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Perspectives on Legal Aspects of Labour Migration

Governance in Armenia

Reply to Petros Aghababyan,
Legal Aspects of Labour
Migration Governance in Armenia

Vahan Bournazian

in association with

Khachik Harutyunyan

CARIM-East Analytic and Synthetic Notes 2012/07



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CARIM-East
Creating an Observatory of Migration East of Europe

Analytical and Synthetic Note

CARIM-East AS 2012/07

**Perspectives on Legal Aspects of
Labour Migration Governance in Armenia**
Reply to Petros Aghababyan, Legal Aspects of
Labour Migration Governance in Armenia
(CARIM-East RR 2012/03)

Vahan Bournazian^[1]

in association with

Khachik Harutyunyan^[2]

Associate Dean of Law, American University of Armenia (1)

Lawyer practicing in Armenia (2)

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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

Robert Schuman Centre for Advanced Studies

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

Full consideration of the detailed and thorough report entitled *Legal Aspects of Labour Migration Governance in Armenia* by Petros Aghababyan reveals that Armenia still struggles to create and carry out an achievable, transparent and cohesive national policy on labour migration. Regional agreements related to labour migration seem ineffective and stagnate; bilateral agreements are marginally more effective, but excessively distinctive, and the latest are not yet approved or are unapprovable. Some legislative provisions remain unimplemented and proposed legislation languishes. The legal framework reveals a split mandate between several ministries, all with distinct interests, which complicates cooperation and impedes development of a process-oriented perspective amenable to migrants. The National Action Plan appears quite comprehensive but does not articulate a short-term, achievable and cohesive policy goal that would help facilitate prioritizing the 14 points of the Plan and creating the political will to carry it forward. Law and legal frameworks must reflect policy choices and goals, but with due regard for known realities.

The reality is that Armenia is a country of emigration. While official statistics may be difficult to come by, the Government of the Republic of Armenia (RA) admitted to the International Labour Organization (ILO) that Armenia is predominately a country of emigration.¹ Also, while national security concerns warrant a policy to stem the outflow of citizens, the stated policy to prevent or discourage emigration conflicts with harsh economic realities and a reliance on remittances from abroad: it may well be that every third household in Armenia is engaged in labour migration.² Considering this reality, and considering that irregular emigration, because of its risks, is more likely to lead to permanent emigration or long-term stays abroad,³ RA authorities must recognize that a policy to promote and regularize circular labour migration would be, in effect, an anti-emigration policy over the long term: implementing a legal framework that truly facilitates circular labour migration would address current economic and migration realities while at the same time assuring the periodic return to, and continuous close association of Armenia's migrant population with Armenia.

While the recently adopted National Action Plan outlines initiatives which will support regularized circular migration, no Decree or Plan clearly *articulates* such a specific goal; in fact, the 2008 Decision announcing the prevention of emigration as a priority remains official policy. Realities dictate that a significant decrease in emigration at the moment is not achievable outright, but that regularized circular labor migration is achievable, and that it should be conceived of, *and articulated as*, an intermediate step towards securing a stable population in the near future. Considering the fact that seven different ministries with diverse interests participate in the execution of the Plan, failure to articulate regularized circular migration as a specific policy goal impedes development of the political will necessary for prioritizing and implementing a circular migration legal framework. Questions of political will, a cohesive and transparent policy, and effective implementation are real concerns for migration governance in Armenia.

With regard to efficacy, Aghababyan's report recognizes that current regional and bilateral agreements are insufficient tools for labor migration governance. The CIS agreement is ineffective due to a lack of implementing mechanisms.⁴ The Political will to implement is also at question considering that bilateral agreements with principal countries of destination, like Russia, seem to supplant and overshadow the CIS agreement. Similarly, bilateral agreements are also of limited utility, and are in some ways more akin to friendly understandings than serious tools of labour migration management. Efforts with Russia to improve that bilateral treaty were started but renegotiation is at stalemate. As

¹ Direct Request (CEACR) 2012 on Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Art. 2.

² Zayonchkovskaya & Tjurjukanova, *The Protection of the Rights of Migrant Workers in the Countries of Central and Eastern Europe and the CIS and Perspectives of Joining the 1990 Convention*, UNESCO, SHS/2004/MC/6/REV.

