



## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

Co-financed by the European Union

# ***Legal aspects of labor migration management in the Republic of Belarus***

**Oleg Bakhur**

CARIM-East Research Report 2013/19



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

**Research Report**  
**CARIM-East RR 2013/19**

**Legal aspects of labor migration management**  
**in the Republic of Belarus**

**Oleg Bakhur**

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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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## **I. Preface**

In the early 90-ies of the 20 century, after the collapse of the Soviet Union, Belarus had to face the problem of migration management and, in particular, of international labor flows. The development of the Belarusian legislation regulating social relations in the field of labor migration took place against the background of significant social, economic and political changes. Belarus as a sovereign state faced a number of challenges due to a significant intensification of migration; it became both the host country for labor migrants and their country of origin. It should be noted that the Republic of Belarus had no experience in the field of legal regulation of international labor migration. Therefore, the development of the Belarusian legislation in this area took place, on the one hand, in accordance with international law. On the other hand, Belarusian legislation copied many provisions from the regulations of the former Soviet Union, with all their advantages and flaws.

In the first half of the 1990s laws were passed, which established the basis of the legal regulation of migration in general and in particular influenced the legislation on labor migration. Most important legislative acts on labor migration have been adopted during the last 20 years. However, current trends in this area of social relations demonstrate insufficient efficacy of the current legislation, as well as the existence of gaps in legal regulations. It is necessary to develop an efficient, transparent and flexible legal instrument for labor migration management, balancing the rights of migrant workers and the economic interests of business entities, on the one hand, and the interests of national security, on the other hand. In addition, it is important to ensure the compliance of the national system for labor migration management with international standards.

### **1. General description of migration situation in Belarus**

Documentation of migration processes in Belarus started only in 1994 what makes the analysis of migration dynamics and status quo in the country rather complicated.

According to the National Statistics Committee of Belarus 17,510 people (2010 - 17,169) entered the country in 2011 to settle as permanent residents, 7,610 (2010 – 6,866) left the country to settle as permanent residents somewhere else, hence net migration equaled to 9,900 people (2010 - 10,303). The main inflow of migrants comes from the CIS countries, including Russia, Ukraine and Kazakhstan, which account for over 85% of total arrivals in Belarus.

The key factors influencing the development of external labor migration are: the economic situation and the situation on the national labor market. These indicators in Belarus are as follows. Thus, the number of employed in the economy is around 4.5 million. With the number of working-age population by nearly a million more than the number of employed in the economy.<sup>1</sup> Thus, the data suggest that a significant number of Belarusians work unofficially both at home and abroad. Currently, there are no methods for determining the number of Belarusian illegal labor emigrants. Some experts believe that about 50 thousand Belarusians work abroad illegally, others refer to 300 thousand of Belarusian citizens<sup>2</sup>.

According to official statistics, over the past five years the number of Belarusians going abroad to work has been reducing as a result of the reduction in labor demand abroad due to the global economic crisis. In 2008, 6,204 citizen of Belarus went abroad to work on the basis of labor contracts, in 2010

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<sup>1</sup> According to the National Statistics Committee of Belarus, also see [http://naviny.by/rubrics/economic/2012/03/14/ic\\_articles\\_113\\_177161](http://naviny.by/rubrics/economic/2012/03/14/ic_articles_113_177161)

<sup>2</sup> Migas, V., Nechay, A. World and Belarusian experience in managing international labor migration / V. Migas, A. Nechay / Belarusian Journal of International Law and International Relations. 2004 № 1. Pp. 84 - 92, and the opinions of interviewed experts in the Department of Citizenship and Migration of the Ministry of Interior.

about four thousand people, in 2011, 5,522 (the slight increase can be explained by the Belarusian economic crisis of 2011). As regards international labor immigration, immigrant inflows recently have increased. In 2011, 8,434 people came to Belarus to work on the basis of work contracts, while in 2010, 6,816 people did. The majority of people entering Belarus for work purposes are the citizens of Ukraine, Lithuania, China, Moldova, Uzbekistan and Latvia<sup>3</sup>.

Most frequently labor emigration of Belarusian citizens is directed towards the following countries: Russia, Czech Republic, Lithuania, Latvia, Poland and the USA. Traditionally, the main emigration flow has been directed to Russia and according to forecasts the trend will stay unchanged. This is due to the creation of a common labor market within the Union State and the CES<sup>4</sup> (visa-free, no need to obtain a work permit), geographical proximity of the countries, lack of a language barrier, availability of a significant number of jobs and high competitiveness of Belarusians in the Russian labor market. Emigrants from Belarus are mostly employed at jobs involving physical labor<sup>5</sup>. Such work is heavy, poorly paid and least attractive to the local population<sup>6</sup>.

Data from recent Belarusian sociological surveys<sup>7</sup> indicate a relatively low level of potential foreign emigration in case of Belarusian population: only 5.9% of respondents would like to go abroad for permanent residence. Belarusians favor temporary labor migration in comparison to emigration<sup>8</sup>.

Despite survey results demonstrating low potential for foreign labor emigration, we believe that, given the latency, the potential is much bigger. We attribute this to the fact that the country is ripe for economic reforms aimed at significant increase of labor productivity, which will reduce a significant number of people employed in the national economy. In addition, the labor force in the country has been increasing. Given the fact that at present about 12% of the population is employed in the informal sector, and 3% are registered as unemployed, one can forecast the deterioration of the situation in the labor market and, consequently, an increase in labor migration

## **2. The system of state agencies, implementing migration policies**

Since the 90ies of the 20th century there have been an ongoing process of the development of state agencies implementing migration policies. The formation of the system began with the establishment in June 1992 of the State Migration Service with the State Committee for Labor and Social Welfare of the Republic of Belarus (since 1997 till November 2001 - Committee on Migration of the Ministry of Labor, and since December 2001 till December 2003 - The Department of Migration of the Ministry of Labor and Social Welfare).

In December 2003, the management of migration processes in the Republic of Belarus was transferred to the Ministry of Interior. On December 30, 2003 by the Presidential Decree<sup>9</sup> No. 603 the Department of Citizenship and Migration of the Ministry of Interior of the Republic of Belarus was established on the basis of the Department of Migration of the Ministry of Labor and Social Welfare and structural units of the Ministry of Interior in charge of passport and visa services, as well as migration.

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<sup>3</sup> According to the Department of Citizenship and Migration of the Ministry of Interior of the Republic of Belarus

<sup>4</sup> CES - the Common Economic Space. Currently CES include Russia, Kazakhstan and Belarus. it was formed after a series of 17 international legal instruments was signed on December 9, 2010.

<sup>5</sup> The following occupations: builder, forestry worker, driver, light or heavy industry worker.

<sup>6</sup> Migas, V., Nechay, A. World and Belarusian experience in managing international labor migration / V. Migas, A. Nechay / Belarusian Journal of International Law and International Relations. 2004 No 1. Pp. 84 – 92.

<sup>7</sup> Conducted by the Institute of Sociology of the National Academy of Sciences of Belarus in 2010.

<sup>8</sup> Artyukhin, M.I. Potential for external migration of Belarusian population: a sociological analysis / M.I. Artyukhin, S.A. Pushkevich // Reports of the National Academy of Sciences. 2011. Volume 55, No 3. Pp. 115-118.

<sup>9</sup> "On some measures to improve the law enforcement bodies and agencies of the Republic of Belarus."

Currently, the following subjects in Belarus are involved in the development and implementation of the state policy on international labor migration: the President of the Republic of Belarus, the Council of Ministers (Government); law enforcement bodies (the Department of Citizenship and Migration of the Ministry of Interior of the Republic of Belarus), other government agencies (e.g. Ministry of Foreign Affairs, the State Border Committee, Ministry of Labor and Social Welfare). The authority of each party involved in foreign migration management is defined in a separate chapter of the Law No. 225-Z (Articles 6 - 10).

Created Department aims at a unified formulation and implementation of public policy in the area, and is meant to manage migration quickly and efficiently, ensure clear coordination of other agencies and departments involved in migration management (Article 9 of the Law No. 225-Z identifies key functions in the area).

Let us highlight some of the features of the practical implementation of labor migration policies by the government of the Republic of Belarus.

Department of Migration of the Ministry of Interior, as the main subject implementing migration policy, focuses on protecting the domestic labor market and state regulation of the use of foreign labor in the country. In this case, the State Department works on the basis of the State Program to Combat Human Trafficking, Illegal Migration and Related Unlawful Acts<sup>10</sup>. For such purposes the legitimacy of the use of foreign labor is verified annually on the Republican level. Inspections cover non-state-owned companies, including construction companies, trade and service companies, as well as production companies. The inspections usually identify illegally employed foreigners (annually over 100 people). Offenders of immigration laws are subjected to operational sanctions, including deportation.

In recent years, a number of measures have been undertaken aimed at strengthening the control over illegally working foreigners from the CIS countries. Resolution of the Council of Ministers from February 14, 2000 No. 198 "On the exemption to some organizations from fees for special permits (licenses) for the use of foreign workers in the Republic of Belarus" defined in the Brest region the status of Ukrainian citizens from bordering Volyn and Rivne regions, having worked at Brest companies on a permanent basis for over 10 years. In accordance with migratory regulations, based on the recommendation of the Ministry of Labor, the government issued a Decision to legalize the status of CIS country citizens, who entered the Republic of Belarus at different times and found employment in the agricultural sector due to the shortage of workers. Currently the legal status have been granted to over three thousand people in such a situation.

Thus, the analysis of the current legislation shows that the main body in the field of migration management is the Department of Citizenship and Migration of the Ministry of Interior of the Republic of Belarus. The role of the Ministry of Labor and Social Welfare is limited to the establishment of standards in the field of social welfare and their implementation supervision

## **II. Legal and institutional framework for regulating migrants' foreign employment**

### **1. International agreements**

Currently, there are three main areas of the development of international relations of the Republic of Belarus, related to labor migration management:

- i. Adherence to multilateral international agreements defining the basic principles of international labor migration management;

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<sup>10</sup> On the State Program to Combat Human Trafficking, Illegal Migration and Related Unlawful Acts for years 2011 - 2013: Decree of the President of Belarus No 518 from October 2, 2010.



- ii. Adoption of regional bilateral and multilateral agreements on international labor migration management<sup>11</sup>;
- iii. Adoption of bilateral agreements on labor migration between the Republic of Belarus and non-CIS countries.

### 1.1 Multilateral agreements

Belarus has acceded to a number of UN documents on migration. Among them: the Universal Declaration of Human Rights<sup>12</sup>, the International Covenant On Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights from December 16, 1966<sup>13</sup>.

