

Contemporary Tendencies of the Legal Regulation of the Intellectual Migration Process

Juraev Shukhrat

Tashkent State University of Law Lecturer of International Private Law Department

Abstract: In this article, matters of legal regulation of process of the intellectual migration or so called “brain drain”, contemporary tendencies and trends in this field. The object of research of the monograph is the legal relationship between the participants of intellectual migration processes and government agencies and other organizations. The subject of the research is the issues of intellectual migration, regulation of issues related to the outflow of highly qualified personnel and potential specialists, the role of the state in regulating the outflow of minds, public policy and key trends in intellectual migration.

Keywords: Intellectual migration, brain drain, contemporary tendencies, legal regulation, national strategy, highly qualified specialists.

Introduction

The current state and level of development of international labor migration allows us to highlight a number of important areas. These include migration from developing countries to industrialized countries; migration within industrialized countries; labor migration between developing countries; migration of highly qualified specialists from industrialized countries to developing countries, etc. It should be noted that the migration of highly qualified specialists to developed countries, that is, the pros and cons of intellectual migration, and its importance in the context of Uzbekistan, have a special place today. Intellectual migration is part of this labor migration, which is characterized by the migration of scientists, teachers, scientists and artists, as well as highly qualified specialists in a wide range of fields to the labor market.

As the American scholar P. Drucker rightly points out, “the real capital that develops the economy is knowledge. Intellectual labor workers form a group that sets values and norms in society. [13]”

In addition to this, it can be said that at any time, regardless of the age of civilization, scientists and artists have been the main force in the development of society. So, the migration of this layer from one society to another is, of course, a great loss and a test. Let us now briefly consider the emergence of the concept of “brain drain”, which is common in direct legal encyclopedic dictionaries and scientific research. The term “brain drain” was first used in a 1962 report by the British Royal Society to describe the emigration of scientists, engineers and technicians from the United Kingdom to the United States.[17]

In today's process of globalization, the growing flow of intellectual migration creates an objective need to regulate migration processes, in particular, international intellectual migration. Over the years, the expansion of intellectual migration has begun to have different effects on recipient countries (recipient countries) and donor countries. As a result, the real impact of intellectual migration on the economies of countries has led to the widespread use of this concept in the scientific literature. There are various concepts and definitions in scientific thought today that define this concept. [18]

In explaining the concept of intellectual capital, economists have seen it primarily as a force for the development of society through the creation of new products as a result of human knowledge, skills and mobility (rapid adaptation to new conditions, new information, retraining and rapid assimilation of knowledge). This concept is inextricably linked with the concept of intellectual property, and the owners of this capital are intellectual individuals.[19]

Carvalho describes this category of people as people who, as a result of their professional activity, work not with products or objects, but mainly with ideas, have deep and unique knowledge and try to share their

views with others. There are two approaches to defining the content and scope of intellectual migration, the first of which is to interpret this concept in a broad sense. According to him, intellectual migration includes not only the migration of scientific and technical specialists, but also the migration of all intelligentsia engaged in intellectual activity, ie highly qualified specialists who have been working in a foreign country for more than a year. The second approach is narrow-minded and involves only those layers of the intelligentsia that are capable of making major changes in society and influencing its economy. In addition to the above, there are also two concepts aimed at understanding intellectual emigration [16].

These are the concepts of "brain exchange" and "brain waste". The concept of "brain exchange" positively assesses intellectual emigration. According to him, people move to find new jobs to spend their professions and specialties, in which case no one loses. Brain gain and brain drain are common in the economies of all countries and are an exchange of information on the state of the labor force in exporting and importing countries. In the concept of "brain waste", intellectual emigration is negatively assessed.[20]

In this concept, intellectual emigration is a major loss to exporting countries and has a negative impact on their economy and development.

evaluated. In addition to the above, due to the fact that intellectual capital belongs to the donor or recipient state and the international intellectual migration policy of countries, three major concepts of legal regulation are put forward: the concept of "non-interference"; The concept of "direction for the future"; The concept of "active regulation". The concept of non-interference is widely used by developed countries, mainly in the interests of recipient countries. This concept is based on the principle that states should not interfere in the process of international intellectual emigration, as there is a high risk of obstructing the full realization of human rights and freedoms in modern integration processes.[21]