³ Conclusions based on a review of irregular emigration effects in the Philippines, Sri Lanka and Pakistan; see Gevorkyan, Aleksandr, *Managed Temporary Labor Migration: Case of Armenia and Russia*, Gaidar Institute for Economic Policy, 2006, p. 8.

⁴ Aghababyan Report, Sec. 1.2.

Russia pursues a policy favoring immigration, and as Armenia must pursue an anti-emigration policy, or at least the perception of such a policy, one may question whether there is sufficient political will to better regularize labour migration between these countries.⁵

Future bilateral agreements with Bulgaria and Qatar and eventually the EU seem more promising, but when considered comprehensively and in context, a series of distinct bilateral agreements will be disjointed and could impede development of a cohesive framework and policy for Armenia. For example, the Qatar agreement assigns specific administrative roles to the State Migration Service (SMS), but such a role would only apply under this bilateral agreement, thus only for migrants to Qatar.⁶ Considering the slow implementation of domestic legislation, one could perceive that bilateral agreements could be useful to push forward labour migration governance; however, pursuing bilateral agreements alone will not create a uniform and cohesive policy or process. Thus, if international agreements are to be pursued, and considering that the market for Armenian labour is wide, Armenia should pursue the broadest international framework, the UN Convention,⁷ and then develop national frameworks and processes to facilitate regularized circular migration to all destinations. Such a focus would guarantee that national interests be placed above bilateral relations and promote a cohesive policy and process.

Further evidence of lack of cohesion is manifested in the institutional regulatory framework whereby several distinct ministries play a role in migration regulation.⁸ It may be that each agency pursues its own specific regulatory interests and that this impedes development of a process-oriented perspective, which would facilitate regularized labour migration while at the same time ensuring the rights of migrants. Because economic realities warrant labour migration, it will occur, and the failure to develop a process-oriented perspective occasions irregular migration.

For example, consider now the institutional framework in detail. The State Migration Service (SMS), a body of the State Territorial Administration Ministry, is the primary body engaged in the development and implementation of migration policy, but in conjunction with other state bodies. The State Employment Service (SES), a body of the Ministry of Labour and Social Affairs, is charged with finding information regarding employment vacancies in foreign states. The SES is also charged with providing free orientation to those seeking employment or vocational training abroad; with the support of the IMO, the SES runs three Migration Resource Centers for this purpose. Add to this that the Ministry of Education and Science is the primary body charged with negotiating with other states regarding the recognition of certificates issued by Armenian universities, but that the Ministry of Economy's Accreditation Agency accredits those organizations which certify professional and vocational skills.⁹ In addition, it is the Department of Visas and Passports, a corps of the National Police, which provides exit permits, simple stamps in passports that authorize travel abroad. At the same time, the National Police has another department for illegal migration and international cooperation. To obtain an exit permit, meanwhile, one must bring documentary evidence from the Ministry of Defense stating that military service requirements have been satisfied. Lastly, the National Security Administration controls the borders and ports of entry. This decentralized approach will remain the same in near future, but perhaps an inter-agency body will be created, as intimated in the National Action Plan 2012-2016. Such a complicated and defuse institutional framework frustrates

⁵ Aghababyan's Report mentions public concerns regarding immigration to Russia (sec. 1.3.2) and RA Government concerns to avoid a perception of favoring emigration (sec. 4.5).

⁶ Aghababyan Report, Sec. 1.3.3.

⁷ United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁸ The Monitoring Commission for the National Action Plan on Migration includes one representative each from seven (7) distinct ministries and two (2) government adjunct bodies as well as one representative from the Government. National Action Plan 2012 - 2016, RA Gov. Dec. N1593-N (2011).

⁹ Moreover, skills accreditation is in need of great development in Armenia.

coordination. For this reason, a clear and transparent policy goal of regularized circular migration must be *articulated* if there is to be the political will to carry out this kind of a split mandate.

