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# **Access of Labor Migrants from Kyrgyzstan, Tajikistan and Uzbekistan in Russia to Pension Accumulation System**

## **Analytical Review**

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## CONTENTS

### **1. Access of Labor Migrants from Kyrgyzstan in Russia to Pension Accumulation System,** *A. Krasnikov, E. Nasritdinov*

1.1. Introduction	4
1.2. Situation Overview	5
1.3. Current Legislative Practice	9
1.4. Identified Areas of Concern	15
1.5. Conclusions	16
1.6. Recommendations	17

### **2. Access of Labor Migrants from Tajikistan in Russia to Pension Accumulation System,** *Kh. Umarov*

2.1. Introduction	19
2.2. Situation Overview	19
2.3. Current Legislative Practice	21
2.4. Identified Areas of Concern	23
2.5. Conclusions	27
2.6. Recommendations	27

### **3. Access of Labor Migrants from Uzbekistan in Russia to Pension Accumulation System,** *B. Umurzakov, F. Irnazarov*

3.1. Introduction	29
3.2. Situation Overview	31
3.3. Current Legislative Practice	34
3.4. Identified Areas of Concern	36
3.5. Conclusions	37
3.6. Recommendations	37

# 1. Access of Labor Migrants from Kyrgyzstan in Russia to Pension Accumulation System

## 1.1. Introduction

On 23 March 2011, during the board meeting in the Ministry of Labor, Employment and Migration, Tynybek Tabyldiev, Official Secretary of the Ministry, said there were as many as 383 786 Kyrgyz nationals registered with migration services in Russia today, of who only 69 913 people had received a legal work permit. “Others have to keep wandering abroad,” he said<sup>1</sup>. A little earlier, on 21 December 2010, Alik Baiboriev, Deputy Minister of the same institution, said that depending on the season about 350-500 thousand Kyrgyz nationals were out of the country<sup>2</sup>.

Taking into account that the Ministry of Labor indicates only the number of migrants who are officially registered, it is easy to assume that their actual numbers, including all illegal aliens, is much higher. If we also consider those nationals of Kyrgyzstan who changed their nationality in 2003-2009 and became Russian citizens (according to the Ministry of Labor, there are 240 thousand people in this category<sup>3</sup>, of who 42 thousand people changed their nationality in 2010<sup>4</sup>, 41 thousand people – in 2009<sup>5</sup>, and 43 thousand people in 2008<sup>6</sup>), we can argue that about one-fifth of the country’s population lives abroad.

The above-mentioned figures and research carried out by the authors of this report in Kazan (Republic of Tatarstan, Russian Federation) indicate that the dynamics and scale of labor migration have not dwindled. On the contrary, the political events in 2010, including the April revolution and interethnic clashes in south of the country, engendered a new wave of migration, particularly from southern regions. In addition to political instability, certain economic factors such as unemployment and very low salaries in government institutions remain the driving force in fuelling labor migration. According to A. Baiboriev, the number of able-bodied people in Kyrgyzstan is 1.5 higher than the number of those actually employed<sup>7</sup>.

Except for “push-away factors” in Kyrgyzstan, certain “attraction factors” in recipient countries also play a significant role in migration growth. These include Russia’s growing economy and demographic crisis. In furtherance of this argument, one may refer to the statement by Konstantin Romodanovskiy, Director of the Russian Federal Migration Service (FMS), who said in December 2010 that Russia needed at least 5 million labor migrants<sup>8</sup>. Talking about possible scenarios for the future, Sergey Borisov, an analyst, who participated in the discussion of the State Migration Policy Concept in the Public Chamber, stressed during the meeting that within ten years Russia’s need for external labor force may increase threefold, thereby reaching about 10 to 20 million people<sup>9</sup>. Tatyana Golikova, Minister of Health of the Russian Federation, pointed out that in 2009 the population of Russia decreased by 224 310 people due to natural factors, while the overall population in the country increased by 15 000 to 25 000 people. The difference was covered due to labor migrants who had obtained Russian passports<sup>10</sup> (333 474 foreign nationals, of who 65.3% obtained Russian citizenship based on a simplified procedure).

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<sup>1</sup> T. Osmonalieva, IA 24.kg, 3 February 2011, Central Asian Migration News Digest, issue 116, SRC AUCA, src.auca.kg.

<sup>2</sup> Information Portal of Kyrgyzstan, 21 December 2010, Central Asian Migration News Digest, issue 113, SRC AUCA, src.auca.kg.

<sup>3</sup> CA-News, 25 February 2010, Central Asian Migration News Digest, issue 113, SRC AUCA, src.auca.kg.

<sup>4</sup> T. Osmonalieva, IA 24.kg, 3 February 2011, Central Asian Migration News Digest, issue 116, SRC AUCA, src.auca.kg.

<sup>5</sup> Russian FMS, *Eho Moskvi*, 4 January 2010, Central Asian Migration News Digest, issue 96, SRC AUCA, src.auca.kg.

<sup>6</sup> Russian FMS, *Eho Moskvi*, 4 January 2010, Central Asian Migration News Digest, issue 96, SRC AUCA, src.auca.kg.

