**LEGAL REGULATION OF REPATRIATION IN THE REPUBLIC OF**

**KAZAKHSTAN: SOME THEORETICAL AND PRACTICAL PROBLEMS**

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**Abstract.** This article explores the peculiarities of legal regulation of immigration to the Republic of Kazakhstan. As one of the few countries that have put a policy of repatriation cornerstone of immigration policy, Kazakhstan pays great attention to regulatory and legal support for the return of immigrants to their historic homeland. The authors concludes that there are significant contradictions between the legal order of government action and the actual results achieved during the implementation of the repatriation program. To address the issues facing the state in the field of migration policy in general, and of immigration policy in particular, it is necessary to form a harmonious whole of the political, economic, social and psychological structure, the unity of all the elements in accordance with the multi-faceted national legal culture and legal validity.

**Keywords:** repatriation, migration, homecoming, immigrant, Oralman.

**Правовое регулирование репатриации в Республике Казахстан: некоторые теоретические и практические проблемы**

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**Аннотация.** В данной статье рассматриваются особенности правового регулирования миграции в Республике Казахстан. Как одно из немногих стран, которое реализуют политику репатриации и миграции, Казахстан уделяет большое внимание нормативно-правовой поддержке для возвращения реаптриантов на историческую родину. Автор пришел к выводу, что существуют значительные противоречия между правовым регулированием политики репатриации и фактических результатах, достигнутых в ходе реализации программы. Для решения проблем, стоящих перед государством в области миграционной политики в целом, и иммиграционной политики, в частности, необходимо, сформировать гармоничную целостность политической, экономической, социальной и психологической структуры, единства всех элементов в соответствии с многогранной национальной правовой культуры и юридической основы.

**Ключевые слова:** репатриация, миграция, возвращение на родину, иммиграция, оралман.

**Қазақстан Республикасында репатриация саясатының құқықтық реттелуі: кейбір теориялық және практикалық мәселелер**

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**Аңдатпа.** Бұл мақалада Қазақстан Республикасында көші-қон саясатының құқықтық реттелуінің ерекшеліктері қарастырылады. Көші-қон және репатриация саясатын жүзеге асырып келе жатқан аз мемелкеттер ішінде Қазақстан Республикасы қазақ репатрианттарының еліне оралуының нормативті-құқықтық негізіне мән беруде. Автор, көші-қон бағдарламасын жүзеге асыру барысында репатриация саясатының құқықтық реттелуі мен оның нақты нәтижелері арасында алшақтықтардың болғандығы жайлы пікірлерін ұсынуда. Бұл мәселені шешуде мемлекеттік көші-қон саясатымен, соның ішінде иммиграцияны реттеу барысында әлеуметтік-экономикалық, саяси және психологиялық жүйенің тұтас жүргізіліп, құқықтық негіз және жан-жақты ұлттық құқықтық жүйе қатар жүргізілген абзал деген қорытынды жасалады.

**Кілт сөздер:** репатриация, миграция, елге оралу, иммиграция, оралман.

**Introduction**

Since independence, one of the most difficult problems is the problem of the return of Kazakh repatriates, for whatever reason, at different times fled their homeland. One reason for the interest of the state in this issue is to improve the demographic situation in the Republic of Kazakhstan. The main direction of the state policy in the field of migration in Kazakhstan - a repatriation of ethnic Kazakhs from the Commonwealth of Independent States, the Baltic States and CIS countries. Implementation of immigration policy is currently the Committee on Migration of the Ministry of Internal Affairs of the Republic of Kazakhstan.