Note that the Republic of Belarus has not made a commitment to the following international instruments, introducing universal approach to the legal status of migrant workers: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>14</sup>, the European Convention on the Legal Status of Migrant Workers from November 24, 1977. In spite of the above circumstances, the provisions of these Conventions are taken into consideration by Belarusian lawmakers, as a result many of them are reflected in the regulatory acts of Belarus.

Certainly a positive step for Belarus is to expand international cooperation with the International Organization for Migration. An Agreement on Cooperation Between the Government of the Republic of Belarus and the International Organization for Migration was concluded in the city of Minsk in 1998<sup>15</sup>. The agreement provides for the implementation of a number of migration programs by IOM<sup>16</sup>.

Belarus acquired full membership in IOM on November 29, 1999, at the 90th session of the IOM Council, what facilitates the successful implementation of the above Agreement and targeted programs in the field of migration.

Belarus participates in the majority of the ILO Conventions. Accession to the Conventions establishes the legal basis for ensuring social and labor protection, acceptable working and living conditions of Belarusian migrant workers abroad, as well as prevention of various forms of exploitation. In addition, it established the basis for the improvement of the situation of foreign workers in the Republic of Belarus. Although Belarus is not a party to some ILO Conventions on labor migration<sup>17</sup>, it takes into account all the fundamental principles and provisions of the Conventions when concluding international treaties and agreements on labor migration, as well as adopting national regulations in this area.

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<sup>11</sup> De-facto implemented only in the CIS and the Common Economic Space (CES).

<sup>12</sup> Adopted in New York on December 10.12.1948

<sup>13</sup> The Covenants were ratified by the Decree of the Presidium of the Supreme Council of the Republic of Belarus on October 05, 1973

<sup>14</sup> Adopted by Resolution No. 45/158 of the General Assembly of the United Nations, on December 18, 1990

<sup>15</sup> On ratification of the Cooperation Agreement between the Government of the Republic of Belarus and the International Organization for Migration: The Law of the Republic of Belarus of 05.05.1999 No. 251-Z // National Register of Legal Acts of the Republic of Belarus - 19.05.1999. No. 36, 2/26.

<sup>16</sup> In particular: strengthening the capacity of national institutions in the field of migration, provision of advisory services, technical assistance on migration issues, information on migration issues, assistance with the migration of citizens of the Republic of Belarus, foreign citizens, stateless persons, refugees, persons in need of such assistance, as well as with the return of skilled labor and selective migration.

<sup>17</sup> ILO Migration for Employment Convention (Revised 1949) (adopted in Geneva on July 1, 1949); Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted Geneva on June 24, 1975), Convention No. 181 on private employment agencies (adopted in Geneva on June 19, 1997).

## 1.2 Regional agreements

As noted above, currently the largest exchange of labor migrants takes place between the Republic of Belarus and the Russian Federation and other CIS countries. During last 20 years Belarus worked to conclude agreements within the CIS and other local intergovernmental associations<sup>18</sup> aimed at creating a common labor market<sup>19</sup>, establishing legal, economic and organizational conditions for the transition to the free movement of labor, solving the issue of coordinated management of labor migration.

In order to harmonize the state policy in the field of labor migration, as well as to achieve regional legal harmonization the Interparliamentary Assembly of the CIS Member States has adopted model legislation<sup>20</sup>. These acts cannot be considered either as a part of national legislation or international legal instruments. These are recommendations, the provisions of which may be fully or partially used by CIS states in the legislative process. The states, thus, are aware of model solutions, what in turn enables the harmonization of national legislations.

In order to create a coordinated labor market through improving the management of migration processes, on November 13, 1992 under the CIS Executive Committee the Advisory Council on Labor, Migration and Social Welfare of the population of CIS countries was created. The work of the Council is overseen by the Department for Humanitarian Cooperation, General Political and Social Issues. It is important to note that the Advisory Board currently has no real influence on decision-making either at the CIS level, or at the level of individual states. Its decisions are recommendatory and not binding.

The possibility of migratory labor exchange between Belarus and the countries of the Commonwealth of Independent States<sup>21</sup> is largely driven by the rule of freedom of movement of people in the Commonwealth, recorded in a number of multilateral agreements<sup>22</sup>. These agreements provide for a visa-free entry and transit, as well as a single list of documents for the movement of citizens across the Commonwealth.

Labor migration in the CIS is regulated by two agreements:

- i. Agreement on cooperation in the field of labor migration and social welfare of migrant workers (signed in Moscow on April 15, 1994, amended on November 25, 2005)<sup>23</sup>;
- ii. Convention on the Legal Status of Migrant Workers and Members of their Families of the Commonwealth of Independent States (signed in Chisinau on November 14, 2008)<sup>24</sup>.

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<sup>18</sup>The Union State of Belarus and Russia, the CES (Common Economic Space of Belarus, Russia, Kazakhstan).

<sup>19</sup>Drozdovich, N.S. International and legal cooperation of the Commonwealth of Independent States in the field of labor migration / N.S. Drozdovich // Legal magazine. 2007. Issue 3; p. 63.

<sup>20</sup>Charter of social rights and guarantees of the citizens of independent states, (approved by Resolution of the Interparliamentary Assembly of the CIS on October 29, 1994 in St. Petersburg, contains provisions on international movement of workers); Labor migration in the CIS: Model legislation (adopted on May 13, 1995, defines the legal status of migrant workers, deals with legal regulation of the recruitment and use of migrant workers in the CIS) // Newsletter of the Interparliamentary Assembly of the CIS. 1995. Issue 8.

<sup>21</sup>Further referred to as the CIS or the Commonwealth.

<sup>22</sup>The agreement on visa-free travel of citizens of the Commonwealth of Independent States on the territory of its members of October 9, 1992 // Commonwealth: Inf. Bulletin of the Council of Heads of State and the Council of CIS Heads of Government. 1992. No. 7, Agreement on the procedure for the departure of citizens of the Commonwealth of Independent States to the states that are not members of the Commonwealth of Independent States, and for return from them, of January 17, 1997 // Commonwealth: Information Bulletin of the Council of Heads of State and the Council of CIS Heads of Government. 1997. No. 1 (25).

<sup>23</sup>Entered into force in case of the Republic of Belarus on November 20, 1997 // Commonwealth: Inf. Bulletin of the Council of Heads of State and the Council of CIS Heads of Government. 1994. No. 1 (14).

<sup>24</sup>On ratification of the Convention on the Legal Status of Migrant Workers and Members of their Families of the Commonwealth of Independent States: The Law of the Republic of Belarus of July 6, 2009.

Analysis of these multilateral agreements shows that they are based on generally accepted international principles regulating international labor migration<sup>25</sup>.

A completely different situation exists in case of the emerging Common Economic Space (CES). Significant freedom of movement has been introduced in the three states comprising the CES. Thus, on the stage of shaping the legal framework of the Common Economic Space, two agreements<sup>26</sup> regulating labor migration were signed on November 19, 2010 in St. Petersburg:

- Agreement on Cooperation to Combat Illegal Migration from Third Countries;
- Agreement on the Legal Status of Migrant Workers and Members of their Families<sup>27</sup>.

These agreements introduce such innovation as work without a work permit for the citizens of the member states on the territory of the Contracting Parties (Russia, Belarus, Kazakhstan).

Analysis of regional regulations on labor migration concluded by the Republic of Belarus has demonstrated that:

- Belarus signed such documents only with the CIS countries, as well as with the members of local integrative associations<sup>28</sup>;
- Visa-free travel was introduced in order to facilitate labor migration<sup>29</sup>;
- Concluded agreements (with the exception of agreements within the CES) do not provide migrant workers with full rights necessary for the functioning of a free labor market. Those documents refer to bilateral agreements and national legislation of the country of employment when describing the legal framework for employment and work of foreign migrant workers.
- Conditions for seamless flow of migrant workers are established only within the CES<sup>30</sup>
- Measures are introduced in order to ensure the integration of all categories of migrants in society and form tolerant attitude towards them, to combat illegal migration and motivate citizens of the CIS countries to respect the law, language and culture of the host country;
- Analyzed agreements do not establish an interstate judicial body (prerequisite of modern times), competent to settle disputes caused by States' violations of their obligations related to social and labor issues; such authority should be given to the Economic Court of the CIS. An overall mechanism to monitor the employment of foreign workers in the CIS countries and respect of their rights haven't been developed as well<sup>31</sup>.

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<sup>25</sup> Kasyanov E.V., The legal regulation of labor migration in the framework of the Commonwealth of Independent States / Kasyanov E.V. // 34 Law in modern Belarusian society: Collection of scientific works. - Minsk, 2009. - Issue 4. - p. 515.

<sup>26</sup> Agreements entered into force on January 1, 2012.

<sup>27</sup> Belarus ratified these Agreements on December 28, 2010.

<sup>28</sup> The CES.

<sup>29</sup> Between the majority of CIS member-states.

<sup>30</sup> For example, work without permits is possible only in case of foreign migrant workers that are citizens of member-states of the CES, on the territory of a member-state

<sup>31</sup> Drozdovich, N.S. International legal cooperation of the Commonwealth of Independent States in the field of labor migration / N.S. Drozdovich // Legal journal. - 2007. – No. 3. - p. 62.

## 1.3 Bilateral agreements

### 1.3.1 CIS Agreements

Within the CIS a number of bilateral agreements was signed aimed at labor migration management<sup>32</sup>. Their analysis have demonstrated that the agreements are similar in structure and content. In addition, they largely overlap, complement and specify the provisions of the Agreement on Cooperation in the field of labor migration and social protection of migrant workers (1994, Moscow). In the absence of bilateral agreements between Belarus and some of the CIS countries, as regards labor force exchange, countries should refer to the above mentioned Agreement of 1994 as well as the Convention on the Legal Status of Migrant Workers and Members of their Families of the Commonwealth of Independent States (2008, Chisinau).

#### 1.3.1.1 The Union of Russia and Belarus

Let us analyze the contractual relations between Belarus and the Russian Federation in the field of labor migration in the context of the local integrated union of Belarus and Russia. The issues of employment of citizens of the Republic of Belarus in the Russian Federation (and vice versa) are regulated by:

1. Decision of the Supreme Council of the Commonwealth of Belarus and Russia of June 22, 1996 No. 4 "On equal rights of citizens to employment, remuneration and other social and labor guarantees";
2. Agreement between the Republic of Belarus and the Russian Federation "On Equal Rights" of December 25, 1998 (entered into force on July 22, 1999).

According to Decision No. 4 of 1996 general procedures for the recruitment and use of foreign labor enforced by both countries, are not applicable towards citizens of Belarus in Russia and vice versa. Documents relating to the implementation of labor rights and social and labor guarantees, issued by the appropriate authorities of the Parties shall be recognized without legalization (paragraph 1).