<sup>7</sup> Information Portal of Kyrgyzstan, 21 December 2010, Central Asian Migration News Digest, issue 113, SRC AUCA, src.auca.kg.

<sup>8</sup> *Tajmigrant*, 2 December 2010, Central Asian Migration News Digest, issue 113, SRC AUCA, src.auca.kg.

<sup>9</sup> *Demoscope Weekly*, 29 November 2011, issues 445-446, <http://demoscope.ru/weekly/2010/0445/gazeta09.php>.

<sup>10</sup> RIA News, 30 December 2009, Central Asian Migration News Digest, issue 96, SRC AUCA, src.auca.kg.

Annual quotas for labor migrants in Russia vary from 1.5 to 2 million people, and such methods as simplified procedures for obtaining registration and work permits reflect the policy of Russian authorities as regards the attraction of labor force. Additional measures, including a simplified procedure for obtaining Russian citizenship and prohibition on working in certain areas, make many labor migrants become Russian nationals. This helps Russia solve two problems at the same time, which include the dearth of laborers and the demographic crisis.

With this system in place, everything should, as it seems, go perfect. However, there are many critical issues related to legal protection of labor migrants, as well as their adaptation and employment in Russia. On the one hand, it has to do with a large number of those who are unregistered, or so-called illegal aliens, and on the other hand, it is also caused by prodigious gaps in the legislation regulating labor migration both in countries of destination and recipient countries. One of the most urgent issues, which is, unluckily, largely disregarded nowadays, is the issue of social benefits for labor migrants, and particularly the issue of their pensions.

As reported by Mukhametkaliy Abulgaziev, Chairperson of the Kyrgyz Social Fund, during the meeting of the Parliament which took place on 21 January 2011, labor migrants in Russia and Kazakhstan, as well as those who came to the capital of Kyrgyzstan from its regions, will receive no pension when they grow old, as they are not making any contributions to the Social Fund<sup>11</sup>. This statement by the head of the agency should not be neglected, since essentially we talk about one-fifth of Kyrgyzstan's population that may be possibly left without any social benefits when they become old.

In this report, this view of the issue is considered pivotal for a more detailed exploration of the situation. The report features the findings of a small-scale research carried out amongst labor migrants from Kyrgyzstan in Kazan, Russia, and also presents the analysis of the legislation regulating pension provision in the Kyrgyz Republic (country of destination) and the Russian Federation (recipient country).

## **1.2. Situation overview**

To study the situation, in November 2010 the SRC AUCA researchers carried out a study among Kyrgyz migrants working in the markets of Kazan (Republic of Tatarstan, Russian Federation). The goal of the research was to study the life of migrants in general, and also focus in more detail on the issues of pension provision and social vulnerability/protection. The research was conducted among migrants from Kyrgyzstan and Tajikistan, and comparisons were drawn as a result. Overall, 114 migrants were surveyed, with 68 migrants coming from Kyrgyzstan. This report is focused on the latter.

### **Research context**

Kazan is an important destination point for migrants from Central Asia. Although there are not so many migrants in this city compared to such places as Moscow or Yekaterinburg, their numbers are still high. According to Zakir Sairbekov, an active representative of the Kyrgyz community in Kazan and an author of the newspaper *Labor Migrant*, as of today the community is comprised of approximately 3 000 to 4 000 members, and over 2 000 migrants from Kyrgyzstan have already become Russian citizens. There are a few factors that make Central Asian migrants choose Kazan as their destination point. First of all, Tatar which is the official language widely spoken in Kazan is very similar to Kyrgyz, and therefore, this makes it easier for Kyrgyz migrants to work there and trade their goods. Secondly, both migrants from Central Asia and local Tatars profess one religion, Islam. According to many migrants, there are no skinheads or any other features of overt discrimination in Kazan. Thirdly, Kazan is preparing for the World Student Games in 2013, and many large facilities are currently under construction there, which requires labor force.

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<sup>11</sup> CA-News, 21 January 2010, Central Asian Migration News Digest, issue 115, SRC AUCA, src.auca.kg.

Some migrants have been working in Kazan for over 10 years. Many such “old-timers” have bought apartments and live fairly decently. Most of the migrants (90%) spend an average of 5 to 7 years in Kazan. In 2010, the number of those coming back from Kazan was increasing quite rapidly, and yet recent political events in Kyrgyzstan in April and June 2010 engendered a new wave of migration, particularly from the south of the country.

### **Pension**

The main topic discussed in this paper is pensions. The situation regarding the legality of work and payment of taxes is also very important here. The study showed that 84% of the interviewed migrants work officially, and that 94% pay taxes. All trade in the market squares of Kazan is under very strict control, and it is difficult to evade taxes. Each market square has its own administration that works very closely with all traders in their territory. Thus, as for the formal aspect, traders are in a better position than migrants who are employed, for example, in construction, where work is less transparent.