The repatriation of Kazakhs in Kazakhstan is multifaceted and is not simple, has its historical roots and consequences need to be strengthened study. In public literature in recent years expressed different views on the positive and negative aspects of the general repatriation of Kazakhs from China to Kazakhstan. In our opinion, the repatriation of ethnic Kazakhs - a positive phenomenon for the Republic of Kazakhstan. Kazakhs are an integral part of a single Kazakh ethnic group and most of them have a high level of national consciousness. Practice shows that many foreign Kazakhs, especially those living in China, Mongolia, Uzbekistan, have extensive experience in agriculture. Accordingly, repatriated Kazakhs will be a great help in the development of agriculture in Kazakhstan with their many years of experience in the field and under similar climatic conditions. One can not fail to take into account the mentality of Kazakhs. Foreign Kazakhs have kept the Kazakh language, which is important for the development of the Kazakh language in Kazakhstan. However, the process of adaptation of Kazakh returnees in Kazakh society is constrained by negative factors. This lack of knowledge of the Russian language, lack of skills, lack of education, ignorance of the law, psychology, mentality and culture of the local population.

Resettlement of ethnic Kazakhs from abroad to the Republic of Kazakhstan - is a complex process that requires a balanced approach taking into account financial and economic opportunities and interests of the republic, as well as international law. In this regard, it is extremely important to improve the internal legal framework for the successful implementation of the program admission and settlement of displaced persons on the basis of their legitimate rights and interests in accordance with the Constitution of the Republic of Kazakhstan. Persons of Kazakh nationality, coming from countries of the Commonwealth of Independent States, are the most adapted category of immigrants both economically and culturally. In addition, within the framework of the Commonwealth of Independent States signed a number of documents related to various social problems (pensions, organization of education, employment and others.). The acquisition and loss of nationality is also facilitated.

**Legal aspects of the repatriation of Kazakhs**

Legal basis for the legal regulation of repatriation were laid down in the Declaration of State Sovereignty of 25 October 1990 the Constitutional Law on the independence of 16 December 1991, the first Constitution of sovereign Kazakhstan dated January 28, 1993, the current Constitution of the Republic of Kazakhstan on August 30, 1995 . Of particular significance is the Declaration. It was declared as follows: The Supreme Council of the Kazakh Soviet Socialist Republic, expressing the will of People of Kazakhstan, seeking to create decent and equal conditions of life for all citizens of the Republic, considering the paramount task of consolidating and strengthening the friendship of the peoples living in the Republic, recognizing the Universal Declaration of Human Rights and the right of nations to self-determination, aware of the responsibility for the fate of the Kazakh nation, based on the committed to creating a humane and democratic rule of law, proclaims the sovereignty of the Kazakh Soviet Socialist Republic and adopts the present Declaration [1].

The Constitutional Law of 16 December 1991, Article 7 provides: "The Republic of Kazakhstan has its own citizenship. For all Kazakhs were forced to leave the territory of the Republic and living in other countries, recognizes the right to have citizenship of the Republic Kazakhstan, along with citizens of other States if it does not contradict the laws of the States of which they are part. The Republic of Kazakhstan regulate migration processes. The Republic of Kazakhstan creates conditions for the return to its territory of persons forced to leave the territory of the Republic in times of mass repressions, forced collectivization, as a result of other inhuman political actions, and their descendants, as well as for the Kazakhs living in the territory of the former Soviet republics "[2].

The Constitution of 1993 and 1995 are fixed such inalienable human rights and freedoms as the right to free movement within the territory of Kazakhstan and the free choice of residence; right to leave the Republic and its citizens - the right to freely return to the Republic.

The first piece of legislation directly regulating the legal status of migrants was the Law of the Republic of Kazakhstan "On Immigration", dated 26 June 1992, which at that time was the legal basis for the regulation and organization-oriented software migration to the republic of ethnic Kazakhs, creating the necessary conditions of life in a new place for refugees, for persons and families returning to their homeland [3].

The purpose of this law was to organize the resettlement of Kazakhs from abroad, which was planned to create a special immigration authorities, as well as the formation of the National Immigration Fund. It also established annual immigration quota. To regulate migration processes in the Republic of Kazakhstan in 1990 made the following regulations: Law of the Republic of Kazakhstan "On Citizenship" from December 20, 1991 [4], Presidential Decree "On the Legal Status of Foreign Citizens in the Republic of Kazakhstan" dated 19 June 1995 [5]; Decree of the President of the Republic of Kazakhstan "On the procedure of granting political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan" dated July 15, 1996 [6]; Decree of the President of the Republic of Kazakhstan "On the order of consideration of issues related to the citizenship of the Republic of Kazakhstan" dated September 27, 1996 [7].