The idea that all forms and methods of state regulation of these rights are aimed at restricting human rights and cannot be tolerated is inherent in this concept. The concept is primarily supported by the United States, Canada, Australia and a number of EU countries. It is also interesting to note that in these countries the concept of "active regulation" for immigrants is applied. Globalization has led to the spread of the concept of "direction for the future." [12]

This concept can solve the problems of legal regulation of intellectual emigration only at the national level in the interests of the individual and donor countries. This concept is widely used in developing countries and China, which have a policy of sending students and researchers abroad on the basis of special programs, primarily to reduce the demographic crisis in the country. According to this concept, the exporting countries will be able to do it themselves in the future also pursues a policy of recalling sent intellectual migrants at the expense of higher wages and greater opportunities. The concept of "active regulation" is widely used by countries that are donors of intellectual capital. This concept is based on the possibility and expediency of state regulation of intellectual emigration processes by various means (legal, administrative, economic, etc.). As a result, the state will be able to introduce mechanisms to retain intellectual capital in its territory. Pakistan, India, Brazil, Paraguay, and others can be cited as the countries that have suffered the most from the "insanity." [24]

Immigration policy in these countries focuses on re-immigration programs to repatriate highly qualified professionals. The process of intellectual migration is of special importance for Uzbekistan as well. For our country, too, the issue of intellectual migration has two distinct aspects. The first case is the effective use of foreign specialists by attracting them to Uzbekistan, and the second case is the process of leaving highly qualified specialists in Uzbekistan to work abroad. As for the first issue, until recently, the recruitment of highly qualified specialists in Uzbekistan was a process with its own bureaucratic stages [12].

It should be noted that many foreign specialists are invited to enterprises established in Uzbekistan on the basis of investment agreements. In order to ensure the fulfillment of obligations by foreign investors, who are provided with additional guarantees and protection measures (benefits and preferences), the practice of concluding an investment agreement with the investor has been established. However, these processes were not approved by the Cabinet of Ministers of the Republic of Uzbekistan on October 19, 1995.

The decision was made in accordance with the regulations on the recruitment and use of labor, and in its content did not meet the requirements of democratic reforms.

It establishes a number of interrelated procedures for hiring highly qualified specialists who are foreign nationals to enterprises in Uzbekistan. This has had a negative impact on the process of attracting foreign experts. In 2017 alone, the Agency reviewed 5122 applications for permits and approvals, and as a result of the study, the number of enterprises that issued permits for the attraction and use of foreign labor - 892; The number of certificates of labor rights issued (extended) to foreign citizens for employment in the Republic of Uzbekistan - 4230.

Notices were sent to 192 enterprises whose permits to attract foreign labor had expired. The Ministry of Internal Affairs of the Republic of Uzbekistan and the Federal Migration Service were provided with information on the certificates of employment of 935 foreign citizens, which were revoked on the basis of applications from enterprises. In 2017, 144 enterprises with foreign capital were established by the decisions of the President of the Republic of Uzbekistan and the Cabinet of Ministers, of which 51 enterprises (employers) applied to the Agency and were issued permits to attract and use foreign labor 730 foreign nationals have been issued work permits to work on these investment projects.

In order to prevent this, on November 7, 2018, the President of the Republic of Uzbekistan adopted Resolution No. PP-4008 "On measures to create favorable conditions for qualified foreign specialists to work in the territory of the Republic of Uzbekistan." This decision clearly identifies a number of shortcomings in this area in Uzbekistan and the issues that need to be addressed. In particular, the lack of measures for a differentiated immigration policy based on a selective approach to the entry of foreign migrants, in turn, studies show that the removal of barriers to attracting qualified foreign managers will increase GDP by more than foreign investment [12].

In order to improve the legislation in this area, the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated March 25, 2019 No 244 approved the Regulation "On the procedure for attracting and using foreign labor in the Republic of Uzbekistan." This document contains norms aimed at addressing shortcomings and challenges set by the Presidential Decree in this area. But it is difficult to say that this regulation will also serve to attract foreign experts and attract them to investment enterprises. Another important issue for our country is the return of highly qualified specialists who went abroad to work. According to the Ministry of Health alone, there are Uzbek doctors working in cardiac surgery, neurosurgery, orthopedics, traumatology, dermatology and liver surgery in Norway, Denmark, Kuwait, the United Kingdom and Russia.