The study showed that 41 migrants (61%) from Kyrgyzstan transfer part of the money earned to the Russian Pension Fund. Of them, 31 migrants hold Russian citizenship, and 10 migrants are not Russian nationals. Of those with Russian citizenship, 11 migrants do not do such transfers. The following were mentioned as some of the reasons: “I don’t need it,” “I’m still too young,” “I work illegally,” “I didn’t think about it” and “I don’t have enough money.” It is noteworthy that 41% of migrants with Russian citizenship, and 42% with Kyrgyz citizenship, said they knew how pensions were calculated in the Russian Pension Fund.

The situation regarding contributions to the Kyrgyz Pension Fund is much worse. The analysis shows that only 11% of migrants working in Kazan make such payments. Among those who have not acquired Russian citizenship and are still citizens of Kyrgyzstan, only 4 people (17%) of the 24 pay contributions. Reasons for not paying contributions are the following: “In any case they won’t pay me my pension,” “Never worked in Kyrgyzstan,” “No money,” and “I don’t know how to pay contributions,” or a trivial answer such as “I do not know.” Poor knowledge of legal issues is often one of the main reasons why migrants do not pay contributions to the pension fund. Of 24 migrants without Russian citizenship who are citizens of Kyrgyzstan, only three knew how pension was calculated in Kyrgyzstan. Migrants with Russian citizenship were not much different from them, with only 4 out of 31 claiming to know how pension was calculated in Kyrgyzstan.

During the survey, all migrants were asked how they were going to ensure their life in old age. The majority (35%) prefer to invest their savings in real estate or business, 22% – in the state pension fund, 14% prefer commercial banks, and only 5% of the migrants interviewed were going to pay contributions to a private pension fund. These figures show that even state pension funds do not enjoy much credibility from the Kyrgyz people, not to mention private funds. Commercial banks have not gained much credibility either.

It is noteworthy that 70% of migrants essentially agree to voluntarily transfer money to a pension fund, although not many people understand how to do it and whether it is generally possible.

Of those migrants who did not pay any contributions, the majority (40%) rely only on themselves, 10% – on their children and 23% do not know how they will support themselves in old age.

It is necessary to note the following. 20% of migrants heard of illegal pensions in Kyrgyzstan. Thus, we can assume that one of the most important reasons that migrants do not want to pay contributions to a pension fund is that they are confident they can always receive an illegal pension with the help of acquaintances or through a bribe.

During the study, it has been identified that an attitude of respondents towards pensions depends on their gender. For instance, women are more law-abiding in observing the requirements to work officially and to pay taxes, and in paying contributions to the Russian

Pension Fund. Also, a higher percentage of women preferred to invest their savings in the State Pension Fund of the KR.

As for the family status of migrants, similar differences can be noticed. A higher percentage of married, rather than single, migrants work legally, pay taxes and make contributions to pension funds.

### **Citizenship**

The issue of pensions is directly connected with citizenship. As the survey showed, many migrants who come to Kazan hurry to obtain Russian citizenship. Among the 68 migrants interviewed, 40 migrants (59%) already acquired Russian citizenship, 24 (35%) retained Kyrgyz citizenship (of them, 4 migrants have already submitted documents to obtain Russian citizenship and 9 people would like to submit such documents), 4 persons (6%) keep both passports. We may notice that the vast majority of migrants from Kyrgyzstan (84%) received, submitted, or plan to submit documents to obtain Russian citizenship.

What is the cause of such a prevalent desire to acquire Russian citizenship? This is partly due to the fact that citizens of Kyrgyzstan are in a better position to acquire Russian citizenship than migrants from other Central Asian states, since there is an agreement in place on a simplified procedure for obtaining citizenship between Kyrgyzstan and Russia. If all documents are all right, citizenship can be obtained within 3-4 months. However, the researchers concluded that the acquisition of Russian citizenship by Kyrgyz migrants is more of an instrumental nature. Almost all migrants (94%) said that if the economic situation in Kyrgyzstan improved and they had decent earnings at home, they would return. Absolutely all of the migrants interviewed (100%) said they considered themselves Kyrgyz, even those who changed citizenship, and only four people said they considered themselves both Kyrgyz and Russian. Almost all migrants described the situation regarding the acquisition of Russian citizenship as a forced and temporary measure, and argued that as soon as they could improve their financial situation, or raise children, they would certainly return to Kyrgyzstan.

First of all, the Russian legislation prompts migrants to acquire Russian citizenship, because it prohibits non-Russian citizens from working in the market squares, and numerous bureaucratic obstacles exist, such as the need to regularly register. Even from a financial point of view, it is better to obtain citizenship rather than living without one.

The adoption of Russian citizenship is not an easy decision, since Kyrgyzstan and Russia have no agreement on dual citizenship. By acquiring Russian citizenship migrants lose their Kyrgyz citizenship and cannot register property in Kyrgyzstan in their names. The study showed that some of Kyrgyz migrants (6%) managed to evade the law. Some acquired Russian citizenship before a control mechanism was developed and implemented, and the law, as Zakir Sairbekov noted, is not retroactive. Others acquired new Kyrgyz passports illegally after they de-registered in order to obtain Russian citizenship. Oftentimes, migrants use the following strategy: one spouse acquires Russian citizenship, while the other retains Kyrgyz citizenship. Thus, all documents necessary to obtain a work permit in the market square are registered in the name of a spouse holding Russian citizenship, and all documents for immovable property in Kyrgyzstan are registered in name of the person retaining Kyrgyz citizenship. However, the number of such couples made up only about 30% of all migrants. In most cases (70%), both spouses have acquired Russian citizenship.