It is stipulated that citizens of the state of origin, involved in labor activities in the state of employment, have the same rights as the citizens of the state of employment to remuneration, working time and leisure time, health and working conditions and other labor issues. In this case, the labor law of the state of employment is applicable. Moreover, overall length of service and professional experience gained in connection with work on the territory of Belarus and Russia are mutually

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<sup>32</sup> 1. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Armenia on temporary employment and social protection of citizens working outside their countries (signed on July 19, 2000, entered into force on May 24, 2001, amended on October 23, 2006) 2. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Azerbaijan on the Employment and Social Protection of the Citizens of the Republic of Belarus, temporarily working in the Republic of Azerbaijan and Azerbaijani nationals working temporarily in the territory of the Republic of Belarus (signed in Baku on May 02, 2007) 3. Agreement between the Government of the Republic of Belarus and the Russian Federation on the Employment and Social Protection of the Citizens of the Republic of Belarus, working in the Russian Federation, and Russian citizens working in the territory of the Republic of Belarus (signed in Moscow on September 24, 1993). 4. Agreement between the Government of the Republic of Belarus and the Government of Ukraine on the Employment and Social Protection of the citizens of the Republic of Belarus and Ukraine, working outside their countries (signed in Minsk on July 17, 1995, amended on September 30, 2010) 5. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Kazakhstan on the Employment and Social Protection of the Citizens of the Republic of Belarus, working in the Republic of Kazakhstan and citizens of the Republic of Kazakhstan working in the Republic of Belarus (signed in Almaty on September 23, 1997, amended on October 05, 2000), 9. Agreement between the Government of the Republic of Belarus and the Republic of Moldova on the Employment and Social Protection of the Citizens of the Republic of Belarus, working in the Republic of Moldova and the Moldovan citizens working in the territory of the Republic of Belarus, signed on May 5, 1994.

recognized by both Parties (paragraph 2 of Decision No. 4). Extensive social rights and guarantees are also ensured (paragraphs 2 and 3).

Agreement between the Republic of Belarus and the Russian Federation "On Equal Rights" of 1998 stipulates that the Republic of Belarus and the Russian Federation mutually ensure to citizens equal rights to employment, remuneration and other social and legal guarantees in the territories of Belarus and Russia. (Article 7). Provisions of paragraphs 2 and 3 of Decision No. 4 are duplicated.

Thus, to date, the Union State of Belarus and Russia has established framework that provides citizens of the two states with most extensive rights in the field of labor migration.

### **1.3.1.2 Features and flaws of CIS bilateral agreements**

Existing agreements formally declared the goal of free movement of labor as an important condition for the existence of a common labor market in the CIS<sup>33</sup>, but in fact they are designed for maximum protection of national labor markets, and are based on the principle of national workers' priority right to employment. The main method of legal regulation at the CIS level is a reference to an appropriate legal system, most often national one. Currently when moving across the Commonwealth (CIS) citizens enjoy freedom only in terms of a visa-free crossing of internal borders of the CIS<sup>34</sup>. Only the Union of Belarus and Russia as well as the CES ensure free movement of labor migrants, similar to the European Union law.

As regards international legal co-operation in the field of labor migration, there is a lack of fully effective system for monitoring implementation of Agreements signed by CIS member-states. Partially the implementation of legal regulations and their enforcement are ensured by the international cooperation of national administrative bodies and labor and social welfare agencies.

The flaw of CIS agreements is lack of practical instruments ensuring fulfillment of taken obligations. The central coordinating and monitoring body is not stipulated for. To address these issues it has been proposed to expand the powers and role of the Advisory Council on Labor, Migration and Social Welfare of the CIS member states<sup>35</sup>.

Taking into account above mentioned features of CIS bilateral agreements, the following measures can be recommended in order to improve the efficiency of the system regulating international labor relations within the CIS:

- To expand best practices established within the Union of Belarus and Russia, as well as the CES, establishing economic, legal and institutional framework for the free movement of workers;
- at the level of the national legislation of the CIS countries there is a need to improve the mechanisms for labor migration management, aimed at balancing, on one hand, increased

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<sup>33</sup> Charter of the Commonwealth of Independent States, the Treaty on the Economic Union.

<sup>34</sup> In order to ensure free movement of people across the Commonwealth, the following bilateral agreements were concluded: 1. Agreement between the Republic of Belarus and the Russian Federation on equal rights of citizens of the Republic of Belarus and the Russian Federation to the freedom of movement and choice of residence on the territory of the members-states of the Union State, 2. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Azerbaijan on mutual visa-free travel for citizens (signed in Minsk on May 15, 2006) 3. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Uzbekistan on mutual trips of citizens (signed in Tashkent on January 19, 2005) 4. Agreement between the Government of the Republic of Belarus and the Republic of Moldova on visa-free travel for citizens (signed in Minsk on December 24, 2004) 5. Agreement between the Government of the Republic of Belarus and the Government of Turkmenistan on mutual trips of citizens (signed in Minsk on December 22, 1999) 6. Agreement between the Government of the Republic of Belarus and the Cabinet of Ministers of Ukraine on visa-free travel for citizens (signed in Kiev on June 12, 2009).

<sup>35</sup> Ryazantsev, S. Global labor market and international migration: a textbook for students majoring in "World Economy" / S.V. Ryazantsev, M.F. Tkachenko. - Moscow: Economics, 2010. - Pp. 53-54.

international labor migration and, on the other hand, the need to protect domestic labor market, prevent illegal migration etc.

### 1.3.2 Agreements with non-CIS countries

Labor migration between the Republic of Belarus and countries outside the CIS is primarily based on the principle of the free movement of persons<sup>36</sup>.

There are only several bilateral intergovernmental agreements with non-CIS countries directly related to labor migration and social welfare<sup>37</sup>.

Analysis of these agreements shows that they do not provide to citizens of contracting parties more extensive rights than those provided for in general multilateral agreements related to labor migration. So, they all stipulate that migrant workers' involvement in labor activities on a basis of a job contract and all social relations of similar kind are regulated in accordance with the national legislation of the country of employment<sup>38</sup>.

However, one can positively evaluate both the fact that these Agreements describe mandatory provisions of employment contracts to be concluded with labor migrants prior their departure to the country of employment<sup>39</sup>, and the fact that in case of the termination of the contract due to employer's fault, the employer should pay a compensation<sup>40</sup> to a migrant worker and cover the cost of the migrant's return to the place of permanent residence.

### 1.3.3 Summary

To summarize, a sufficient number of international bilateral agreements have been concluded by the Republic of Belarus only with CIS countries, while only a few agreements have been concluded with non-CIS countries. This is a negative development as it significantly hinders the flow of labor migration towards countries outside the CIS. A common feature of all concluded agreements is that

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<sup>36</sup> 1. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Cuba on mutual visa-free travel of citizens (in force since March 10, 1999), 2. Agreement between the Government of the Republic of Belarus and the Government of the Bolivarian Republic of Venezuela, on the abolition of visas in national passports from December 8, 2007, 3. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Poland on mutual trips of citizens, concluded by an exchange of notes on December 20, 2007, 4. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Lithuania on Amending the Interim Agreement between the Government of the Republic of Belarus and the Government of the Republic of Lithuania on mutual trips of citizens from November 26, 2002, concluded by an exchange of notes on December 20, 2007, 5. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Latvia on mutual trips of citizens, concluded by an exchange of notes on January 31, 2008.

<sup>37</sup> 1. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Poland on mutual employment of citizens of September 27, 1995, 2. Agreement between the Government of the Republic of Belarus and the Government of the Republic of Serbia on temporary employment of citizens of the Republic of Belarus in the Republic of Serbia and the citizens of the Republic of Serbia in the Republic of Belarus of March 31, 2009, 3. Agreement between the Republic of Lithuania and the Republic of Belarus ensuring citizens' rights to pension benefits of April 14, 1994.

<sup>38</sup> Including all the restrictions imposed on foreign workers, i.e. annual quotas for employment of foreigners, obligatory permit to stay and work, migrant worker cannot perform in the country of employment any other paid activities, except the ones specified in the work permit.

<sup>39</sup> Information on the duration of the contract, the amount of wages, working conditions, hours of work and overtime, holidays, payment for medical examination (prior to departure to the place of work), travel expenses from the place of residence to the place of employment, food, shelter, medical care, compensation for health damage related to work and other information required in accordance with the national law.

<sup>40</sup> As stipulated in the labor contract and the national legislation of the country of employment.

they repeat provisions of international agreements and international legal standards related to labor migration, including the scope of the rights of migrant workers.

Only within the framework of the CIS, the Union of Belarus and Russia and the CES a regional subsystem of international labor law was created, which sets the most favorable conditions for the workers, giving them extended rights.

## **2. System for the regulation of employment of citizens of Belarus abroad**

### **2.1 Specificity of the regulation of employment of citizens of Belarus abroad**

Law No. 225-Z regulates employment on the basis of job contracts outside of Belarus in case of Belarusian citizens and in the Republic of Belarus in case of foreign permanent residents<sup>41</sup> (Part. 1 Art 2).

It is important to keep in mind that the Law No. 225-Z does not apply to employment and labor activities outside of Belarus of the following categories:

- citizens and foreigners with permanent residence outside the country;
- citizen permanently residing in Belarus but employed outside of Belarus on the grounds<sup>42</sup> different from the ones defined in the international treaties signed by the Republic of Belarus (Part 3. Art. 2).

In contrast to the previous legislation, the Law No. 225-Z establishes basic principles of international labor migration (Article 4): voluntary international labor migration, impermissibility of illegal labor migration, protection of the labor market of the Republic of Belarus, impermissibility of the employment of emigrant and immigrant workers under terms degrading their human dignity, inflicting damage to their health; impermissibility of the discrimination of emigrant and immigrant workers<sup>43</sup>; impermissibility of the substitution of labor relations arising from job contracts with immigrant workers by obligations arising under contracts introduced by the civil legislation of the Republic of Belarus.

An emigrant worker is a citizen or a foreigner permanently residing in Belarus and leaving (having left) the country in order to get employed by a foreign employer on the basis of an employment contract (Article 1 of the Law No. 225-Z).

In addition, the definition of “an employment contract” and “a contract with recruiter” are provided (there is a fundamental difference between these definitions), as well as a detailed definition of a “foreign employer” (Article 1).

Unfortunately, it should be noted that the Law No. 225-Z does not provide the definitions of a “frontier worker”<sup>44</sup> and “cross-border commuting/labor migration”<sup>45</sup>, previously used<sup>46</sup> in the Law No.