During the years of independence, many Uzbek medical workers have gone abroad. In particular, there are hundreds of Uzbeks in Yemen doctors and nurses work. Due to the ongoing fighting in Yemen, the flow of Uzbek specialists there has decreased, but has not stopped. As a result of Uzbekistan's health care reforms, many patients travel to countries such as Kazakhstan, Russia, Turkey, India and Germany for treatment. [17-20] The following remarks of the President show the urgency of this issue: "I think that special delegations from our country are holding meetings with our compatriots abroad, taking necessary measures together with local authorities to improve their working and living conditions, to ensure their rights. you are aware. In particular, we invite our highly qualified scientists and specialists, doctors, potential investors, including many talented sisters, who are successfully working in foreign countries, to our country and create all conditions for them to use their knowledge and experience for the development of our country. These circumstances lead to the conclusion that it is necessary to apply the concept of "active regulation" in the field of intellectual migration in our country. In addition, there is a need to adopt a law on labor migration in Uzbekistan to regulate labor migration and repatriate citizens working abroad [13].

Conclusion

In conclusion, matters of legal regulation of the international intellectual migration process or so called "brain drain" demand more accurate and detailed approach to regulate and rule the process properly.

To reduce the flow of the intellectual migrants legal regulation should be sophisticated and targeted to the specific regulation of the issue. Motivating privileges and guaranteed rights might serve as solid bases for staying in home countries or returning back to the countries of origin.

Moreover, there is also some promising evidence that suggests governments can successfully encourage the return of their high-skilled diaspora by providing tax incentives to returning emigrants. The return of migrants can support economic development, especially when they bring capital and knowledge, and when their home countries provide the right conditions for them to make full use of their skills and experience. As a method of preventing measures of brain drain governments should diversify and implement fields of the study where more talents can work or do researches by using cutting edge technological innovations. And by reducing the excessive bureaucracy politics and barriers before the “brains” governments makes the country more attractive. As an example, it might be brought on legal documents which regulate legally activity of the “El-yurt umidi” Foundation.

Systemizing legal rules to simplify and to make more comprehensive the system of national legal norms which regulate the field of intellectual migration one of the crucial matters of the legal regulation of the brain drain in a proper way. Under this method, governments should use strategies of timing the process such as: short term, mid-term and long term strategies to cope with the tasks in order to regulate the sphere.

References:

1. Bana L. (2016), Brain Circulation, the Phenomenon and Challenges, European Journal of Interdisciplinary Studies, Jan-Apr 2016, Vol.4 Nr.
2. Barslund M. and Busse M. (2014), Making the Most of EU Labour Mobility, Report of a Centre for European Policy Studies (CEPS) Task Force, October 2014. ESPON (2017), The Geography of New Employment Dynamics in Europe, Applied Research, Delivery 4 – Draft Final Report, 22.09.2017, authored by Busetti S. et al., available at <https://www.espon.eu/employment>.
3. European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2018), 2017 annual report on intra-EU labour mobility, Final Report January 2018.
4. Eurostat (2017a), Population and population change statistics, based on data extracted in July 2018, Eurostat statistics explained online. Eurostat (2017b), Regional Yearbook 2017 edition, Publications Office of the European Union, 2017.
5. Garcia Pires A. J. (2015), Brain drain and brain waste, Journal of Economic Development, Volume 40, Number 1, March 2015.
6. SamekLodovici M. (2018), The Geography of New Employment Dynamics in Europe: Key Findings and Policy Suggestions, presentation at the ESPON Seminar ‘Territorial Cohesion Post 2020: Integrated Territorial Development for Better Policies’, 30-31 May 2018, Sofia, Bulgaria.
7. Todisco E., Brandi M.C. and Tattolo G. (2003), Skilled migration: a theoretical framework and the case of foreign researchers in Italy, Flinders University Languages Group Online Review, Vol. 1, Issue 3, December 2003.
8. UNESCO Institute for Statistics (2012), International Standard Classification of Education ISCED 2011, Montreal, Canada.
9. Каланов К. Особенности миграционных процессов в Узбекистане. // Материалы второго конгресса социологов тюркоязычных стран на тему Гражданское общество и социальный прогресс в XXI веке. – Алматы. 2008. – С. 438 – 441.
10. Каланов К. Внутренняя миграция на неформальном рынке труда в Узбекистане. // Россия – Узбекистан: история и современность (ч.II). / ЕвроАзия. – Москва. № №. (Июнь) / 2008. – С. 70 -75.