Certainly, it is very difficult to draw conclusions about the situation of all migrants in Russia based solely on the results of one survey in Kazan. All main cities receiving migrants from Central Asia are characterized by their uniqueness, including the situation with citizenship and pensions. Kazan is rather one of the most successful examples as was repeatedly mentioned by the respondents themselves, and there are more migrants here trying to acquire Russian citizenship than in other cities. It is also necessary to take into account that not in all areas of employment the position of migrants is just as official as in trade. Although migrants working in the area of trade and residing in Kazan are in a more favorable position than others, their views

regarding pensions is far from being optimistic. Probably, the situation of migrants in relation to pensions in other Russian cities and migrants working in other spheres is much worse.

Analyzing the data obtained in the course of the study, it is possible to make the following assumptions. Many migrants try to obtain, and do obtain, Russian citizenship. However, citizenship is acquired not to stay in Russia until old age, but rather to accumulate money and return home. Perhaps, this explains the fact that only three-quarters of migrants make payments to the Russian Pension Fund after they acquired citizenship. The situation with transfers to the Kyrgyz pension fund is much worse (11-17%). Confidence in pension funds and banks, especially among Kyrgyz nationals, is very low, so the majority of migrants prefer to invest money in real estate or business as a means of ensuring their old age. Corruption, or the possibility of such, also plays its role, as many migrants are aware of illegal pensions in Kyrgyzstan received through acquaintances or a bribe. Also, poor knowledge of legal issues among migrants has an impact, too, and the vast majority do not know what should be done to receive a pension in the old age both in Russia and Kyrgyzstan.

The study showed that the situation regarding pensions of Kyrgyz migrants working in Russia is complicated by the superposition of problems in two legal spheres connected with calculation and registration of pensions (they are different in Russia and Kyrgyzstan) and issues of citizenship. The complexity of legal issues makes the situation difficult not only for migrants, who as a result make reckless decisions, and become vulnerable with respect to their old age, but also for experts and officials working in the field of social provision. Undoubtedly, it is necessary to conduct a serious analysis of the legislation on pension provision for Kyrgyz migrants working in Russia. The next part of this report includes such an analysis.

### **1.3. Current legislative practice**

#### **Legislation of the Kyrgyz Republic**

Kyrgyz legislation governing the provision of pensions for citizens of Kyrgyzstan engaged in labor activity abroad includes a number of normative documents that are basic in determining the fundamental rights and obligations of persons in this category. For example, *the Agreement of the CIS States on Guarantees of the Rights of Citizens of Member States of the Commonwealth of Independent States* (of March 13, 1992) makes it possible to regulate the provision of pensions for citizens of a member state of the Agreement under the legislation of the state in whose territory they reside. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of December 18, 1990 No. 45/158 introduces a number of terms that make it possible to determine the legal status of Kyrgyz citizens engaged in labor activity abroad.

The *Agreements on Cooperation of the Member States of the Commonwealth of Independent States in Combating Illegal Migration*, on labor activity and social protection of migrant workers, *federal laws of the RF* on labor pensions in the RF, on mandatory pension insurance in the RF, on non-governmental pension funds, and also laws of the KR on external migration, on external labor migration, on state pension social insurance, on non-governmental pension funds in the KR form the base to create legal relations regarding provision of pensions including in the case of labor migration.

The payment of pensions is also regulated by the *instruction on the procedure for payment of state social insurance pensions and benefits*. This instruction establishes the procedure for paying pensions at the request of a pensioner. In particular, the payment of state social insurance pensions and benefits may be made via direct deposit into the pensioners' savings or retirement accounts at banks or other lending institutions. It is provided that when pensioners move to other former Soviet Union republics and the far abroad, the pension is paid to them for 6 months in advance. Accrued amounts that have not been claimed by the pensioner on time are paid for a term of up to 3 years, while amounts due but not received by fault of the agency that awarded the pension are paid for the entire period of accrual without limitation.



The instruction also establishes that deductions from pensions are made based on judicial decisions, rulings and sentences (in relation to financial penalties), execution orders issued by notaries, and other decisions and rulings the execution of which, under the legislation of the Kyrgyz Republic, is carried out in accordance with the procedure established for the execution of judicial decisions. Deductions from pensions may also be made by a decision of the agencies of the Social Fund to recover amounts overpaid to pensioners due to abuse on their part.

*The instruction on the procedure for centralized award and recalculation of pensions* establishes the procedure for centralized award and recalculation of pensions in the agencies of the Social Fund of the Kyrgyz Republic (hereinafter, the Social Fund).