After the adoption of the Law "On Migration" on December 13, 1997 each ethnic Kazakhs granted immigrant. Government of Kazakhstan established the Migration Department under the Ministry of Labour and Social Security, which was later transformed into the Agency for Migration and Demographic Policy.
Since 1995, the state budget was introduced special items on repatriation activities. Since 1998 began a new phase of state regulation repatriation relations in the Republic of Kazakhstan. Basis for further development of the legislation of the Republic of Kazakhstan, including migration, it was the President's Address to the Nation "Kazakhstan - 2030: Prosperity, security and the welfare of all Kazakhs". In this letter emphasized that the rank of the leading priorities of national security must be a forceful demographic and migration policy [8].

In December 1997, the Law of the Republic of Kazakhstan "On Migration". The purpose of the law is to regulate social relations in the field of migration, the definition of the legal, economic and social foundations of migration processes, as well as creating the necessary conditions of life in a new place for individuals and families returning to their homeland [9].

Was substantially expanded conceptual framework introduced new articles, greatly extending the provisions of the Law "On Immigration" of 1992. From a theoretical point of view the change in the concept of "repatriation" in the Act. So, as amended on December 13, 1997 article in the number 1 is given as the concept of repatriation repatriation of prisoners of war, displaced persons, refugees, immigrants, Oralman. And, as amended on January 12, 2007 repatriation already treated as voluntary or forced return of citizens of the Republic of Kazakhstan for their homeland. On the basis of this law Kazakh immigrants first got the official status of the immigrant. Thus, immigrant available categories of persons of the indigenous nationality who are victims of mass political repressions, as well as their descendants. As amended by the Law "On Migration" from December 20, 2002 Oralman referred not only victims of mass political repression, and foreigners and stateless persons of Kazakh nationality, permanent residence at the time of acquisition of the sovereignty of the Republic of Kazakhstan abroad and arrived in Kazakhstan with the objective of residence.

September 5, 2000 approved the Concept of Migration Policy of the Republic of Kazakhstan, according to which should be given full support resettlement and local reception Oralman, their adaptation to the place of residence. It is necessary to create conditions for successful adaptation Oralman the local social environment, take measures for psychological recovery survivors in armed conflict. All of the above available has been identified as the most binding priorities of migration policy to address Oralman in Kazakhstan [10, p.40].

In 2005, in a speech at the Third World Kurultai of Kazakhs in Astana, President Nursultan Nazarbayev noted that among the countries of the Commonwealth of Independent States, Kazakhstan - the only state that is engaged in a systematic repatriation scattered throughout the world overseas compatriots and highlights for this solid budget, and wide planetary community it is - one of the three [11].

In the Address of the President of the Republic of Kazakhstan to the people of Kazakhstan dated March 1, 2006 "Strategy of Kazakhstan in the 50 most competitive countries of the world. Kazakhstan on the threshold of a new leap forward in its development, "the need for a modern concept of migration policy has been put forward as the main priorities of Kazakhstan in the promotion of the most competitive and dynamic countries in the world. With regard to adaptation measures Oralman noted: "Our focus should be more given to the creation of conditions for surface preparation in special centers, adaptation and integration of Oralmans in our society. If you teach them the profession, language, as it is in other countries, they can quickly adapt to new conditions " [12].

In accordance with the objectives put forth in the President's message to people of Kazakhstan in 2006, and the Action Plan for 2006-2008 on implementation of sectoral programs Migration Policy of the Republic of Kazakhstan for 2001-2010, developed the Concept of migration policy of the Republic of Kazakhstan for 2007-2015 [13], which identified areas of ethnic migration policy over the medium term.

The concept is aimed at the improvement of existing and development of qualitatively new mechanisms of migration management in the Republic of Kazakhstan. The purpose of the Concept defined mitigate the adverse effects of migration flows in the framework of the preservation and development of national identity and national security by minimizing illegal formation and selective migration.

