. These are also relevant for migrants such as for example, the right of the access to court, family and private life, non-discrimination on grounds of nationality and others.

- f) **To ensure better protection of migrants by providing equal treatment and non-discrimination between immigrants and citizens of the countries, as well as the prevention and combating of racism and xenophobia, at the level of legal acts and in their practical interpretation and application.**
- g) **To ensure better integration of migrants into the receiving societies of the CARIM-East countries by means of legislative and other measures. This recommendation is also interlinked with recommendation (6) above.**

In most cases without integration measures, the migrants “risks encountering difficulties in getting a job, and faces the prospect of social exclusion....”⁶ The concept of integration provides for a common set of rights for certain categories of foreign migrants, including migrant workers. This concept is broad and goes outside the scope of labour migration, but nevertheless, according to very limited range of the international and regional (EU) legal standards and numerous best practices, various policy areas shall have the rules for successful access of migrant workers. This means access not only to employment opportunities, but also to “education systems, access to health and other public services, access to private services (banks, insurance, etc.), conditions allowing for active participation in public and political life and building up social and cultural ties to achieve a feeling of belonging to the receiving society”⁷.

⁶ As stated in European Commission Staff Working Paper “EU initiatives supporting the integration of third-country nationals”, accompanying the document Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of Regions “European Agenda for the Integration of Third-Country Nationals”, {COM(2011) 455 final}, Brussels, 20.7.2011, SEC(2011) 957 final.

⁷ Ibid

Finally it should be noted that this recommendation goes in line with the observations of several national reports, which indicate the need of states to provide for awareness raising measures for immigrants/potential immigrants. Such measures would ensure better information for the immigrants/potential immigrants on the legal and administrative requirements on access to the labour market and other aspects of their stay in a given country

h) To further strengthen the management of the labour emigration of its citizens.

This recommendation is not automatically applicable to all the countries, as most, as mentioned above, have the relevant legislation.

It could be further divided into three basic requirements:

- to further develop the strategic policy planning instruments for the proper management of labour emigration issues; and
- to adopt the legal instruments on labour emigration in line with the above-mentioned strategic policy planning instruments; and
- to provide for capacity building among responsible state institutions in order to ensure the proper implementation of labour emigration policy and related legislative framework in practice.

i) To make efforts aimed at establishing cooperation on circular migration with individual states of the European Union.

This recommendation follows from suggestions, which were directly expressed, for example, in the national reports for Armenia and Georgia.

Circular migration still does not have a uniform definition in international or regional legislation. For example the frequently quoted “circular migration is the fluid movement of people between countries, including temporary or more permanent movement which, when it occurs voluntarily and is linked to the labor needs of countries of origin and destination, can be beneficial to all involved”⁸. Or there is the definition of the European Commission: “as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries”⁹.

As to the benefits of circular migration, debates between the state institutions, academia and civil society are ongoing. Typically, on the positive side, it is indicated that such migration may “be a useful tool for low-income or middle income migrant source countries through generating remittances, investments, and trade and enterprise networks and by improving the human-capital base. Circular migration may also contribute to the attainment of the Millennium Development Goals, but cannot realistically be regarded as a panacea for development or as a major means to satisfy more general development objectives”¹⁰. In addition different EU initiatives with some of CARIM-East countries may be mentioned in this regard, for example, the existing EU-Moldova, EU-Georgia and EU-Armenia Mobility partnerships¹¹.

⁸ Agunias, D. R., and K. Newland, “Circular migration and development: Trends, policy routes, and ways forward”, Policy Brief, Migration Policy Institute, Washington DC, 2007.

⁹ European Commission, “On circular migration and mobility partnerships between the European Union and third countries”, COM (2007) 248, Brussels, 16.5.2007.

¹⁰ Report Workshop of Government of Mauritius and the European Commission, “Creating development benefits through circular migration” (JLS/B3/KT/kg D(2008) 16257), held in Mauritius, 8-9 September 2008, p.4., available at http://diasporaydesarrollo.org/index.cfm/files/serve?File_id=b64391fa-4f0e-4902-b8a4-90f434de29b2, last date of visit 19 June 2012.