Considering that Armenia does maintain sizeable bureaucratic structures, and considering that the stated policy is to prevent emigration, it may be surprising that private employment agencies, which facilitate employment abroad, remain totally unregulated. Any legal entity may engage in this business without obtaining any specific license. The number and identity of such enterprises is completely unknown to the SMS and there is no legal tool to discover them. Furthermore, the risk that such enterprises may engage in trafficking in persons and the fact that they are unregulated raises a question about Armenia's compliance with ILO obligations. Pursuant to the Migration for Employment Convention (Revised) (C97), Art. 3 obligates Armenia to take steps against misleading propaganda, and in a recent review, the ILO asked Armenia what steps it is taking on this issue with regard to "individual employers and recruitment agencies."¹⁰ Additionally, Art. 3 of the Migrant Workers (Supplementary Provisions) Convention (C143), requires Armenia to take appropriate measures against clandestine movements of labour migrants and those who organize such activities. According to the ILO this includes trafficking in persons, and in a recent request, the ILO asked Armenia to "provide full information" on how it addresses this issue.¹¹ Thus, all private employment agencies undermine the RA's stated policy on preventing emigration and *unregulated* private employment agencies increase the risk of human trafficking.

Considering this affront to stated policy and the risk to migrants that unregulated private employment agencies represent, why have they remained unregulated for so long? A question of political will arises. While the National Action Plan calls for the regulation of private employment agencies, this is just one of several initiatives competing for attention. To ensure that Armenia follows through on such a serious issue, it is advisable that Armenia accedes to the ILO Private Employment Agencies Convention (C181). Acceding to the Convention would boost the political will to pursue the regulation of private employment agencies and it would provide a framework upon which to develop appropriate regulatory legislation. It should also be considered that the licensing of private employment agencies provides income to the state and, more importantly, regulating such enterprises provides a tool for the state in managing circular migration.¹²

When considering migrant rights, it is also interesting to note that the Office of the Human Rights Defender is not involved in the National Action Plan. This office enjoys greater public support than most state ministries and agencies, so involving the Human Rights Defender would add legitimacy to the process and prioritize a human rights perspective on labour migration management. A human rights perspective, in turn, could help develop a migrant and process-oriented perspective on governance; such a perspective is lacking because the various ministries and agencies currently involved view labour migration from their own ministerial perspectives. A human rights and process perspective would better match the UN Convention¹³ and better serve the interests of migrants themselves. In addition, the Office of the Human Rights Defender cooperates with counterpart organizations abroad, which may be able to offer best practice experience. A human rights perspective and human rights expertise could also help with prioritizing the initiatives to be pursued under the National Action Plan.

Coupled with issues of cohesive policy formation with regard to labour migration is a question of transparency, as made apparent by RA Government Decisions. RA Government Decision No. N380-A (2008) announces that the prevention of emigration and the stimulation of immigration is a main

¹⁰ Direct Request (CEACR) C97 (2012).

¹¹ Direct Request (CEACR) C143 (2012).

¹² See generally Gevorkyan, Aleksandr, *Managed Temporary Labor Migration: Case of Armenia and Russia*, Gaidar Institute for Economic Policy, 2006, p. 8.

¹³ United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

priority. Emigration is generally considered a threat to national security because the unresolved international armed conflict with Azerbaijan requires Armenia to maintain a population ready to serve in national defense. However, a weak economy and a significant dependence on remittances from abroad, whereby every third family is engaged in labour migration, make such a policy unachievable for the immediate future: labour emigration is a necessity. Thus, the National Action Plan (RA Government Decision No. N1593-N (2011), a 14 point plan, includes favorable labour migration initiatives such as regulating private employment agencies, researching foreign job markets, acceding to international treaties for the purpose of improving opportunities for contractual employment abroad, and improving domestic legislation regarding the foreign employment of Armenians.¹⁴ Compare this with the fact that the Draft Law on the Regulation of Overseas Employment has been languishing unadopted since 2002. Aghababyan's Report intimates that failure to adopt the Draft Law is connected to the fact that the authorities do not want to be perceived as encouraging emigration.¹⁵

Thus, there is a conflict of policy goals and there is an issue of transparency in policy development. National security dictates an anti-emigration policy and economic realities demand labour migration. In fact, recognizing or quantifying how much emigration has taken place may itself be a threat to national security. Understandably, political leaders do not appear to be free to admit to facilitating labour migration when it is conceived of as emigration. The result is that the political will to carry out the required initiatives with regard to labour migration are fatally compromised, as possibly evidenced by the languishing 2002 Draft Law.