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<sup>41</sup> Foreign citizens and stateless persons.

<sup>42</sup> For example, employees of foreign branches of Belarusian companies.

<sup>43</sup> On the grounds of gender, race, ethnicity, language, religion, political beliefs, membership or lack of membership in trade unions or other public associations, property or official status, age, place of residence, physical or mental disabilities, unless as their result a person cannot perform one’s job; or other circumstances not related to the qualifications, specific job conditions or the status of an employee.

<sup>44</sup> A frontier worker is someone who resides in a neighbouring state, where he/she returns at least once a week.

<sup>45</sup> Travel of Belarusian citizens to the territory of neighboring states and entry of nationals of neighboring States to the Republic of Belarus in order to obtain work on a contract basis, provided their country of origin continues to be their permanent residence place.

169-Z<sup>47</sup>. In fact, foreign commuting in recent years has been widely spread in the regions bordering with Russia, and the availability of legal terminology would facilitate the effective management of these processes.

Employment of Belarusian citizens abroad may take place (Article 11 of Law 225-Z):

- i. With the assistance of legal entities and individual entrepreneurs with a special permit (license) for employment related activities outside of the Republic of Belarus;
- ii. Independently.<sup>48</sup>

## 2.2 Employment abroad with the assistance of legal entities and individual entrepreneurs

The Law No. 225-Z sets out obligations of legal entities and individual entrepreneurs who have appropriate licenses and are involved in activities related to employment outside of the Republic of Belarus (Article 15), among which the most important are: registration of employment contracts and work agreements with emigrant workers<sup>49</sup> in citizenship and migration offices within one month from the date of their conclusion; verification of the information on foreign employers, as well as foreign recruitment agencies, involved in employment outside of the Republic of Belarus in relation to student undergraduate programs; submission<sup>50</sup> to citizenship and migration offices of information about emigrant workers, employed outside of Belarus with their assistance; submission to citizenship and migration offices of information about emigrant workers who have left Belarus for employment and labor activity, within five working days respectively from the date of their departure from the country and from the date of their entry to Belarus after the end of employment abroad.

Licensing of activities related to employment of Belarusian nationals and foreigners abroad is regulated by the Decree of the President of the Republic of Belarus of September 01, 2010 No. 450 (as amended on February 13, 2012) "On licensing certain types of activities."<sup>51</sup> It stipulates that licenses for such activities are issued by the Ministry of the Interior. The Decree No. 450 clarifies very important definition of "activities related to employment of citizens abroad,"<sup>52</sup> stipulating that such activities may only be carried out by Belarusian legal entities and individual entrepreneurs, registered in the Republic of Belarus. Licensing requirements and conditions to be met by the license applicants are also defined in the Decree.

Analysis of current licensing procedures related to the employment of Belarusian nationals and foreigners abroad, revealed that the procedure is very thorough, transparent and is aimed at the provision by the state of maximum protection of rights, freedoms and legitimate interests of nationals and foreigners employed abroad. However, the requirements for license applicants seeking licenses for activities related to employment of nationals and foreigners abroad, are too rigid (for example,

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<sup>46</sup> Steiner, A.I. Regulation of labor migration in accordance with the law of the Republic of Belarus of 30.12.2010 No. 225-Z "On international labor migration" / A.I. Steiner / / / Consultant Plus: Belarus. Technology Prof. [Electronic resource] / YurSpektr Ltd. - Minsk, 2011.

<sup>47</sup> Law of the Republic of Belarus of June 17, 1998 No. 169-Z (as amended on July 21, 2008) "On international labor migration" (repealed with the adoption of the Law of the Republic of Belarus of December 30, 2010 No. 225-Z, which came into force six months after its publication.)

<sup>48</sup> That is, without the assistance of legal entities and individual entrepreneurs with the appropriate license.

<sup>49</sup> Employed outside of the Republic of Belarus with their assistance.

<sup>50</sup> On a quarterly basis, in a format defined by the Ministry of Interior of the Republic of Belarus.

<sup>51</sup> National Register of Legal Acts of the Republic of Belarus, 08.09.2010. No. 212, 1/11914

<sup>52</sup> Any action, including one-time action, enabling foreign employment of Belarusian citizens, foreign citizens, stateless persons permanently residing in Belarus (hereinafter - the citizens), including assistance to the citizens in finding employment with a foreign employer outside the country; in getting a work permit in a foreign country and concluding an employment contract with a foreign employer.



university degree of the head of the legal entity applying for the license<sup>53</sup>; a contract for the employment of nationals abroad concluded directly with a foreign employer (such contracts with intermediaries/recruitment agencies are not allowed).

Moreover, as overly bureaucratic one can describe the procedure for the registration of agreements (contracts) on employment of citizens abroad, concluded with foreign employers or foreign agencies.

Thus, in accordance with paragraph 274.1 of the Decree No. 450, within 10 days from the date when the license is obtained, the applicant is required to register agreements on employment of citizens abroad, concluded with foreign employers or foreign agencies. However, the same documents are submitted for obtaining a license for such activities (paragraph 273.2 of the Decree No. 450). We believe that it would be reasonable to register agreements on employment of citizens abroad<sup>54</sup> before issuing a license or simultaneously with its issuance.

Specified circumstances, naturally, hinder further development of services related to employment abroad.

Belarusian migrant workers are guaranteed the protection and patronage of the Republic of Belarus in the State of employment (Article 14 of the Law No. 225-Z). Protective measures should be undertaken by diplomatic and consular missions of the Republic of Belarus, they also should patronage migrant workers in the manner defined in the law, and by international treaties accessed by Belarus<sup>55</sup>. Notice that the above provisions of the Law No. 225-Z are based on both the Constitution (Articles 10, 11) and the provisions of international legal instruments<sup>56</sup> (e.g. Art. 2 of the Declaration on Human Rights in respect of persons who are not citizens of the country in which they live, 1985<sup>57</sup>).

Departure of Belarusian citizens and foreigners permanently residing in the country for the purpose of getting employed abroad, takes place in accordance with the procedure established in the legislation regulating exit and entry to the Republic of Belarus<sup>58</sup>.

### **2.3 Informing labor emigrants prior their departure for the country of employment**

It is essential to provide legal and other information to labor emigrants before their departure for the country of employment. In the Republic of Belarus the following entities are involved in such activities (Article 16 of the Law No. 225-Z):

- legal entities and individual entrepreneurs providing employment services outside of the Republic of Belarus (must inform for free labor emigrants, to whom they provide services related to foreign employment, about:
  - provisions of the legislation of the Republic of Belarus on international labor migration, on the procedure for exit and entry into the country;

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<sup>53</sup> The head of a separate division, including the branch of a legal entity, the individual entrepreneur.

<sup>54</sup> Concluded with the foreign employer or foreign agency.

<sup>55</sup> Podgrusha, V.V. Peculiarities of legal regulation of international labor migration / V.V. Podgrusha // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / YurSpektr Ltd. - Minsk, 2011.

<sup>56</sup> Art. 10 of the Constitution of the Republic of Belarus guarantees citizens' protection and patronage of the state, both in the country and abroad;

Art. 11 of the Constitution stipulates that foreign citizens and stateless persons in the Republic of Belarus shall enjoy the rights and freedoms and fulfil the obligations to the same extent as citizens of Belarus, unless otherwise provided by the Constitution of the Republic of Belarus, laws and international treaties.

<sup>57</sup> Laws and regulations adopted by the State in respect of aliens should be compatible with international obligations assumed by the State, including those in the field of human rights.

<sup>58</sup> In accordance with the provisions of the Law of September 20, 2009 (as amended on December 29, 2009) No. 49-Z "On the procedure for exiting and entering the Republic of Belarus in case of the citizens of the Republic of Belarus."

- provisions of the laws of the State of employment in the area of international labor migration; about the location and telephone numbers of the Department of Citizenship and Migration of the Ministry of Interior and its offices;
- location and telephone numbers of diplomatic and consular missions of the Republic of Belarus in the State of employment (if any);
- international organizations defending human rights, freedoms and legitimate interests of emigrant workers);
- Offices for Citizenship and Migration of the Department of Citizenship and Migration of the Ministry of Interior (for free inform emigrant workers, independently leaving the Republic of Belarus for employment purposes about:
  - provisions of the legislation of the Republic of Belarus on international labor migration, on the procedure for exit and entry into the country;
  - location and telephone numbers of the Department of Citizenship and Migration of the Ministry of Interior of the Republic of Belarus and its offices;
- Ministry of Foreign Affairs of the Republic of Belarus (for free informs emigrant workers, independently leaving the Republic of Belarus for employment purposes about:
  - location and telephone number of diplomatic and consular missions of the Republic of Belarus in the State of employment (if any);
  - international organizations defending human rights, freedoms and legitimate interests of emigrant workers).

#### **2.4 Employment outside of the Republic of Belarus related to undergraduate program participation**

Employment outside of the Republic of Belarus for undergraduate program participants<sup>59</sup> in accordance with the Law No. 225-Z (Art. 20) has certain specificity<sup>60</sup>. Such employment can be provided with the assistance of legal persons or individual entrepreneurs with a special permit (license) for activities related to employment outside of the Republic of Belarus.

Listed entities (or individual entrepreneurs) may assist in foreign employment for undergraduate program participants on the basis of foreign employment contracts of nationals and foreigners, concluded directly both with the foreign employer and the foreign intermediary (recruitment) organization. This greatly simplifies the procedure, compared to other kinds of citizens' foreign employment. Activities related to oversees employment for undergraduate program participants in addition to the Law No. 225-Z are regulated by the Presidential Decree No. 3<sup>61</sup>, as well as the Resolution of the Ministry of Education of the Republic of Belarus No. 53<sup>62</sup>, as well as the aforementioned Presidential Decree No. 450<sup>63</sup>.

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<sup>59</sup> Programs relating to employment of Belarusian students abroad during the summer holidays.

<sup>60</sup> Kashirina O.S. Legal Issues in the field of labor migration and possible solutions // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / YurSpektr Ltd. - Minsk, 2009.

<sup>61</sup> On some measures to combat trafficking in human beings: Presidential Decree No. 3 of March 09, 2005 (as amended on 01.09.2010) // National Register of Legal Acts of the Republic of Belarus. - 16.03.2005. – No. 40. - 1/6300.

<sup>62</sup> On the procedure for preparing the opinion on the possibility of employment outside of the Republic of Belarus of Belarusian citizens, foreign citizens and stateless persons permanently residing in the Republic of Belarus, participating in undergraduate programs and annulment of the Resolution of the Ministry of Education of the Republic of Belarus of December 27, 2005 No. 124: Resolution of the Ministry of Education of the Republic of Belarus of July 01, 2011 No. 53 // National Register of Legal acts of the Republic of Belarus. July 13, 2011 No. 79.