The length of service is determined on the basis of the *regulation on the procedure for confirmation of the length of service for award of pensions*. Thus, prior to a personal registration, the length of service of a person is determined in accordance with the documents issued by their previous employers, educational institutions or in connection with other activities included in the length of service or by superior organizations, executive boards of associations, concerns and other voluntary associations, enterprises and organizations of the system where the specified activity was carried out, as well as by archives.

According to this regulation, in determining the right of a Kyrgyz citizen to a pension, including pensions on preferential terms and length-of-service pensions, it is necessary to take into account the length of service acquired in the territory of any sovereign state of the former Soviet Union before the Agreement on guarantees of rights of citizens of member states of CIS came into force, i.e. before March 13, 1992. It is also established that the length of working of Kyrgyz citizens for hire in other countries is determined according to documents legalized by the Ministry of Foreign Affairs of the KR.

According to the Agreement on guarantees of the rights of citizens of member states of CIS, a *regulation has been developed on the procedure for payment of pensions to citizens of the KR leaving (who left) for permanent residence in the RF*. This regulation governs the procedure for payment of state social insurance pensions (old-age, disability, survivor pensions) to citizens of the KR leaving (who left) for permanent residence in the RF until they have the right to be awarded and paid a pension at the new place of residence in the RF.

*A procedure to determine the indexation amount of delayed salaries, pensions, benefits and other social payments* has also been developed.

In the system of legislation there is a separate role for the construction of conceptual models in the migration policy influencing directly the provision of pensions for labor migrants from the KR. For example, a *concept of the state migration policy of the KR up to 2010* has been developed that established a system of objectives, strategic directions and priority tasks, forms and methods of their implementation in the regulation of migration processes and in related areas based on the analysis of stable trends, identification of relevant problems and forecast of social and economic consequences.

*A concept of the introduction of the accumulated part of the pension in the pension system of KR* has also been developed that makes it possible to replace the distributive pension scheme that is based on the principle of solidarity.

The legislation also uses *methodical instructions* on the procedure for recalculation of the insurance part of the pension and methodical instructions for the increase in the basic part and recalculation of the insurance part of the pension for the corresponding period.

### **General trends in the development of pension provision for Kyrgyz nationals working abroad**

The legislation of the KR does not create a separate concept for the development of the pension provision system for Kyrgyz citizens working abroad. A general concept has been developed and formulated of the pension provision in the KR, the implementation of which will make it possible for all citizens of the KR to exercise their rights to pension provision, including for those who work outside the country.

The provision of pensions in the KR is based on the personal responsibility of the insured and the strict correspondence of pension payments to amounts of insurance contributions and to pensionable service with the use of personalized registration and personal insurance accounts of citizens.

In order to increase the number of insured persons, a single database of taxpaying natural and legal persons, payers of insurance contributions and insured citizens has been created and is expanding.

A gradual transition from the pension award scheme to a personal accounts system is taking place. At the same time, it is expected that annual indexations will be carried out of contributions of insured persons according to the inflation level.

The necessity of transition to a model based on the long-term (40 years and more) accumulation of funds intended for the provision of pensions has been noted.

Pension accumulation funds are the property of employees and shall not be transferred to the budget.

It is expected that with the introduction of state pension insurance accumulation system for the period from 2040 to 2050 the payment of pensions under SP1 (which is calculated based on average salary and length of service prior to 1996) will cease completely, and the proportion of SP2 (which is calculated based on the notional accounts of citizens) will be reduced.

The need for the development of non-governmental pension insurance has been recognized. In future, it is planned the involvement of non-governmental pension funds as insurers in the system of mandatory pension insurance.

The provision of pensions for Kyrgyz citizens working abroad largely depends on the state migration policy of the KR, one of the directions of which is to form a regulatory and legal framework to make it possible for the migrants to exercise their rights, including the right to pension provision.

#### **External migration (Kyrgyz Law “On External Migration,” Ref. No. 61, of 17 July 2000)**

The regulation of external migration is based on the principles provided by the Constitution of the KR and by the generally accepted norms of international law in the area of external migration. Thus, the human rights to free choice of residence, to free choice of occupation and profession, to freedom of movement are provided in the KR. At the same time migrants are required to respect and observe the legislation of Kyrgyzstan.

Every citizen of the KR has the right to leave the KR and may not be deprived of this right. However, the right of a citizen to leave the country may be temporarily restricted, particularly, if there are "unsettled outstanding obligations" (Article 46, p.2 of the Law of the KR "On External Migration"). A failure to pay mandatory payments provided by the pension legislation of the KR may be an example of such an obligation.

Also, a citizen of the KR shall not be deprived of the right to enter the KR.

The citizens of the KR travelling to the RF for more than three months shall register their arrival within three days in diplomatic or consular missions of the KR in the RF.

Kyrgyz citizens travelling abroad are guaranteed protection of the Kyrgyz Republic in accordance with the KR legislation. For example, citizens, including those traveling abroad, are guaranteed social protection in their old age, in case of illness and loss of earning capacity, and the loss of a bread winner, and amount of pension is established in accordance with economic abilities of the state at a level not lower than subsistence wage established by law (Article 27 of the KR Constitution).