11. Варганян А. А. Международная образовательная миграция: региональный аспект // Мировая экономика и международные отношения. – 2016. - No 2. -С. 113-121.
12. Musayev B. Intellektualmigratsiya: uningfoydalivasalbiyotomonlarinimadanamoyonbo'ladi. // Intellektualmulhquqiningdolzarbmuammolari – T.: TDYU,2020. – 336 bet.
13. Друкер П. Классические работы по менеджменту = ClassicDrucker: Пер. с англ.М.: Альпина Бизнес Букс, 2008. – С. 56.
14. Турбан. Г.В. Экономика и управление внешнеэкономической деятельностью: учеб.пособие / Г. В. Турбан; Белорусь, гос. экон. ун-т. – Минск, 2007. – 319 с.
15. Супрун, В. А. Интеллектуальный капитал: главный фактор конкурентоспособности экономики в XXI веке / В. А. Супрун. – М.: URSS, 2006. – 190 с.
16. Carvalhais I.E. Brain Drain/Brain Gain from the Perspective of a SemiPeripheral State: Portugal // DIVERSITIES. 2012. Vol. 14. No. 1. P. 99–116.
17. Turdialiev, M. A., &Komilov, B. (2020). The Legal Issues Of International Investment Activity In Uzbekistan: Critical Analysis And Legal Solutions. The American Journal of Political Science Law and Criminology, 2(12), 16-21.
18. Akramov, A., Mirzaraimov, B., Akhtamova, Y., &Turdaliyev, M. A. (2020). Prospects For The Development Of Trust Management In Uzbekistan. Psychology and Education Journal, 57(8), 530-535.
19. Narziev, O. (2021). The Perspectives Of The Establishment Of International Financial Centers In Uzbekistan And The Implementation Of English Law. Turkish Journal of Computer and Mathematics Education (TURCOMAT), 12(4), 1104-1108.
20. ТУРДИАЛИЕВ, Мухаммадали. "ЭРКИН ИҚТИСОДИЙ ЗОНАЛАР ДОИРАСИДА ИНГЛИЗ ҲУҚУҚИНИ ЖОРИЙ ЭТИШНИНГ ХОРИЖ ВА МИЛЛИЙ ТАЖРИБАСИ." ЮРИСТ АХБОРОТНОМАСИ 1.6 (2020): 151-158.
21. Said, Gulyamov, and RustambekovIslambek. "Recommendations on the preparation and publication of scientific articles in international peer reviewed journals." Review of law sciences 4 (2020).
22. Gulyamov, S. S., Rustambekov, I., &Bozarov, S. S. (2020). Legal bases for business activities in free (special) economic zones of the Republic of Uzbekistan.Palarch's Journal of Archaeology of Egypt/Egyptology, 17(10), 1884-1895.
23. Инамджанова, Э. (2021). Некоторые вопросы правового значения кодекса поведения для арбитров международного инвестиционного арбитража.In Актуальные проблемы юриспруденции (pp. 45-52).
24. Bozarov, S. S. (2018). Prospects for the innovative development of free economic zones in the Republic of Uzbekistan. Review of law sciences, 2(1), 23
25. Akramov, Akmal, et al. "Prospects For The Development Of Trust Management In Uzbekistan." Psychology and Education Journal 57.8 (2020): 530-535.
26. Khalilova, M. E., &Khalilova, Z. E. (2021). ATTRACTING FOREIGN INVESTMENT TO UZBEKISTAN: CHALLENGES AND PROSPECTS. In INTERNATIONAL SCIENTIFIC REVIEW OF THE PROBLEMS OF LAW, SOCIOLOGY AND POLITICAL SCIENCE (pp. 68-77).