<sup>63</sup> Decree No 3 stipulates that the Ministry of Interior in cooperation with interested agencies should preliminary verify the terms under which assistance in foreign employment of citizens of the Republic of Belarus is provided in case of undergraduate programs (prior to issuing a license to a legal entity). The Ministry of Education should issue an opinion enabling employment of citizens in case of each of undergraduate employment programs. The procedure for issuing the opinion enabling employment of citizens and foreigners outside of Belarus in case of undergraduate employment

The duration of the foreign employment contract in case of undergraduate program participants cannot exceed three months.

## 2.5 Requirements for employment contracts

Requirements for employment contracts (Article 17 of the Law No. 225-Z), on the assistance in employment (Article 18 of the Law No. 225) and work agreements<sup>64</sup> (Article 19 of the Law No. 225-Z, art. 19 of the Labor Code<sup>65</sup>) are regulated by the law. They are defined in the Law No. 225-Z, which duplicates the relevant provisions of Presidential Decree No. 3.

It is forbidden to enter employment contracts with those foreigners and foreign companies that are not direct employers (Art. 17 Par. 2 of the Law No. 225-Z, as well as section 1.3 of the Presidential Decree No. 3), with the exception of employment outside of Belarus of undergraduate program participants.

Requirements for the contract for assistance in finding employment as well as to the employment contract are defined by the law.

Note that although imperatively the requirements to the above mentioned contracts as a whole conform to the requirements of international law, in practice difficulties may occur when concluding employment contracts with foreign employers, because the law of the country of employment does not provide for the inclusion into such contracts of provisions foreseen by the legislation of Belarus.

## 2.6 Independent employment outside the country

From the start, one should note insufficient regulation of the employment of Belarusian citizens and foreigners<sup>66</sup> outside the country, defined in the Law No. 225-Z as an independent employment (art. 11). Although, in principle, the possibility of independent employment of persons outside the Republic of Belarus is defined by law, the procedure for such employment is not established, not contributing thus to ensuring the rights of citizens abroad. In practice, citizens get employed abroad independently all the time. The Law No. 225-Z regulates only one of the aspects of this form of labor migration<sup>67</sup>. So, if a citizen desires the protection of their rights, freedoms and legitimate interests by the Republic of Belarus, when independently leaving the country for employment abroad, s/he may prior the departure from the country either notify the Office for Citizenship and Migration at the place of residence or place of stay about the departure from the country for specific purposes, or submit a copy of the employment contract with the foreign employer<sup>68</sup> (Article 12). In addition, as noted above, emigrant workers getting employed independently outside the Republic of Belarus, may for free obtain necessary information in the Offices for Citizenship and Migration of the Department for Citizenship and Migration of the Ministry of Interior and at the Ministry of Foreign Affairs of Belarus (article 16 of the Law No. 225-Z).

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programs is established by the decree of the Ministry of Education No. 53. It defines time period required for the preparation of the opinion, refers to the list of documents (defined by the Presidential Decree No. 450 and the Law No. 225-Z) to be submitted when seeking such an opinion.

<sup>64</sup> Concluded on the territory of the Republic of Belarus between an emigrant worker and a foreign employer, as well as employment contract concluded on behalf of a foreign employer.

<sup>65</sup> Labour Code: Code of the Republic of Belarus of July 26, 1999 No. 296-Z (as amended on December 30, 2010) // National Register of Legal Acts of the Republic of Belarus. 10/29/1999. No. 80, 2/70.

<sup>66</sup> Permanently residing on the territory of Belarus.

<sup>67</sup> Taranov S.N. Methods of state regulation of labor migration in the Republic of Belarus // Youth and Science: Reality and Future: Proceedings of the II Intern. scientific-practical conference. Conf. - Nevinnomyssk, 2009. - V. 5. Pp. 359-361.

<sup>68</sup> In the case of an employment contract with a foreign employer in the Republic of Belarus before the departure for the state of employment.

## 2.7 General shortcomings and recommendations

In Belarus the legislator has neglected the issue of brain drain, i.e. departure from the country of highly qualified personnel and those with scarce occupations. There is only one measure aimed at regulating the issue, i.e. 5 year period of obligatory work in the country (based on the obligatory job allocation) after the completion of higher level education at public expense. However, this measure is not efficient, as such a graduate still may find a job and go abroad, and there is a lack of legal mechanisms preventing such employment or making the person accountable. We may recommend the following measures preventing the "brain drain" from the country: to attract sponsors of scientific projects, establish comfortable working conditions, raise the social prestige of being a highly qualified scientist, promote economic application of research and development introducing tax benefits for companies using developed innovations<sup>69</sup>.

In addition, migration policy does not provide for effective measures stimulating re-emigration. Possible solution to the problem may include: customs benefits for returning migrants on imported property and production equipment purchased by labor emigrants abroad; development and adoption of special immigrant program to encourage the return of emigrants from abroad and facilitate their employment in the country; creation of favorable conditions for the use of foreign currency when purchasing goods, land, industrial equipment; establishment of business and humanitarian contacts with overseas employees; establishment of special funds enabling provision of health care, housing and satisfaction of other needs of returning emigrants.

Legislation of Belarus also does not encourage labor migration of citizens with low demand occupations, workers with low skills. It is necessary to introduce such mechanisms due to the current situation in the domestic labor market and the need to increase the amount of foreign remittances. Therefore, in order to better promote Belarusian labor abroad, it may be recommended to nominate Regional Commissioners for Migration at Belarusian diplomatic missions abroad. In addition it is necessary to improve the work in the following areas: analysis of labor demand by Belarusian diplomatic missions in the countries of their accreditation, search for partners enabling export of surplus labor from Belarus<sup>70</sup>.

## 2.8 Summary

In summary, one should note that the Belarusian government has established a comprehensive system for the protection of economic, social and other rights of Belarusian citizens traveling abroad for employment purposes. The system is characterized by:

- detailed legal regulation of the process;
- legal and organizational measures ensuring contractual nature of overseas employment;
- licensing and control of the activities of private companies offering employment abroad;
- introduction of administrative and criminal penalties for abuse in this area;
- clear division of powers of state bodies, including the oversight of contract conclusion between migrants and employers. An equally important step was the introduction of such obligations of Belarusian diplomatic missions abroad as control over the fulfillment of obligations of international agreements on labor migration, and how problems are solved that Belarusian migrants face in the country of employment.

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<sup>69</sup> Migas, V., Nechay, A. World and Belarusian experience of regulation of international labor migration / V. Migas, A. Nechay // Belarusian Journal of International Law and International Relations. 2004 No 1. Pp. 84 - 92.

<sup>70</sup> Migas, V., Nechay, A. World and Belarusian experience of regulation of international labor migration / V. Migas, A. Nechay // Belarusian Journal of International Law and International Relations. 2004 No 1. Pp. 84 - 92.

## **II. Legal and institutional framework for access of foreigners to the labor market of belarus**

### **1. International agreements**

Multilateral, regional and bilateral agreements, concluded by the Republic of Belarus in the field of labor migration, discussed in Section II-1, regulate both the process of the exit from the country with the purpose of foreign employment by Belarusian citizens and provide similar obligations of the Republic of Belarus in relation to labor immigrants.

### **2. Legal and institutional framework**

Mostly, issues of international labor migration in the Republic of Belarus are regulated by labor legislation of Belarus<sup>71</sup> taking into account provisions of international agreements (mostly, agreements concluded within the CIS), as well as the Law No. 225-Z (Chapter 4) and the Law of the Republic of Belarus No. 105-Z "On the legal status of foreign citizens and stateless persons in the Republic of Belarus"<sup>72</sup>.

#### **2.1 Immigrant worker**

The Law No. 225-Z defines immigrant worker as an alien without a permanent residence permit in the Republic of Belarus, that has entered Belarus in order to get employed and work on the basis of an employment contract with the employer in the Republic of Belarus or engaged in such activities in the Republic of Belarus (Article 1). In other words, the law applies to foreign citizens and stateless persons without permanent residence permits in the Republic of Belarus when they seek employment and work on the basis of an employment contract with the employer in the Republic of Belarus<sup>73</sup>. Those foreign nationals that act as founders of commercial organizations with foreign investments in accordance with the provisions of the Law No. 225-Z are subject to its action in the status of workers (immigrant workers).

Thus, at present, foreign workers employed by private citizens as domestic workers are excluded out of the scope of the Law No. 225-Z<sup>74</sup>. Thus, under Part 1 of Art. 309 of the Labor Code, employment contract with the domestic worker is not concluded, in case of a short-term work (up to 10 days in total during the month).

Law No. 225-Z also indicates the range of persons to whom it does not apply (paragraph 4 of Art. 2).

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<sup>71</sup> Labor Code of the Republic of Belarus: Codex of the Republic of Belarus of July 26, 1999 No. 296-3 (as amended on December 30, 2010)// National Register of Legal Acts of the Republic of Belarus. October 29, 1999. No. 80, 2/70.

<sup>72</sup> "On the legal status of foreign citizens and stateless persons in the Republic of Belarus: the Law of the Republic of Belarus of January 04, 2010 No 105-Z // National Register of Legal Acts of the Republic of Belarus. January 20, 2010. No. 15, 2/1657.

<sup>73</sup> Further referred to as labor immigrants.

<sup>74</sup> Kashirina O.S. Legal Issues in the field of labor migration and possible solutions // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / YurSpektr Ltd. - Minsk, 2009.

## 2.2 Basic principles of the access of foreign nationals to the labor market in the Republic of Belarus

In general, the state policy of the Republic of Belarus in the field of labor immigration is based on the following principles:

- Compliance with the public interest
- Awareness of the situation on the labor market in Belarus
- Priority rights of citizens and foreigners residing in the Republic of Belarus, to get employed in case of available jobs (vacancies).

With these principles in mind, the Council of Ministers sets quota for labor immigrants coming to the country (Article 24 of the Law No. 225-Z). At the same time, priority is given to highly qualified specialists, as well as to foreigners that invest in the country's economy, establish on its territory foreign companies and joint ventures, as well as provide training and retraining of employees in line with up-to-date standards (Article 23 of the Law No. 225-Z). Recruitment of immigrants in a particular sector of the economy is possible only under the condition that available jobs (vacancies) cannot be filled in by citizens and foreigners with permanent residence in the Republic of Belarus (Article 23 of the Law No. 225-Z).

However, the Law No. 225-Z does not define who can decide whether there is a need for the recruitment of immigrant workers.