#### **External labor migration (Kyrgyz Law “On External Labor Migration,” Ref. No. 4, of 13 January 2006)**

Kyrgyz citizens who have reached the age of 18 shall have the right to be engaged in labor activity abroad. At the same time, Kyrgyz citizens may obtain employment abroad either through the assistance of the senders or privately.

Kyrgyz citizens traveling abroad for paid work shall have an employment agreement (contract) with a foreign employer and a visa of the state of employment (state of employment – a state in which a migrant worker is engaged in labor activity).

In accordance with the legislation of the KR, migrant workers in the state of employment are entitled to settle employment-related issues that are not contrary to the laws of both states. At the same time, migrant workers shall observe the Constitution and laws of the KR, as well as the rules of stay of foreign citizens in the state of employment.

Migrant workers are subject to state social insurance and are entitled to state insurance benefits and pension provision on the conditions provided by the legislation of the KR and international treaties.

#### **State pension social insurance system (Kyrgyz Law “On State Pension Social Insurance,” Ref. No. 57, of 21 July 1997)**

Insured citizens of the KR residing in the republic and paying state social insurance contributions on the grounds and conditions provided by the Law “On State Pension Social Insurance” shall be entitled to state social insurance pensions (hereinafter, pensions), unless otherwise stipulated by the agreements (treaties) on social security between the KR and other states.

Kyrgyz nationals shall have the right to voluntarily participate in non-governmental pension funds both independently and through the employer.

The total old age pension amount is calculated as the sum of the insurance part and the accumulated part.

The basic pension is set by the KR Government at the same rate for all forms of pension insurance and indexed in accordance with its decisions. The basic part of pension is the main instrument of social protection for pensioners. It is set in the amount of 200 soms and maintained further at a level no lower than 12 percent of the average salary. Since October 1, 2010 the basic pension rate increased to 1000 soms (Decree of the KR President of September 17, 2010, DP No. 187 "On the basic part of pension").

Men who have reached the age of 63 and women – 58 are entitled to the old age pension. Qualifying pensionable service for award of the full old age pension on a common basis is 25 years for men, 20 years for women.

The basic part of pension for persons who do not have pensionable service necessary for the award of the old age pension is calculated in proportion to pensionable service they have through multiplying the basic part of pension by the pensionable service the person has and through dividing by necessary pensionable service.

The insurance pension is established taking into account pensionable service and average monthly salary or accumulated insurance contributions. The pensionable service is calculated from the beginning of the period for which the first contribution was paid.

The old age pension is awarded for life.

#### **Non-state Pension Social Insurance System (Kyrgyz Law “On Non-State Pension Funds in the Kyrgyz Republic,” Ref. No. 80, of 31 July 2001)**

A non-state (private) pension fund (hereinafter “the Fund”) is a special organizational-legal form of non-commercial organization of the pension provision for citizens on a voluntary basis. One of the main functions of a fund is the conclusion of pension provision contracts.

When a fund carries out its activity monetary means are formed due to pension contribution, and part of income from their placement on the basis of an agreement between the Fund and the depositor. Under the terms of this agreement, the Fund is obliged to pay the depositor a private pension in line with the pension scheme he chose.

Depositors have the right to receive a pension, bequeath and transfer by inheritance the funds accumulated in the accounts. In doing so, depositors are obliged to pay timely contributions in the amounts and within a time limit provided by the pension agreement.

### **International agreements governing pension provision in case of external labor migration**

*Agreement on Guarantees of the Rights of Citizens of Member States of the CIS in pension provision*

Pension provision of citizens of the States Parties to the Agreement and members of their families carried out under the legislation of the State in whose territory they reside and at its expense. At the same time this Agreement applies to all types of pension provision of citizens that are or will be determined by the legislation of States parties to the Agreement.

Award of pensions to citizens of States Parties to the Agreement is carried out at their place of residence. To establish the right to a pension, including pension on preferential basis and pension for length of service, it is taken into account the length of service acquired in the territory of any of these states as well as in the territory of the former USSR for the time before entry into force of this Agreement. On the whole, the calculation of pensions is made from the earnings (income) in the periods of work that count toward length of service.

When a pensioner relocates within the CIS, the payment of pension at the previous place of residence ceases if the pension of the same kind is provided by the legislation of the state of the new place of residence of a pensioner.

States parties to the Agreement address issues not settled by agreement as well as connected with its use through negotiations. In doing so, the States parties to the Agreement commit themselves to take necessary measures to establish the circumstances that are critical for determining eligibility for pension and its amount.

*Agreement on cooperation of Member States of the Commonwealth of Independent States in Combating Illegal Migration*

Entry of citizens of a CIS state into the territory of another country also included in the Commonwealth is possible provided that they fulfill the requirements of its national legislation on the rules of entry into, residence in and exit from the country as well as international treaties to which the country is a party.

Member States of the CIS cooperate in combating illegal migration in the following main areas:

- migration control;
- keeping records of citizens illegally crossing the borders of states, illegally staying in the territories of parties to the Agreement as well as persons who are prohibited from entering one of territories one of the parties;
- development of a mechanism for deportation of illegal migrants; and
- exchange of information regarding illegal migration.

