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## ISSUES OF IMPLEMENTATION OF INTERNATIONAL LEGAL NORMS IN THE FIELD OF MIGRATION INTO THE NATIONAL LEGAL SYSTEM OF THE REPUBLIC OF AZERBAIJAN

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**Zeynalova-Sultanova N. Issues of implementation of international legal norms in the field of migration into the national legal system of the Republic of Azerbaijan.**

It is indicated one of the scientific paradigms of modern international law, which has theoretical and practical significance, are issues related to the national legal implementation of international legal norms. Considering that the norms of international law related to migration arose as a need of our time, the importance of implementing this category of legal norms in national law becomes more obvious. In this context, the national legal implementation of international legal norms in the field of migration has both theoretical and practical significance. The increase in the number of international treaties in this area requires the inclusion of the provisions of “these international treaties in national legislation”.

The article examines the national legal implementation of international legal norms in the field of migration. The specifics of the national legal implementation are determined by the example of the national legal system of the Republic of Azerbaijan (AR). To do this, the legislation of the Republic of Azerbaijan is analyzed. The approaches existing in the legal doctrine to determining the features of national legal implementation are analyzed comparatively. In particular, the positions in the national legal doctrine of the Republic of Azerbaijan on this issue, which is a constant object of research, are analyzed. Based on this analysis, the features characteristic of the national legal implementation of international legal norms in the field of migration are determined. These features are not only due to the specifics of the migration sphere but are also determined by the peculiarities of the legislation of the Republic of Azerbaijan. In this sense, the implementation of international legal norms in the field of migration in the national legal system of the Republic of Azerbaijan attracts attention with two important features. Firstly, the implementation of international legal acts on migration in our country includes both legislative measures and a set of institutional measures. Secondly, the main purpose of this process is to influence public life by improving the rights of migrants and to make a motivational contribution to the migration legal relations of the Republic of Azerbaijan as a whole. The implementation of international legal norms in the field of migration into the national legal system of the Republic of Azerbaijan is a set of national legal and organizational means of applying international legal norms in the field of migration. In this sense, international treaties to which the Republic of Azerbaijan is a party related to international migration law include an incorporated type of implementation, acting as part of the national legislative system of the Republic of Azerbaijan.

**Key words:** Illegal migration, illegal migrant, migration, fight, international cooperation, international law.

**Зейналова-Султанова Н. Питання імплементації міжнародно-правових норм у галузі міграції в національну правову систему Азербайджанської Республіки.**

Вказується, однією з наукових парадигм сучасного міжнародного права, яка має теоретичне та практичне значення, є питання, пов'язані з національно-правовою реалізацією міжнародно-правових норм. З огляду на те, що норми міжнародного права, пов'язані з міграцією, виникли як потреба сучасності, важливість імплементації цієї категорії правових норм у національне право стає більш очевидною. У цьому контексті національно-правова імплементація міжнародно-правових норм у сфері міграції має як теоретичне, так і практичне значення. Збільшення кількості

міжнародних договорів у цій сфері потребує включення положень «цих міжнародних договорів у національне законодавство».

У статті розглядається національна правова імплементація міжнародно-правових норм у сфері міграції. Специфіка національної правової імплементації визначається на прикладі національної правової системи Азербайджанської Республіки (АР). І тому аналізується законодавство Азербайджанської Республіки. Проведено порівняльний аналіз існуючих у правовій доктрині підходів до визначення особливостей національної правової імплементації. Зокрема, аналізуються позиції національної правової доктрини Азербайджанської Республіки з цього питання, яке є постійним об'єктом дослідження. На основі цього аналізу визначено особливості, характерні для національної правової імплементації міжнародно-правових норм у галузі міграції. Ці особливості зумовлені як специфікою міграційної сфери, так і особливостями законодавства Азербайджанської Республіки. У цьому сенсі імплементація міжнародно-правових норм у галузі міграції до національної правової системи Азербайджанської Республіки привертає увагу двома важливими особливостями. По-перше, реалізація міжнародно-правових актів з питань міграції в нашій країні включає як законодавчі заходи, так і комплекс інституційних заходів. По-друге, основною метою цього процесу є надання впливу на суспільне життя шляхом покращення прав мігрантів та внесення мотиваційного внеску в міграційні правові відносини Азербайджанської Республіки загалом. Імплементація міжнародно-правових норм у сфері міграції до національної правової системи Азербайджанської Республіки є сукупністю національних правових та організаційних засобів застосування міжнародно-правових норм у сфері міграції. У цьому сенсі міжнародні договори щодо міжнародного міграційного права, учасником яких є Азербайджанська Республіка, включають інкорпорований тип імплементації, що діє як частина національної законодавчої системи Азербайджанської Республіки.