This gap is filled in by the Decision of the Council of Ministers of the Republic of Belarus No. 866 (paragraph 3, part 1)<sup>75</sup>. It stipulates that the procedure for issuing opinions on the possibility of recruitment of foreigners in the Republic of Belarus is approved by the Ministry of Labor and Social Welfare of the Republic of Belarus.

Note that the legal provisions determining priority rights of Belarusian citizens to fill in vacancies, as well as the possibility of introducing quotas for the recruitment of labor immigrants in the Republic of Belarus are in compliance with the Constitution of the Republic of Belarus, as well as the provisions of generally accepted international standards. Thus, according to the article 4 of the UN International Covenant on Economic, Social and Cultural Rights of 16.12.1966 States Parties to the Covenant recognize that the State may subject such rights ... to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. According to Art. 2 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live of 1985, no provision shall be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. The principle of employment in accordance with the laws of the state of employment is provided in the Agreement on cooperation in the field of labor migration and social welfare of migrant workers (Moscow, April 15, 1994).

Another restriction related to the recruitment of labor immigrants in the Republic of Belarus is prohibition of the employment of immigrant workers in the occupations that legally can be taken only by Belarusian citizens. (Article 25 of the Law No. 225-Z).

This limitation is in compliance with provisions of the Constitution (Articles 38, 39 and 80 of the Constitution) and other specific regulations.<sup>76</sup>

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<sup>75</sup> On some measures for the implementation of the Law "On international labor migration": the Decree of the Council of Ministers of the Republic of Belarus of June 29, 2011 No. 866 // National Register of Legal Acts of the Republic of Belarus. July 06, 2011.No .75, 5/34071.

<sup>76</sup> Code of the Republic of Belarus on Judicial System and Status of Judges (Article 91, 94), the Electoral Code of the Republic of Belarus (Article 4, 57), the Law of the Republic of Belarus of 14.06.2003 No. 204-Z "On public service in

## 2.3 Employment procedures

Employment of labor immigrants can be performed:

- With the assistance of legal entities, individual entrepreneurs or foreign organizations that provide recruitment services, or
- independently, that is, without the assistance of legal entities, individual entrepreneurs or foreign organizations that provide recruitment services (Art. 21 part 1 of the Law No. 225-Z).

### 2.3.1 Employment with the assistance of private employment agencies

Procedure for the provision of recruitment services by legal entities and individual entrepreneurs to potential labor migrants is defined by the Resolution No. 885 of the Council of Ministers of Belarus<sup>77</sup>. Recruitment should be done on the basis of contracts (agreements) on cooperation concluded between a legal entity and a foreign company registered outside the Republic of Belarus and providing recruitment services, or on the basis of service contracts, concluded between:

- A legal entity or an individual entrepreneur, providing recruitment services, and an employer in the Republic of Belarus<sup>78</sup>;
- A legal entity or an individual entrepreneur, providing recruitment services and a foreigner.

Resolution No. 885 establishes obligatory terms to be included into the contract<sup>79</sup>. In accordance with the Presidential Decree No. 450, activities related to the recruitment of foreign workers for work in the Republic of Belarus, are not subject to licensing<sup>80</sup>.

Thus, obligations of the parties to cooperation agreements and service agreements, established in the Resolution No. 885, introduce a multistage procedure for the employment of a labor immigrant.

If a foreigner turns to a legal entity<sup>81</sup> providing recruitment services, he should provide copies of documents confirming professional experience, education, and only on this basis the employer will make a decision on the possibility of the conclusion of the employment contract (paragraph 3 of the Resolution of the Council of Ministers No. 885).

In the case of a foreign recruitment company registered outside the Republic of Belarus, a foreigner (job applicant), after having read and agreed to the terms of the future employment contract, should be tested for compliance with the qualifications and other requirements stated by the employer. A foreign company, which conducts testing, shall inform the entity or individual entrepreneur providing recruitment services, about test results, last name, first name, middle name (if any), date and place of birth, educational institutions from which the applicant graduated, place of permanent residence etc.

(Contd.) \_\_\_\_\_

the Republic of Belarus" (Art. 5), the Law of the Republic of Belarus of 01.07.2010 No. 142-Z "On the State Control Committee for Belarus and its Territorial Bodies" (Article 19), the Law of the Republic of Belarus of 05.11.1992 No. 1914-XII «On Military Duty and Military Service " (Article 4), the Law of the Republic of Belarus of 17.07.2007 No. 263-Z (as amended on 31.12.2010) "On Internal Affairs Bodies of the Republic of Belarus" (art. 31), etc.

<sup>77</sup> The Resolution No. 885 of the Council of Ministers of Belarus of June 30, 2011.

<sup>78</sup> A legal term " Belarus employer" is introduced. Belarus employers may be as follows: legal entities, individual entrepreneurs, individuals or foreign organizations operating in the Republic of Belarus through the offices opened in accordance with the law, which according to the legislation of the Republic of Belarus or the law of a foreign country are entitled with the right to conclude and terminate labor contracts with immigrant workers and that employ immigrant workers on the basis of employment contracts.

<sup>79</sup> For example, the agreement between a legal entity and the employer for the provision of recruitment services should include: the number of required workers (foreigners), expected qualifications and other requirements, conditions of employment, foreseen in Art. 19 part 2 of the Labour Code and Art. 32, part 1 Sec. 2, 3, 4, of the Law No. 225-Z; an obligation to discuss potential candidates with the employer.

<sup>80</sup> No license is required since January 1<sup>st</sup>, 2011.

<sup>81</sup> Or to an individual entrepreneur.

The employer, based on obtained information, makes a decision whether the employment contract should be concluded or not. (paragraph 3 of the Resolution the Council of Ministers No. 885).

### 2.3.2 Employment permits

Employment contract by itself is not sufficient, as in order to actually start working a labor immigrant should obtain a special name permit for work on the territory of the Republic of Belarus<sup>82</sup>. To obtain it, the employer should apply<sup>83</sup> to a division of the Department of Citizenship and Migration of the Ministry of Interior<sup>84</sup>. The Law No. 225-Z provides that a special permit is issued to foreign migrants (Art. 29 Part 1), but in practice the permit is obtained directly by the employer.

When working for several Belarusian employers, immigrants should obtain a special permit for each of them (Article 29 of the Law No. 225-Z).

The employer, when the permit is obtained, should hand it to the legal entity or individual entrepreneur providing recruitment services, which in turn hands the certified copy of it to the foreign company registered outside the Republic of Belarus, or to a foreigner (Section 8 Resolution No. 885 of the Council of Ministers). Detailed sequence of actions to be undertaken by Belarus employers when employing foreigners is described in the publication by Samoseiko V.E<sup>85</sup>.

If the employer intends to recruit and employ 10 or more labor immigrants, he is also required to obtain permits for the recruitment of foreign workers in the Department of Citizenship and Migration of the Interior Ministry (Article 26 of the Law No. 225-Z). The permit for the recruitment of foreign workers in the Republic of Belarus here means a document confirming employer's right to recruit labor immigrants that will work in the country on the basis of employment contracts.

### 2.3.3 Grounds for refusal or revocation of permits and special permits

The employer is refused to be issued a permit for the recruitment of 10 or more foreign workers non-permanent residents of the Republic of Belarus on the grounds described in Art. 27, 28 of the Law No. 225-Z. Article 30 of the Law No. 225-Z contains the list of grounds for refusal to issue a special permit to labor immigrants<sup>86</sup>.

Analysis of the grounds for refusal described here above shows that the list is complete, they are formulated precisely, do not contain any ambiguities or evaluation categories, and were introduced either due to the interests of national security or the need to ensure that rights of immigrants.

In turn, interviews with employees of the Department of Citizenship and Migration of the Republic of Belarus has shown that the most common grounds for refusal is a negative opinion about immigrant's suitability to work, issued by the Labor, Employment and Social Welfare Agency.

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<sup>82</sup> Further referred to as a special permit.

<sup>83</sup> Application should be filed in the name of the Belarus employer.

<sup>84</sup> Main Department of Internal Affairs of Minsk City Executive Committee or one of regional Departments of Internal Affairs.

<sup>85</sup> Samoseiko, V.E. Sequence of actions when employing foreigners requiring visa to enter the Republic of Belarus // Consultant Plus: Belarus. Technology Prof. [Electronic resource] / YurSpektr Ltd. - Minsk, 2011.

<sup>86</sup> See the Law on international labor migration of December 30, 2010 at [http://www.carim-east.eu/media/legal%20module/natfr/BY\\_2.1natfr4\\_RUS.pdf](http://www.carim-east.eu/media/legal%20module/natfr/BY_2.1natfr4_RUS.pdf)



## 2.4 Mechanisms for skills assessment and recognition of qualifications

The Law No. 225-Z does not impose any special requirements to the list of documents that must be presented by immigrant workers seeking the employment. However, such requirements are provided for in other regulations.

Thus, as a general rule in the Republic of Belarus in accordance with Part 2 of Art. 26 of the Labor Code, employment without documents specified in Part 1 of Art. 26 of the Labor Code is not allowed<sup>87</sup> (for example, an identification document of an alien, employment history, certificate of training, confirming the right to perform the work, insurance certificate<sup>88</sup>, medical health certificate).

Furthermore, according to Art. 102 of the Education Code and Section 3 of the Regulation No. 981<sup>89</sup> foreigners must obtain a certificate of the "recognition of a certificate issued in a foreign country and establishment of its equivalence (compliance) with the education certificate of the Republic of Belarus." The procedure for obtaining such a certificate is described in detail in the Regulation No. 981. Note that in accordance with Part 1 of Art. 4 of the Agreement on Cooperation in the field of labor migration and social protection of migrant workers of 1994 documents, i.e. diplomas, certificates of education, various categories, qualifications etc. required for employment purposes, are valid on the territory of Belarus without their recognition if they have been issued by a State Party to this Agreement<sup>90</sup>.

The actual verification of applicants' compliance with required qualifications may be held by the Belarus employer or foreign company registered outside the Republic of Belarus (providing recruitment services for Belarusian employers), a foreigner (job applicant) himself, in the form of taking tests verifying compliance with qualifications and other expectations of the employer.

## 2.5 Requirements for an employment contract

Requirements for employment contracts between the immigrant and the employer are defined in article 19 part 2 of the Labor Code of Belarus (generally binding requirements), as well as the Law No. 225-Z (Article 32, special requirements). Thus, the employment contract shall specify: procedure, conditions of termination, amendment and extension of the employment contract, the terms for moving to the Republic of Belarus, food, accommodation, medical treatment of the labor immigrant. The Law No. 225-Z provides that the duration of the employment contract shall not exceed the duration of the special work permit issued to the labor immigrant.