Illegal migrants discovered in the territory of one of the parties are subject to deportation to the state of departure in accordance with the legislation of the state of entry unless otherwise provided by international agreements.

*Agreement between the Government of the Russian Federation and the Government of the Kyrgyz Republic on labor activity and social protection of migrant workers (of March 28, 1996)* Under this Agreement, migrant workers are engaged in labor activity in the territory of the receiving state:

- 1) under civil law contracts, such as:
  - contract for performance of works (rendering services) – for a period of up to 1 year with the possibility of prolongation up to 1 year;

– other civil contracts – for a period of a contract with the possibility of prolongation up to one year;

2) under employment contract – for a period of up to 2 years with the possibility of prolongation up to 1 year, or for a period of up to 6 months one time during a calendar year, for seasonal works.

To address issues related to the implementation of the Agreement, a joint working group that meets alternately in the Russian Federation and KR has been created.

Depending on the situation in the labor market of the Russian Federation and the KR plenipotentiary authorities yearly determine by mutual agreement the annual number of migrant workers no later than November 30.

The parties annually exchange information on employers and customers of works (services) attracting migrant workers as well as data on the number and professional composition of the employees involved.

*International convention on the protection of the rights of all migrant workers and members of their families (of August 1, 2003 No. 180)*

For the purposes of the Convention, the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Thus, those of them who are documented or in a regular situation under the legislation and international agreements shall be considered as migrant workers and members of their families.

States Parties undertake, in accordance with international human rights instruments, to respect and to ensure the rights of all migrant workers and members of their families within their territory or subject to their jurisdiction.

Every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law.

Migrant workers shall enjoy treatment not less favorable than that which applies to nationals of the State of employment including social security provided that they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm.

Kyrgyz nationals and members of their families are also entitled to protection and assistance from the consular or diplomatic establishments of the KR. In particular, in case of deportation of a citizen of the KR he should be promptly informed of his right to assistance from the KR authorities.

Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State.

However, there are certain restrictions for any migrant worker. For example, a State of employment may restrict access to limited categories of employment and restrict free choice of remunerated activity. At the same time migrants who have received work permits may choose a remunerated activity subject to the condition that they reside lawfully in the territory of the state of residence.

In accordance with this Convention, migrant workers and members of their families may be deported from the country of stay only following a decision of the competent authority and in accordance with the law. Such a decision shall be notified to the deportees in a language they understand. All interested persons shall be provided with information of their rights before or at the very least during the rendering of a decision.

**State Pension Social Insurance in the Russian Federation (Federal Law of the Russian Federation “On Labor Pensions,” Ref. No. 173-FL, of 17 December 2001)**

Insured citizens of the RF residing in the RF shall be entitled to state social insurance pensions (hereinafter, pensions) unless otherwise stipulated by the agreements (treaties) on social security between the Russian Federation and other states.

Persons paying the state social insurance contributions under the grounds and conditions provided by the Federal Law “On Mandatory Pension Insurance in the Russian Federation” shall be entitled to a pension.

Foreign citizens, including citizens of the KR permanently residing in the Russian Federation, shall be entitled to a labor pension equally with citizens of the Russian Federation.

Citizens of the RF and foreign citizens, including citizens of the KR, shall have the right to voluntarily participate in private pension funds.

The total old age pension amount is calculated as the sum of the insurance part and the accumulated part.

The insurance part of the pension shall be determined by the Federal Law of the RF “On labor pensions in the Russian Federation” depending on the corresponding category of citizens. At the same time the minimum amount of the basic part of the pension in the Russian Federation is 2562 rubles.

The accumulated part of pension is calculated based on the amount of pension accumulations of the insured person recorded in a special part of his personal account.

Men who have reached 60 years and women – 55 years shall be entitled to the old age pension. The old age labor pension shall be awarded if there is at least five years of pensionable service.

The old age pension is granted indefinitely.

The insured person in the Russian Federation has the right, according to the procedure established by the Federal Law, to refuse to receive accumulated part of pension from the Pension Fund of the RF and, since January 1, 2004, transfer his accumulations to a private pension fund.

Pension provision in Russia is financed by the federal budget.

#### **1.4. Identified areas of concern**

Having studied the KR legislation, we can deduce that, as a whole, it does not have a separate concept of the development of the pension provision system for Kyrgyz citizens working abroad. At the same time, there is also no legal and regulatory framework governing relations in the provision of pensions for Kyrgyz nationals working in other countries without an appropriate permission.

Kyrgyz citizens working in the RF without an appropriate permission and not paying pension contributions on a voluntary basis in the RF have no legal personality in the RF, i.e. may not be participants of the system of formation of pension provision neither in accordance with domestic legislation of the RF nor with international agreements, which complicates the solution of issues connected with pension provision for them.

Also, since there is economic instability, when introducing the accumulation system there is a risk that working migrants will not be able to receive pensions even if they paid the funds required for future pension provision. At the same time due to the weak investment market in the KR there are no incentives for long-term allocation of investment resources in the form of contributions to the pension accumulation system.