**Ключові слова:** нелегальна міграція, нелегальний мігрант, міграція, боротьба, міжнародне співробітництво, міжнародне право.

**Problem statement.** One of the scientific paradigms of modern international law, which has theoretical and practical significance, are issues related to the national legal implementation of international legal norms. Considering that the norms of international law related to migration arose as a need of our time, the importance of implementing this category of legal norms in national law becomes more obvious. In this context, the national legal implementation of international legal norms in the field of migration has both theoretical and practical significance. The increase in the number of international treaties in this area requires the inclusion of the provisions of “these international treaties in national legislation”.

When considering the theoretical and practical issues of the implementation of international law in the field of migration in the national law of the Republic of Azerbaijan, it is necessary first to pay attention to the concept of the implementation of international law and the terminology used in this area. The positions on this issue are ambiguous in scientific literature. In this regard, when clarifying the legal nature of migration law, a national legal implementation of the norms of international law in this area and the definition of its features are necessary. We will try to analyze these features using the example of the national legal system of Azerbaijan.

**Source database analysis.** The conceptual foundations of national legal identification as a scientific concept were developed by Professor R.A. Mullerson. According to his understanding, the national legal implementation of the norms of international law is the process of implementing the requirements of international law on the territory of a State using the norms of national law. National legal implementation is a stage of the actual implementation of the norms of international law and creates the necessary legal regulations for international law. Sharing these views, we would like to note that, in turn, the new norms of international migration law are being implemented through domestic migration legislation and the practical implementation of these norms in national States is being carried out.

**The purpose** of this article is to determine the issue of implementing international legal norms in the field of migration into the national legal system of the Republic of Azerbaijan.

**Presentation of the main material.** It should be especially emphasized that, since today international migration law contains new norms of international law, existing international treaties in this area may not yet be fully ratified by states, including the Republic of Azerbaijan. However, the accepted concept is that for the implementation of international law, including international migration law, national ratification of these treaties may not be considered necessary. For this purpose, in international

migration law, direct nationwide legal implementation of a number of general norms, such as principles such as non-proliferation, acts as a public requirement. Currently, in the process of implementing the norms of international migration law, there is an interdependence of international and national law and a transformation of national legislation. At this time, national laws are naturally updated and enriched by the norms of international migration law.

Professor I.I. Lukashuk identifies two main stages of international legal regulation, firstly, the legislative stage, covering the procedure for implementing the provisions of international law; and secondly, the law enforcement stage, at which the process of direct implementation of norms is carried out [2, p. 134–432]. The main essence of our research is both theoretical and practical issues of the implementation of international legal norms in national legislation in the field of migration. For this reason, in our opinion, the above-mentioned views of I.I. Lukashuk fully justify themselves in the context of the implementation of international migration law. Because at present, a more effective procedure for implementing the provisions of international migration law directly depends on the one hand, on National law-making, and on the other – on the law enforcement process.

Ukrainian scientist A.S. Gaverdovsky interprets implementation as “purposeful organizational and legal activities carried out by States individually and collectively or within the framework of international organizations to timely, comprehensively and fully fulfill their obligations assumed in accordance with international law [1, p. 62]. In this sense, we believe that the introduction of international legal norms into the legislation of the Republic of Azerbaijan in the field of migration should be considered as a purposeful organizational and legal activity carried out individually or within the framework of international organizations to timely, comprehensively and fully fulfill obligations related to migration law.