In addition, it must also be considered that social trust toward institutions is decisive for the success or failure of labour migration policy in Armenia. Evgenya Paturyan mentions in this regard that:

“Those who trust the government are less likely to emigrate. The direction of causality between trust and propensity to emigrate is more difficult to decide. While it is plausible to assume that disappointment leads to distrust and a wish to leave the country, it could also be the case that those who have, for whatever reason, decided that Armenia is not the right country for them, are justifying their decision by a negative attitude towards its institutions”.¹⁶

Thus, any policy or action plan, which is to be implemented cannot have success if it does not enjoy the trust and support of the population.

Another factor to consider, because it impedes social trust, is corruption. The nexus between social trust and corruption is shown by Bertelsmann Stiftung in its Transformation Index for 2012:

“For the Armenian government, a lack of legitimacy and low level of widespread popular support have further imperiled its attempts to overcome the combination of structural fragility, entrenched corruption and the influence of powerful business interests, known as oligarchs, who have extended their power and influence to the political arena.”¹⁷

Speaking about Armenia and the nexus of corruption and emigration, International Crisis Group affirms that “[c]orruption and abuse of public office for personal enrichment still go unpunished, and emigration is the most emblematic sign of systemic dysfunction.”¹⁸ Thus, public discourse and transparency need to be incorporated into the development and implementation of the National Action Plan if such obstacles are to be addressed.

¹⁴ National Action Plan for 2012 – 2016, RA Gov. Dec. N1593-N (2011), section on Rights & Interests of RA Citizens Leaving Armenia for Foreign Employment.

¹⁵ Report Sec. 4.5.

¹⁶ Caucasus Analytical Digest no. 31, Nov. 2011. Author E. Paturyan, page 8. Available at <http://www.css.ethz.ch/publications/pdfs/CAD-31-6-8.pdf>

¹⁷ See at <http://www.bti-project.org/countryreports/pse/arm/>

¹⁸ Armenia: an opportunity for statesmanship. Europe report no. 217, 25 June, 2012. International Crisis Group. P. 2.

Another related factor is to consider the foreign policy objectives of other states, which are carried out by means of migration policy, particularly with regard to Russia. One perspective is that Russia used and is using its ability to absorb and/or remove illegal migrants from CIS countries as a tool for political pressure. Such an approach was employed by Russia in relations with Moldova, Georgia, Tajikistan and possibly others. In this regard, James Nixey in the briefing paper for Chatham House notes:

“Russia’s greatest economic lever with Azerbaijan and Armenia is in the form of migrant workers and their remittances. For example, Azerbaijan has approximately two million citizens working in Russia, sending \$2.5 billion back home – 10% of GDP. The Azeri population resident in Russia constitutes a particularly strong form of leverage insofar as Russia has threatened to deport illegal workers and impose a visa regime.”¹⁹

Russia, as a first destination country for labor migrants originating from Armenia cannot be particularly interested in pursuing regularized circular labour migration.

Another foreign policy issue which Russia may well address through its labour migration policies toward migrants from CIS countries is China's expansion. Chinese migrants, who are mainly present in Russia’s Far East, are a potential threat for the territorial integrity of Russia.²⁰ This is one reason why Russia operates voluntary resettlement programs in CIS countries and by this program tries to balance, *inter alia*, Chinese population growth in the region. Russia’s Federal Migration Service also is present in Armenia and operates the same program.

Moreover, in considering the ability of domestic authorities to pursue Armenia’s own national interests in general, several factors must also be taken into consideration. First, some suggest that Armenia’s authorities lack sufficient legitimacy. Freedom House in its analyses of Nations in Transit for 2012, defines Armenia as a semi-consolidated authoritarian regime.²¹ For many a valid question is whether authorities can act purely in the national interest, without regard for private interests, is.

Second, its economic dependence on Russia limits Armenia’s freedom of action in regard to pursuing national interests and policy. Some researchers would agree with the following conclusion:

“The plethora of European loans and grants are unlikely to secure the EU’s position in the Russian dominated Armenian economy. Russian capital dominates Armenian telecommunications, electricity networks, banking and gas distribution. In the latter sector Russia provides a de facto subsidy and prevents the price of gas from doubling: an offer that the EU cannot match. Thus, a primarily economic led policy does not play to the EU’s comparative advantage. Armenians look to the EU more for a role in promoting democratic progress, conflict resolution and support for civil society.”²²

John Nixey goes further and concludes that “[i]n the South Caucasus, Armenia has already succumbed to Russia economically, with ramifications for its sovereignty.”²³

Third, one must consider the Nagorno-Karabakh conflict between Armenia and Azerbaijan.²⁴ A solution to the conflict is being mediated by OSCE Minsk Group, the co-chairs for which are Russia,

¹⁹ The long Goodbye: Waning Russian influence in the South Caucasus and Central Asia. James Nixey, page 6. Briefing paper. The means and ends of Russian influence in abroad series. Chatham House. Available at: http://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0612bp_nixey.pdf

²⁰ http://src-h.slav.hokudai.ac.jp/coe21/publish/no16_1_ses/05_zakaurtseva.pdf , page 96.