Conceptual novel in migration management in the current period can be called in the document indicated the need for selective migration policy. In accordance with the Action Plan for 2008-2010. to implement the concept of migration policy of the Republic of Kazakhstan for 2007-2015. provides for the development of adaptation and integration of immigrants in the Kazakh society, the development of a mechanism of rational settlement of immigrants in the interests of the demographic and socio-economic development of the regions, the regional labor market, to provide regular monitoring and evaluation of migration processes and other activities [14].

**The current status of immigrants in Kazakhstan**

In 2009, launched the program "Nurly Kosh", designed for 2009-2011gody [15]. It implies an increase in quotas for the reception. Admission repatriates and internal migration, in addition to the program "Nurly Kosh", regulate the following valid documents: Territorial Development Strategy of the Republic of Kazakhstan until 2015 [16], the State Program for Rural Development of the Republic of Kazakhstan for 2004-2010 [17].

Finally, in 2011, in the Republic of Kazakhstan adopted a new law "On migration" [18]. The new law provides differentiated allowances depending on the region of settlement Oralman installed additional factors to the base rate. In particular, in the northern regions of the country Oralman will receive benefits is 2.4 times more than in the south.

Ethnic Kazakhs, independently entered the territory of the Republic of Kazakhstan and staying on the territory of our country, applied for inclusion in the immigration quota Oralman in managing migration police Territorial Department of the Interior. A resident outside the Republic of Kazakhstan, specifying the intended place of residence in Kazakhstan - the Overseas. Overseas after receiving the committee's decision to consent to the inclusion in the quota, will assist in the resettlement of ethnic Kazakhs. However, the diplomatic and consular missions of Kazakhstan has not provided for this staffers. Under the new law Oralman included in the immigration quota may receive a lump sum benefits and funds for the purchase of property only after admission to the citizenship of the Republic of Kazakhstan on presentation of identity documents, including adult family members, except for family members of non-Kazakh nationality. And in case of failure included in the immigration quota Oralman of acquiring citizenship of the Republic of Kazakhstan lump sums and means for the acquisition of property are not charged and (or) are not paid.

This norm, according to the legislator, exclude cases receive benefits and compensation on forged documents. As recognized in the migration service, up to 2011 such facts were not uncommon. According to the Migration Police Committee of MIA RK, 2010 in Almaty, Atyrau, Pavlodar and South-Kazakhstan regions revealed 64 facts allocation of allowances amounting to more than 42 million Tenge to persons who do not enter the country, or received benefits twice in different regions . For such facts in the last three years 10 criminal cases [19]. Under the new Act Oralman benefits will be paid only on an established place of residence, and in the case of traveling abroad or from the Republic of Kazakhstan - should be returned to the budget.

These measures help to relieve tension in the regions experiencing a surplus of labor. Prior to the enactment of the Act, residence arriving compatriots were determined exclusively at their request, making it difficult to state regulation. As a result, up to 60% of repatriates are concentrated in four areas - Almaty, Zhambyl, South-Kazakhstan and Mangistau, already experiencing significant demographic pressure. Thus, the effect of the law to all persons of Kazakh nationality, regardless of the status of Oralman, arrived in the Republic of Kazakhstan to permanent residence in the historic homeland. Among those who have taken over the years of independence of Kazakhstan citizenship of the Republic of Kazakhstan, 98% are Oralman.

**Conclusion**

Legal scholars, practitioners and migrants themselves are unanimous in the opinion that the development of relevant sub-legal acts. Thus, to date, the Committee of migratory police developed and the process of adjustment draft Government decision on the approval of the immigration quota Oralman for 2012-2014, Rules inclusion in the immigration quota Oralman Terms of lump-sum benefits, differentiated according to the regions of settlement and include the cost of primary adaptation, transportation to the constant residence and transportation of property and allocation of funds for the purchase of housing or receiving preferential credit loan for the construction, rehabilitation or acquisition of housing.

The analysis shows that the evolution of legislation in the field of repatriation takes place according to the priorities of migration policy at a particular stage of development of Kazakhstan's statehood, as well as to address the problem areas that arise in the course of law enforcement, further optimization of legislation in the area of ​​migration and to improve the content of migration processes .

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