V.Y. Kalugin interprets implementation as a whole process of applying international law, including ensuring such enforcement. Based on these opinions, it should be noted that the institution of implementation in international law is of a general nature, expressing the whole process of implementation and law enforcement, it can be directly applied to the norms of international migration law.

V.Y. Suvorov considers the term “implementation” as a synonym for the term “implementation”, explaining it as the embodiment and implementation of the norms of international law in the practical activities of states and other institutions. In this sense, the actual implementation of international migration law is also embodied in the practical activities of both States and international organizations.

The implementation of the norms of international law in the field of migration leads to the adoption of positive measures to ensure the realization of these rights. For example, the introduction of alternatives to imprisonment for migrants, ensuring migrants’ access to health care, education and other social services, etc. requires the implementation of real implementation measures. The current international legal instruments provide a comprehensive legal framework for migration management. The mechanisms for effective domestic implementation of clearly defined national rules address, among other things, a number of issues related to the treatment of migrants, including migrant women, men, children, refugees, stateless persons, migrant workers and migrant victims of human trafficking [11]. In this sense, it should be noted that nowadays the implementation of the norms of international migration law manifests itself as a practical issue that often occurs in the context of migrant women, men, children, refugees, stateless persons, migrant workers and victims of human trafficking from among migrants.

In our opinion, the implementation of the norms of international law in the field of migration into national legislation is understood as a set of national legal and organizational means used by states parties to exist international treaties in the field of migration.

Effective implementation of international migration law requires Governments to establish administrative rules explaining how they intend to enforce national legislation or what a migrant must do to comply with the law. Having a comprehensive migration strategy helps to ensure harmony, eliminate gaps and measure progress. It is also an effective tool for fulfilling the international obligations of the State in relation to migration management [9]. In this regard, the “State Migration Program AR” (2006-2008), approved by the Decree of the President of the Republic of Azerbaijan dated July 25, 2006, justifies the implementation of international migration law as a comprehensive migration strategy. The same document notes that the regulation of migration processes determines the study and use of international experience, the improvement of migration rules within the country in accordance with international standards, the conclusion of international agreements on bilateral and multilateral grounds, as well as the coordination of migration policy with other countries. In this regard, within the

framework of the State Program, the issue of the expediency of Azerbaijan's accession to international treaties in the field of migration is being studied, the process of concluding agreements with foreign countries in this area is being intensified, cooperation with relevant structures of foreign countries in the fight against illegal migration is being carried out, appropriate training courses are being organized to study international experience and cooperation with international organizations, especially with the International Organization for Migration [5].

M.A. Murzin writes that to implement the principles and norms of international law and control their implementation at the level of the world community, an integrated approach to the development of international standards is necessary. At the domestic level, it is necessary to adopt national regulations in accordance with the standards of international migration law and the requirements of the control mechanism. Thus, on the one hand, this mechanism should include a set of institutional measures implemented by executive authorities to implement the above-mentioned legal acts, and on the other - legislative measures.

The main purpose of the system of legal norms, regardless of their level of development, is to influence public life. The provisions of all legal systems should be embodied in public relations, as well as in the activities of people and their organizations [4, p. 28]. As can be seen, implementation acts as the main tool for the state to implement international rules in the field of international migration law. The importance of this legal process lies, first, in the effective implementation at the national legal level of the norms of universal migration law. On the other hand, the necessary implementation of implementation measures demonstrates the importance of implementing obligations in the field of international migration into the national legal system.

In this sense, we believe that the implementation of the norms of international migration law into the national legal system of the Republic of Azerbaijan attracts attention with its two important characteristics. Firstly, the implementation of international legal acts on migration in our country includes both legislative measures and a set of institutional measures. Secondly, the main purpose of this process is to influence public life by improving the rights of migrants and to make a potential contribution to the migration legal relations of the Republic of Azerbaijan as a whole.