²¹ See at <http://www.freedomhouse.org/report/nations-transit/2012/armenia>

²² Armenia: why the European Neighborhood policy has failed. Policy Brief no. 68, Feb. 2011.FRIDE. Author Nelly Babayan. p. 2.

²³ The long Goodbye: Waning Russian influence in the South Caucasus and Central Asia. James Nixey, page 1. Briefing paper. The means and ends of Russian influence abroad series. Chatham House. Available at: http://www.chathamhouse.org/sites/default/files/public/Research/Russia%20and%20Eurasia/0612bp_nixey.pdf

²⁴ A conflict started by cruel measures of the Azerbaijani authorities against ethnic Armenians in response to the will of the ethnic majority in Nagorno-Karabakh to rejoin Armenia in exercise of the right to self-determination.

France and the US.²⁵ In this regard Dag Sourander writes: “Isolated and insecure because of its conflict with Azerbaijan, Armenia is hugely dependent on Russia. The conflict helps Russia maintain an extremely important role in the region.”²⁶

And fourth, many believe that pursuing national interests cannot be achieved without consideration of Armenian oligarchs and their business interests in Russia. Bertelsmann Stiftung speaking about oligarchs in Armenia notes:

“Although not as outwardly visible as the ruling elite, a new, wealthy political elite, the so-called oligarchs, have managed to secure a sizeable number of seats in the Armenian parliament. They represent a convergence between corporate, state, and in some cases even criminal interests. In addition to gaining serious influence over the formulation of public policy and garnering substantial leverage over the course of governmental policies, this new oligarchic elite has come to embody the difference between the power to rule and the responsibility to govern.”²⁷

There is the possibility that, in order to pursue their business interests, oligarchs might allow foreign actors such as Russia to use their authority as a channel to lobby for their interests.

In conclusion, the legal analysis provided in *Legal Aspects of Labour Migration Governance in Armenia* by Petros Aghababyan not only reveals the current state of law with regard to labour migration governance in Armenia. It also begs a host of policy questions that need consideration if Armenia is to move forward and achieve regularized circular labour migration. Considering the problems listed here, Armenia faces a real challenge with regard to harnessing the political will to carry out its National Action Plan. Possible solutions to these problems include acceding to international conventions such as the UN Convention and the ILO Convention on Private Employment Agencies, in addition to engaging in real public discourse on how regularized circular migration is itself an anti-emigration policy. Because of risks and limited opportunities, irregular labour migration, Armenia’s current reality, leads to permanent emigration or long term stays abroad.²⁸ RA authorities seem to recognize, but have *failed to articulate*, that a policy to promote and regularize circular labour migration would be, in effect, an anti-emigration policy over the long term: implementing a legal framework that truly facilitates circular labour migration would address current economic and migration realities, while, at the same time, assuring the periodic return to, and continuous close association of Armenia’s migrant population with, Armenia. Realities dictate that a significant decrease in emigration is not, at the moment, achievable outright. But regularized circular labor migration *is* achievable, and should be conceived of, *and clearly articulated as*, an intermediate step towards securing a stable population in the near future.

²⁵ For more see <http://www.osce.org/mg/>

²⁶ Nagorno-Karabakh conflict: recent developments and background. Policy briefing. Dag SOURANDER, Directorate-general for external policies of the Union, Policy department. 2011. Page 6. Available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afet/dv/201/201106/20110615_pdbriefing_en.pdf

²⁷ See at <http://www.bti-project.org/countryreports/pse/arm/>

²⁸ Conclusions based on a review of irregular emigration effects in the Philippines, Sri Lanka and Pakistan; see Gevorkyan, Aleksandr, *Managed Temporary Labor Migration: Case of Armenia and Russia*, Gaidar Institute for Economic Policy, 2006, p. 8.