Requirements for employment contracts concluded in a foreign country between the labor immigrant and the employer of the Republic of Belarus, i.e. a foreign organization, which operates in the country through a representative office opened in accordance with the legislation of Belarus, are determined in accordance with the laws of a foreign country.

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<sup>87</sup> In case of violation a person's employment maybe terminated on the grounds of the violation of employment procedure in accordance with part 3 of art. 44 of the Labor Code.

<sup>88</sup> According to Art. 7 of the Law of the Republic of Belarus No. 3563-XII 'On the basics of the state social insurance' of 31.01.1995 foreigners working in the Republic of Belarus are provided with the right to obtain state social insurance.

<sup>89</sup> On the approval of the Procedure for the recognition of education certificates issued in foreign countries, and establishment of their equivalence (compliance) with education documents of the Republic of Belarus, recognition of relevant periods of study, higher education courses in foreign organizations: Resolution of the Council of Ministers No. 981 of July 21, 2011 // National Register of Legal acts of the Republic of Belarus. 02.08.2011. – No. 86, 5/34198.

<sup>90</sup> Republics of Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyz Republic, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.  
But in this case a certified translation of the education document in one of the state languages of the Republic of Belarus is required, issued in accordance with the procedure existing in the country of departure.

Note that model employment contracts have been developed at the international level in order to protect labor rights of immigrant workers. Thus, ILO Recommendation No. 86 "On Migrant Workers" contains a number of provisions to be included into a labor contract.

Based on the comparison of international standards with the laws of the Republic of Belarus regulating the content of the provisions of an employment contract, we conclude that the national legislation does not specify such an important part of the employment contract as conditions under which an employer can make deductions from the remuneration (bonuses, allowances) of immigrant workers and the amount of these deductions.

We believe that this is a significant omission and requires a legislative solution that would improve legal regulation of labor migration and protection of the rights of immigrants.

## 2.6 Entry and stay

The procedure of recruitment, subsequent employment and entry of an immigrant into the country starts with the verification whether the vacancy cannot be filled in by permanent residents of Belarus<sup>91</sup>. After a letter is received from the State Employment Service confirming the lack of potential applicants on the national labor market, the employer may start recruitment among foreign workers not residing permanently in Belarus<sup>92</sup>. After identifying a candidate, the employer receives a special permit for work in Belarus (paragraph 10 of Art. 1, part 2. Art. 23, Art 29 of the Law No 225-Z), and then sends to the foreigner a certified copy of the said permit.

Prior to the entry of a foreigner into Belarus, employment terms should be discussed with him. Also note that a foreigner may only be employed for a position (occupation), specified in the special permit for work in the Republic of Belarus.

For entry into the Republic of Belarus labor migrants require the following documents: a document for travel abroad (Articles 27, 30 of the Law No. 105-Z); Belarusian work visa<sup>93</sup> /visa with the right to employment (Articles 27 and 28 of the Law No. 10-Z); funds necessary to cover the cost of the stay in Belarus and exit from Belarus<sup>94</sup> (Article 30 of the Law No. 105-Z, Section 8 of Regulation No. 73, paragraph 32 of the Visa Rules); obligatory health insurance<sup>95</sup> (§ 207 of the Regulations on Insurance), migration card<sup>96</sup> (Article 29 of the Law No. 105-Z).

Most importantly, an entry visa with the right to employment should be obtained. The following documents should be submitted:

- i. a certified copy of the special permit for work in the Republic of Belarus;

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<sup>91</sup> To do this, the employer of the Republic of Belarus applies to the State Employment Service requesting a certain category of employees, a prerequisite for obtaining a special work permit for a foreigner. In case the State Employment Service cannot find an appropriate candidate, the Service issues a positive opinion on the possibility of employing a foreigner.

<sup>92</sup> With the assistance of legal entities and individual entrepreneurs or foreign organizations that provide recruitment services, or independently.

<sup>93</sup> Excluding the cases when visa is not required.

<sup>94</sup> In the amount equivalent to not less than 50 basic units (according to the rate on the day of entry into Belarus), for each month of the stay.

<sup>95</sup> Except for categories of foreigners exempt obligatory health insurance.

<sup>96</sup> A foreigner entering the country must fill in a migration card, which, together with the document for foreign travel should be submitted to a Belarusian Border Guard official at the Border crossing Point. When leaving the country, the foreigner should return the migration card, in which Border Guard officials stamp the entry and exit out of the country.

The format of the migration card and the procedure for its use are determined by the Resolution No. 142 "On the use of the migration card and its format" of the Council of Ministers of the Republic of Belarus of February 03, 2006.

- ii. original application of the commercial organization with foreign investments<sup>97</sup>, as well as provided by the commercial organization guarantees that foreigners will comply with the rules of stay on the territory of Belarus<sup>98</sup>.

If a foreigner came to work to Belarus on a short-term visa, departments of Citizenship and Migration of the Ministry of Interior, according to existing procedure, issue a temporary residence permit, and, if necessary, multiple exit-entry visa.

Entry visa or entry into the country may be denied on the grounds defined in Art. 30 of the Law No. 105-Z.

Temporarily residing foreigners are required to register with an interior affair department relevant for their place of actual residence or in a hotel<sup>99</sup> within 5 days<sup>100</sup> from the day of arrival<sup>101</sup> (Article 23, 41 of the Law No. 105-Z, Section 10 of the Rules No. 73).

In accordance with the Law No. 105-Z<sup>102</sup> (Article 48) a labor immigrant is issued a temporary residence permit<sup>103</sup> for the duration of the employment contract, but not exceeding one year.

Registration, renewal of temporary residence (registration) is marked as a registration (renewal of registration) stamp on the migration card or an insert card attached to the document for international travel (paragraph 14 of the Rules No. 73)<sup>104</sup>.

Employment contract with a foreign worker in the Republic of Belarus is concluded upon the submission of required documents (Section 1, Part 1, Art. 54 of the Labor Code)<sup>105</sup>. In addition, applicant should undergo obligatory medical examination (Part 2 of Art. 26, paragraph 4 of Part 2 of Art. 49 of the Labor Code)<sup>106</sup>. An employment contract concluded on the territory of Belarus with an immigrant worker, should be registered by the employer with the Division of Citizenship and Migration, within one month from the date of its conclusion (paragraph 4 part 2 of Article 36 of the Law No. 225-Z).

Upon termination of the employment contract labor immigrants must leave the country, unless there are other grounds for their stay, or to obtain/renew a temporary stay permit or permanent residence permit. The procedure is similar in the case of early termination of the employment contract<sup>107</sup> (Article 36 of the Law No. 225-Z).

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<sup>97</sup> On a blank with a head letter, containing the full name of the commercial company, its location and phone numbers.

<sup>98</sup> With the stamp of the commercial company. In addition, certified copies of constituent documents or letters of appointment to top managerial positions in case of the founders and managers of companies with foreign investments.

<sup>99</sup> Registration is done only if the migration card is available.

<sup>100</sup> Excluding weekends, public holidays and holidays declared by the President of the Republic of Belarus to be work-free days.

<sup>101</sup> The duration of the registration period is longer in case of the citizens of some foreign countries (Russia, Kazakhstan, Ukraine, Lithuania, Latvia).

<sup>102</sup> On legal status of foreign citizens and stateless persons in the Republic of Belarus: the Law of the Republic of Belarus of 04.01.2010 No. 105-Z.

<sup>103</sup> Document granting foreigners the right to reside in Belarus till the expiration date, issued in accordance with the legislation of the Republic of Belarus.

<sup>104</sup> Registration and renewal of registration of foreigners, issuance of temporary stay or temporary residence permits are made only for a period not exceeding the period of insurance (in accordance with paragraph 219 of the Insurance Rules).

<sup>105</sup> Since immigrant workers in Belarus are employed under national labor laws with the specifications established by the Law No. 225-Z (Article 22 of the Law No. 225-Z), foreign workers applying for a job must submit the same documents as citizens of Belarus (Article 26 of the Labor Code).

<sup>106</sup> If medical examination reveals that the applicant is unsuitable for the job (position), the employer should not conclude an employment contract (Part 2 of Art. 26 of the Labor Code).

<sup>107</sup> If the employer is the one to blame for it, then he is obliged to cover the cost of labor migrant's departure from the country.

To summarize, the procedure for the entry and stay of labor migrants has no fundamental differences in comparison to other categories of foreigners. A key feature is that the initiative and the subsequent support<sup>108</sup> comes from the Belarusian employer, not a potential foreign employee.

## 2.7 Rights and obligations of migrant workers

Belarusian legislation provides state guarantees to immigrant workers performing work in the Republic of Belarus (Article 33 of the Law No. 225-Z). Among the most important are the following: equal treatment with nationals<sup>109</sup>, i.e. the same remuneration for work of equal value; for payments stipulated by legislative acts of the Republic of Belarus for nationals in case of loss of health, occupational disability or death due to accidents at work and occupational diseases.

Immigrant workers in accordance with the Law No. 225-Z (Article 35) have a number of rights, among which are: sending remittances from the Republic of Belarus in the manner specified by the legislation of Belarus; importing into the Republic of Belarus, in accordance with Belarusian laws, tools and equipment needed to perform the job duties for the duration of the employment contract; receiving health care at their own expense, at the expense of employers of the Republic of Belarus and other sources not prohibited by national law.

Obligations of immigrant workers are specified in Art. 35 of the Law No. 225-Z, including: to obtain a special work permit, to leave the Republic of Belarus at one's expense after the termination of the employment contract<sup>110</sup>.

## 2.8 Rights and obligations of the employer

The Law No. 225-Z specifies the rights and obligations of the Belarusian employer (Article 36), including important right to include into the employment contract with an immigrant worker, along with information and terms specified in Art 32 Part 1 of the Law, additional information and terms, in case the employment contract is concluded on the territory of the Republic of Belarus. We believe that such provision in the Law No. 225-Z may result in non-uniform understanding and application in practice; the law does not specify any criteria for assessing whether certain information or terms should or should not be included into a contract. However, we believe that when exercising one's right to include additional information into the employment contract, Belarusian employer should strictly abide by national laws. In particular, the provisions of the Constitution of Belarus and legislative acts adopted on its basis. So, Art. 4 of the Law No. 225-Z defines basic principles of international labor migration, such as: non-recruitment of immigrant workers on terms degrading their human dignity and harmful to their health; non-discrimination of immigrant workers on the grounds listed in this article as well as other grounds not related to required qualifications, job description or employee status.

Thus, the legislator defines the criteria that should guide Belarusian employers when including additional information and terms into employment contracts, what may prevent arbitrary application of the Law No. 225-Z by Belarusian employers. The Constitutional Court of the Republic of Belarus in the Decision No. R-526/2010 of 21.12.2010 "On the compliance with the Constitution of the Law of the Republic of Belarus "On international labor migration" also draws attentions to this issue.