Over the past decades, significant research has been conducted on the national application of international law. However, the application of international law in federal States - especially at the subnational level - has not been sufficiently studied. Subnational institutions enjoy sovereignty to the extent that the question arises as to whether international law is effectively applied at the subnational level and how it is implemented [13]

Although international law requires a State to fulfill its international obligations, the processes used by a State to fulfill its international obligations will differ, for example, from legislative, coercive or judicial measures. The state cannot use domestic laws to justify non-compliance with its obligations in the field of migration law at the universal and regional levels. In other words, States are obliged to amend and adopt any relevant laws and measures after the ratification of an international legal instrument.

In addition, in the field of migration, customary international law and jus cogens norms apply to all States, regardless of the ratification of the treaty. For example, all states should recognize the principle of non-refoulement - non-return, prohibition of torture, genocide and slavery. States often adopt national legislation or amend it to incorporate international law at the national level. In addition, international conventions may contain special obligations of states parties to ensure their implementation at the national level and general enforcement measures [9].

Globalization and integration have led to the strengthening of the role of international law in the context of expanding interaction between peoples and States, including large-scale migration processes. Activity in the field of international migration and interstate legal relations involved in solving problems in this area have led to the conclusion of new international migration treaties and the creation of new norms of migration law. In such relations, states consider not only their national interests, but also comply with the norms and principles of international law. At the same time, states should have an internal legal system that does not contradict international legal norms.

The effective functioning of the domestic legal system of the state concerned depends on the interaction of international and national law. The lagging of domestic law from the requirements of the time can lead to serious international consequences [3]. In this sense, the role of international law in the field of migration is complex. This complexity is inherent in the dual nature of migration as a problem of concern both at home and abroad. Any discussion of migration inevitably begins with the recognition

that territorial sovereignty is central and that states have the right to control and regulate the movement of people across their borders. Although no other concept is as controversial as territorial sovereignty, its traditional function is to “designate the relationship between a specific people and a specific territory so that people in that territory can exercise their jurisdiction through the state, as well as be different from other peoples exercising jurisdiction in other territories [14].

States also have different experiences of incorporating treaties into the national legal framework so that the norms of international law in the field of migration can be implemented by state bodies. In some countries, international and sometimes regional human rights law automatically becomes part of national legislation. In fact, this provision may also directly relate to the issue of migrants’ rights. In other words, as soon as a State ratifies or accedes to the Treaty on International Migration, this international law becomes national. According to such systems, contracts are considered self-executing.

The Constitution of the AR has directly revealed its position on this issue. According to paragraph 2 of Article 148 of the Constitution, international treaties to which “the AR is a party are an integral part of the legislative system of the AR” [6]. In this sense, international treaties to which our country is a party, related to international migration law, will be part of national law, and this directly includes the incorporative type of implementation.

In this regard, Professor L. Huseynov rightly notes that this provision implies the general incorporation of all international treaties, that is, not only interstate, but also intergovernmental and interdepartmental agreements [10]. Therefore, we believe that the mentioned constitutional provision simultaneously acts as the basis for the national legal implementation of all treaties advocated by the Republic of Azerbaijan in the field of migration, including intergovernmental treaties.

The principle of incorporation as a special method of national legal implementation is reflected in the Republic of Azerbaijan not only in the constitutional order, but also in other norms of national legislation in the field of migration. Article 1 of the Migration Code of the Republic of Azerbaijan notes that the migration legislation of the Republic of Azerbaijan consists of the Constitution of the Republic of Azerbaijan, this Code, the laws of the Republic of Azerbaijan, international treaties advocated by the Republic of Azerbaijan, and other normative legal acts adopted in accordance with them [15]. As can be seen, in our country there are both constitutional and other normative legal acts requiring the implementation of the norms of international migration law, which creates conditions for the application of international migration law directly in our country without any additional domestic acts.