¹¹ See more on mobility partnerships between EU and third countries in, for example, European Commission, “On circular migration and mobility partnerships between the European Union and third countries”, COM (2007) 248, Brussels,

At the same time more skeptical approaches also exist, which assumes that in some cases circular migration may have a negative impact on migrants' rights. These divergent views, in the author's opinion do not allow applying these recommendations to all countries without further analysis of their political and economic implications.

- j) **To ensure better legal regulation of the private employment agencies, including the proper supervision of their operations**, taking into full account the principles laid down by ILO Private Employment Agencies Convention of 1997 (Nr. 181) and existing best practices.
- k) **It is recommended that consideration be given to whether the legislation of the CARIM-East countries on sanctions for employers for illegal employment of foreigners should be improved and fully harmonized in line with the provisions of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.**

Most CARIM-East countries refer to certain sanctions for employers, which are defined by national legislation in terms of administrative misdemeanors and/or criminal law. In Georgia sanctions for employers still need to be introduced as there is no relevant legislation.

In particular it is recommended that legislation shall encompass the following elements of employer's sanctions, which follow from the above-mentioned directives:

- Obligations on employers to check the documents of employees and to keep proper records of them;
 - Financial sanctions for employers, including sub-contractors;
 - Back payments to be made by employers to illegally employed foreigners;
 - Other measures, such as: exclusion from entitlement to some or all public benefits, aid or subsidies for up to five years, from participation in a public contracts, recovery of some or all public benefits, aid or subsidies, granted to the employer for up to 12 months preceding the detection of illegal employment; and temporary or permanent closure of the establishments that have conducted the illegal employment, or temporary or permanent withdrawal of a license to conduct the business activity in question, if justified by the gravity of the infringement.
 - Criminalizing certain types of illegal employment, for example, in cases of simultaneous employment of a significant number of illegally staying third-country nationals or illegal employment in the particularly exploitative working conditions;
 - Criminal and administrative misdemeanor penalties;
 - Liability of legal persons and related penalties for legal persons;
 - Facilitation of complaints of foreigners of nationals in illegal employment against their employers;
 - Efficient inspections in order to ensure the fulfillment of obligations, following from the sanctions-related legislation.
- l) To provide for efficient legal and policy measures for the facilitation of re-emigration of citizens, which left for overseas employment**

There is no doubt that a while ago all CARIM-East countries become countries of origin of both highly-skilled and unskilled migrant workers, who left for employment overseas. At least one national report (Belarus) directly suggest the need to stimulate the return/re-emigration of workers, by providing selected policy measures, such as: special re-emigration programmes

(Contd.) _____

16.5.2007 or the Commission Staff Working Document, "Mobility partnerships as a tool of the Global Approach to Migration", SEC(2009) 1240 final, Brussels, 18.9.2009.

and special funds; establishing good environment for potential investments; tax and social benefits; and other measures.

Such a recommendation goes well beyond the scope of the study on legal measures. Additional country studies would be necessary in order to provide any specific, tailor-made recommendations in this regard.

REFERENCES

- D.R. Agunias, K. Newland, "Circular migration and development: Trends, policy routes, and ways forward", Policy Brief, Migration Policy Institute, Washington DC, 2007.
- Report Workshop of Government of Mauritius and the European Commission, "Creating development benefits through circular migration" (JLS/B3/KT/kg D(2008) 16257), held in Mauritius, 8-9 September 2008, p.4., available at http://diasporaydesarrollo.org/index.cfm/files/serve?File_id=b64391fa-4f0e-4902-b8a4-90f434de29b2 , last date of visit 19 June 2012.
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country, Official Journal of the European Union, L 168 , 30/06/2009, pp. 24 -32.
- European Commission, "On circular migration and mobility partnerships between the European Union and third countries", COM (2007) 248, Brussels, 16.5.2007.
- The European Commission Staff Working Document, "Mobility partnerships as a tool of the Global Approach to Migration", SEC (2009) 1240 final, Brussels, 18.9.2009.
- European Commission Staff Working Paper "EU initiatives supporting the integration of third-country nationals", accompanying the document Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of Regions "European Agenda for the Integration of Third-Country Nationals", {COM(2011) 455 final}, Brussels, 20.7.2011, SEC(2011) 957 final.
- Meeting of the Foreign Affairs Council on February 27, 2012, Background Note, Brussels, 23. Feb 2012, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/EN/foraff/128120.pdf, last date of visit 20 May 2012.