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<sup>108</sup> When obtaining entry documents and later during the registration process.

<sup>109</sup> And foreigners permanently residing in Belarus.

<sup>110</sup> If there is no other reason for his stay in the country, except the cases of early termination of the employment contract at the request of an immigrant worker in connection with the violation by the Belarusian employer of Belarusian legislation on labor, collective agreement or employment contract with an immigrant worker, as well as the cancellation of a special permit due to the fault of the employer of the Republic of Belarus.

Obligations of the employer are defined in Art. 36 Part 2 of the Law No. 225-Z, the most important and progressive being the following: to cover costs of the departure from the Republic of Belarus of immigrant workers in case of the early termination of the employment contract at the request of an immigrant worker due to the violation by the Belarusian employer of Belarusian legislation on labor, collective agreement or employment contract with an immigrant worker, as well as the cancellation of a special permit due to the fault of the employer of the Republic of Belarus, if there are no other reasons for immigrants' stay in the country; to facilitate the departure of immigrant workers from the country after the termination of their employment contracts, to reimburse the costs of deportation from the country of immigrant workers, employed in violation of the Law and other sub-laws, as well as in the case of the cancellation of a special permit.

## **2.9 Features of employment of citizens of Russia and Kazakhstan**

Recruitment and employment of the citizens of Russia and Kazakhstan in the Republic of Belarus are a subject to specific regulation, i.e. the Decision No. 4 "On the equal rights of citizens to employment, remuneration and other social and labor guarantees" of 1996 and the Agreement on the Legal Status of Migrant Workers and Members of their Families of 2010.

Thus, the employer of the Republic of Belarus recruits citizens of Russia and Kazakhstan on a license-free basis and without special permits, unless a labor migrant asks for one; after the conclusion of the employment contract the citizens of Russia and Kazakhstan should register with the relevant bodies of the state of employment within 30 days from the date of entry into territory of the state of employment. In addition, in the event of early termination of the employment contract after the expiration of 90 days from the date of entry into the country of employment, migrant workers have the right to sign a new contract of employment within 15 days, not necessarily with the same employer, on the terms and conditions stipulated by the legislation of the country of employment.

To summarize, the recruitment of foreign labor force in the Republic of Belarus takes place on the basis of universally recognized international standards and in strict accordance with national laws. In addition, the state, for the purpose of economic regulation of labor immigration, defines goals and national priorities, such as: respect for the principles of economic feasibility, protection of the domestic labor market and the priority right of Belarusian citizens to get employed.

## **3. Measures to prevent illegal migration and introduce relevant sanctions**

Belarusian legislation provides liability for violation of the procedure for the provision of recruitment and employment services.

Code of Administrative Offences of the Republic of Belarus<sup>111</sup> in Art. 9.23<sup>112</sup> provides liability for:

- Failure of a legal entity or individual entrepreneur to sign with a citizen of the Republic of Belarus, foreign citizen or stateless person permanently residing in the Republic of Belarus, a written contract for assistance in finding employment with a foreign employer outside of the Republic of Belarus;
- Conclusion of the contract non-compliant with legal requirements for such a contract.

Part 2 of the article foresees greater responsibility for the provision of misinformation to Belarusian citizens, foreign citizens and stateless persons permanently residing in the Republic of Belarus, on the

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<sup>111</sup> Code of Administrative Offences: Code of the Republic of Belarus of 21.04.2003 No. 194-Z (as amended on 30.12.2010) // National Register of Legal Acts of the Republic of Belarus. 06/09/2003. No. 63, 2/946.

<sup>112</sup> "Violation of the procedure and conditions of employment outside of the Republic of Belarus of Belarusian citizens, foreign citizens and stateless persons permanently residing in the Republic of Belarus."

nature of future employment, or violation of the established procedure for departure of those persons outside of the Republic of Belarus for employment purposes<sup>113</sup>.

The Criminal Code of the Republic of Belarus<sup>114</sup> in the art. 187<sup>115</sup> provides for a liability for illegal employment of citizens abroad, if as a result of above actions a person employed abroad was subjected to sexual or other exploitation against their will, in the absence of offense under article 181 "Human Trafficking" of the CC.

## IV. Conclusions

### 1. The legal framework for international cooperation

At the international level, the Republic of Belarus has acceded to the main international legal instruments, entered into a number of multilateral and bilateral agreements in the field of labor migration. With the here above the conditions are provided for the respect of economic, social and other rights of migrant workers both in Belarus and abroad.

The specificity of regional relations of the Republic of Belarus in the field of labor migration is the fact that international agreements on labor migration have been concluded only with the CIS countries.

However, existing regional agreements (with the exception of agreements within the CES) do not provide migrant workers with full rights necessary for the functioning of a free labor market. As regards legal mechanisms for employment and work of foreign migrant workers, these facts refer to bilateral agreements and national legislation of the country of employment.

Conditions for a smooth exchange of migrant workers are established only within the CES (and within the Union of Belarus and Russia).

Unfortunately, it must be noted that in contrast to the CIS countries, agreements on labor migration with non-CIS countries are poorly developed and in the future Belarus should increase its efforts aimed at concluding such agreements with these countries.

Existing bilateral agreements also have a number of drawbacks. So they only formally declare the goal of free movement of labor; in fact, provisions of international agreements of the CIS (and non-CIS countries) in the area of labor migration are designed to maximize the protection of national labor markets, and are based on the principle of the priority right of national workers to fill in job vacancies. As regards legal regulation, the main method is the reference to the national legal framework.

Another drawback to be overcome is the fact that international legal cooperation in the field of labor migration in the CIS is not fully ensured due to the lack of an effective system for the control over the implementation of concluded agreements, as existing agreements do not provide effective mechanisms for enforcing the execution of undertaken obligations. In addition, there is no central coordinating and monitoring body.

To address these issues it is proposed to expand the mandate and role of the Advisory Council on Labor, Migration and Social Welfare of the CIS countries.

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<sup>113</sup> Committed by an official representative of a legal entity engaged in activities related to employment outside of the Republic of Belarus of Belarusian citizens, foreign citizens and stateless persons permanently residing in the Republic of Belarus, or by an individual entrepreneur engaged in such activities, if these activities do not constitute a crime.

<sup>114</sup> The Criminal Code of the Republic of Belarus: Code of the Republic of Belarus of 09.07.1999 No. 275-Z (as amended on 27.12.2010) // National Register of Legal Acts of the Republic of Belarus. 10/15/1999. No. 76, 2/50.

<sup>115</sup> "Illegal actions aimed at employment of citizens abroad."

Taking into account the above features of bilateral agreements with the CIS countries, the following measures may be introduced in order to improve the regulatory system of international labor relations within the CIS:

- share best practices established within the Union of Belarus and Russia, as well as the CES aimed at the establishment of economic, legal and institutional conditions for the free movement of workers;
- at the level of the national legislation of the CIS countries, it is needed to improve the mechanisms of legal regulation in the sphere of labor migration, taking into account the balance between the expansion of labor migration on the one hand and the need to protect the domestic labor market and prevent illegal migration on the other hand.

## **2. National legislation**

As far as national legislation in this area, it should be stated that currently the Republic of Belarus has a comprehensive system for regulating labor migration, which fully contributes to its development. National legislation is based on universally recognized norms of international law and the Constitution of the Republic of Belarus.

There is ongoing work aimed at improving the legal regulation of these relations in Belarus. Over the past few years the Belarusian legislation related to labor migration has been significantly revised. Given the fact that the main legal act in the field (the Law No. 225-Z) has been applied for less than a year, it is still too early to draw serious conclusions about the effectiveness of the legislative innovations. But it is already clear that the work done by the legislator will increase the efficiency of the state policy in the sphere of labor migration in general, and, in practice, greatly simplifies and structures the process of attracting foreign workers to the Republic of Belarus.

Certain deficiencies of the state policy of the Republic of Belarus in the field of labor migration have been identified. Thus, the country has not developed measures to create conditions for the re-emigration of highly qualified specialists and promising scientists back to the country. In addition, virtually no measures have been undertaken to curb the emigration of highly skilled specialists and scientists, while the few measures that have been undertaken have proved to be totally inefficient. The publication contains several proposals aimed at solving those issues.

Special efforts have been undertaken by the Belarusian state in order to ensure the rights of Belarusian migrant workers abroad. Recruitment of workers for employment abroad takes place on a contractual basis, activities of private companies offering employment abroad are licensed, well-regulated and controlled by relevant authorities. Liability for violations is introduced. Competences of public authorities are defined, including control over the conclusion of employment contracts that should specify terms of payment, accommodation, overtime, social health insurance, etc.

Certain drawbacks have been identified in the procedure for registration of foreign employment contracts, concluded with the foreign employer or a foreign recruitment agency, as the procedure currently is excessively bureaucratized and could be simplified.

Experts predict that the significance of export of surplus labor abroad will increase due to deteriorating situation on the national labor market (due to surplus labor force and possible major job losses in the economy). We believe that successful promotion of the Belarusian labor abroad requires establishment of offices of Regional Commissioners for Migration at Belarusian diplomatic missions abroad. Additionally, the study of conditions of foreign labor markets should be promoted as well as the search for partners that facilitate the export of manpower from Belarus. Belarusian diplomatic missions can play the key role in those processes.

Analysis of legal norms that establish the basis of foreign immigration, showed that Belarus strives to create favorable conditions for attracting foreign labor.

However, successful attraction to the country of highly skilled workers and other required specialists will only be possible if social protection of immigrant workers and working conditions are improved (including increase of remuneration).

Thus, national laws on international labor immigration stipulate that labor immigrants have the right for the same payments as foreseen for Belarusian citizens, i.e. in case of the loss of health, occupational disability or death due to accidents at work and occupational diseases. However, at present, there is no special mechanism for making such payments to immigrant workers.

Besides, another drawback is that currently the law does not provide foreigners, having entered the country on a non-work visa or without any visa, with a possibility to apply for a work permit on the territory of the Republic of Belarus.

Legislation defines maximum duration of the employment contract with immigrant workers, of the special work permit, as well as of labor migrants' stay in the Republic of Belarus, i.e. not longer than a year. After that the contract should be renewed or prolonged, an immigrant worker should obtain new work permit, and register again. We believe that maximum one-year duration complicates the recruitment of highly needed skilled workers and highly qualified specialists that prefer long-term contracts. Thus, it is necessary to increase the maximum duration of employment contracts with foreigners.

We believe that results of our study can be used both for the improvement of migration policy and implementation of further research.