In addition, article 151 of the Constitution may also apply to the question of the legal force of international treaties in force in the field of migration. This article notes that if there is a contradiction between the normative legal acts included in the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and interstate treaties advocated by the Republic of Azerbaijan, international treaties are applied [6]. As can be seen from this constitutional provision, in our country the direct application of all interstate agreements on migration is possible, and the legal force of these agreements is considered higher than national laws. Provisions related to the implementation of international standards in the field of migration in the AR are enshrined in the Migration Code of the AR dated July 2, 2013. Article 2 of the Code, entitled “Principles of the migration legislation of the Republic of Azerbaijan”, states that the migration legislation of the AR is based on respect for the rights and freedoms of man and citizen, legality, equality and justice before the law, ensuring compliance of the migration legislation of the AR with the generally recognized norms of international law, the use of innovative methods for regulating migration processes and ensuring transparency [15]. Apparently, ensuring compliance of migration legislation with generally recognized norms of international law in our country has been recognized as an important principle of law.

The process of implementing international obligations in the field of migration is defined as the adoption of legislation and the creation of local and international institutions, as well as the application of accepted norms [12]. The effectiveness of the implementation process is an important element in strengthening migration management. Regular monitoring of the national immigration legal framework is key to ensuring that appropriate integration policies are implemented worldwide.

Taking this into account, the movement of people across borders is internationalized by a wide range of legal norms, which are firmly reflected in the sources of public international law. Even the most skeptical positivists cannot but accept important international rules governing migration and limiting the sovereignty of states. However, this development was achieved piecemeal in the process of

long-term incremental consolidation. As a result, the existing international legal framework governing migration consists of an eclectic set of overlapping norms scattered across many overlapping areas (such as human rights law, trade law, humanitarian law, labor law, refugee law, maritime law, air law, consular law, criminal law, etc.). As Richard Lillich describes the overall frame “looks like a giant unassembled legal puzzle”, the number of figures in which is unclear, but the magnificent design still appears [16]. The variety of applicable rules and their wide dissemination are clearly detrimental to both the understanding and application of international law. This is the most important issue for scientists and practitioners who want to understand and use international law in this area [17].

Organizational mechanisms are important in the implementation of migration standards. Regardless of whether they are local, regional or universal, each of them serves as an effective implementation of international migration law. When local remedies have been exhausted, mechanisms and procedures exist for individual complaints or communications at the regional and international levels to help ensure compliance with international or regional standards at the national level and ensure compliance with international migration law [9].

**Conclusion.** Thus, the implementation of international legal norms in the field of migration in the system of national law of the Republic of Azerbaijan attracts attention with two important features. Firstly, the implementation of international legal acts on migration in our country includes both legislative measures and a set of institutional measures. Secondly, the main purpose of this process is to influence public life by improving the rights of migrants and making a positive contribution to the migration legal relations of the Republic of Azerbaijan as a whole. The implementation of the norms of international law in the field of migration in the national legal system of the Republic of Azerbaijan is a set of national legal and organizational means of applying the norms of international law in the field of migration. In our country, there are both constitutional and other normative legal acts requiring the implementation of the norms of international migration law, which creates conditions for the application of international migration law directly in our country without any additional domestic acts. This means that the main method of national legal implementation of norms in the field of international migration law in the Republic of Azerbaijan is incorporation. In addition, article 151 of the Constitution may also apply to the question of the legal force of international treaties in force in the field of migration. As can be seen from this constitutional provision, in our country it is possible to directly apply all interstate treaties on migration, and the legal force of these treaties is considered higher than national laws. In this sense, international treaties on international migration law act as an integral part of national law, which directly contains the implementation type of incorporation.

Since today international migration law is a newly adopted area of international law, international treaties existing in this area may not yet be fully ratified by States, including the Republic of Azerbaijan. However, the accepted concept is that for the implementation of the norms of international law, including international migration law, national ratification of these treaties may not be considered necessary. For this purpose, in international migration law, the direct national legal implementation of several general norms, such as principles such as non-proliferation, acts as a public requirement. At this time, in the process of implementing the norms of international migration law, there is a dependence of international and national law and a transformation of national legislation, because of which national law is naturally updated and enriched.

Currently, a more effective procedure for the implementation of the provisions of international migration law directly depends on the one hand, on national lawmaking, and on the other - on the law enforcement process, since it is the implementation of international law in the field of migration that constitutes both theoretical and practical issues of national legislation.

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