Attempts to change the current situation have not led to serious changes due to lack of willingness and preparedness of the main participants of the pension accumulation system, including migrant workers, to implement reforms or promote their implementation.

There is currently no monitoring of labor migration aimed at establishing the actual purposes of stay of migrant workers in Russia, and, consequently, there are no attempts to form

an independent source to fund the provision of pensions for migrant workers who work in the RF having no length of service and not paying contributions for pension purposes. If a migrant worker has no length of service in the CIS countries, including the KR, and did not pay voluntary pension contributions he will not be entitled to pension.

Also, in Kyrgyzstan there is no state program to regularly inform Kyrgyz citizens of the opportunities of international labor market, changes in the legislation of the states of entry and stay in order to reduce illegal labor activity, and of consequences connected with illegal labor migration.

### **1.5. Conclusions**

Pension provision in connection with labor migration is an important and pressing issue for Kyrgyzstan, so a set of regulatory legal acts has been developed that operate currently, regulating legal relations arising in connection with pensions accumulated by Kyrgyz citizens, including citizens working abroad. However, there is no regulatory legal framework governing relations regarding pension provision for Kyrgyz citizens working abroad without appropriate permission.

To solve the existing problems, Kyrgyzstan takes part in the regulation of illegal labor migration and pension provision for citizens working in different countries by joining the relevant international treaties. At the same time an insignificant attention is paid to bilateral treaties, the application of which makes it possible to take into account peculiarities of the legislation of each state and timely react to changing conditions.

Also, a general concept on pension provision has been developed in Kyrgyzstan, however, this concept does not take into account the peculiarities of pension provision for citizens working abroad without appropriate registration.

The pension provision for Kyrgyz citizens, including citizens working abroad, depends on pensionable service that accumulates only when insurance contributions are officially paid. Thus, the pensionable service of “illegal aliens” is not formed and therefore these persons cannot rely on pension provision in the future.

There is also a non-governmental pension insurance system in Kyrgyzstan, however, currently it is not very popular mainly due to the unstable economic and political situation in the KR. In our opinion, possibilities of this system have not been fully appreciated yet, including in relation to addressing pension provision for illegal migrant workers.

It is obvious that problems connected with the existence of illegal labor migration directly depend on the migration policy of the KR, which causes an acute need to coordinate the work of all state bodies participating in the regulation of migration processes.

Problems related to illegal labor migration impact in a greater degree on those citizens of the KR who have no pensionable service acquired in the territory of any of the CIS countries and in the territory of the former USSR as a whole. In this connection it is proposed to conduct an evaluation of the quantity of such citizens and determine the volume of financing necessary to provide them with pensions.

It should be noted that there are strict restrictions on a time limit of labor activity in the RF, with the expiration of which a legal migrant worker becomes illegal. The decrease of such restrictions will lead to the reduction in the number of “illegal aliens,” make it possible to form a reliable registration database of migrant workers, and help forecast more precisely the expenses of the KR as regards their pension provision.

In case a migrant worker is “legal,” he has the right on the same decent treatment as citizens of the RF, including social provision. If a citizen of the KR works in the RF without an appropriate permission and does not pay voluntarily pension contributions in the RF, he may not receive a pension neither in accordance with the internal legislation of the RF, nor international agreements.

The wish of citizens to participate in the pension system in many respects depends on the economic stability in the KR and the reliability of its financial system, and also on the conduct of

active reforms in the system of the pension provision aimed at the creation of appropriate incentives for its development. At the present time there is a slow-down in carrying out active reforms in the system of the pension provision. Moreover, there is no complex mechanism for the registration of migrant workers in the KR.

On the whole, the pension legislation of the RF is based on the same principles and approaches as used in the KR. A peculiarity is that in the RF the pension fund is formed from the federal budget means, while in the KR pension are paid from off-budget means of the Social Fund of the KR. Moreover, the size of pensions in the RF depends not on the salary received, as in the KR, but on the size of social contributions transferred to the account of a natural person. Also, unlike of the KR, in the RF there is a minimum length of service (5 years) that gives the right to receive an old age pension.

### **1.6. Recommendations**

Taking into account the analysis of the legal and regulatory frameworks in the Kyrgyz Republic and Russian Federation governing the relations in the area of pension provision for labor migrants, we have developed the following recommendations. It is our belief that if followed, these recommendations will help mitigate the adverse effects of illegal labor migration upon social benefits and pension provision for Kyrgyz nationals working abroad.

1. We recommend that approaches and principles be developed that would allow to formulate one concept of the Kyrgyz Republic as regards the involvement of Kyrgyz nationals working abroad in the pension provision system. This concept should be developed with the participation of all government stakeholders and non-commercial organizations.
2. We recommend that the applicable legal and regulatory frameworks of the Kyrgyz Republic and the Russian Federation be analyzed in order to establish what legal and regulatory acts should be adopted to reduce illegal labor migration and create proper conditions for a secured pension provision for Kyrgyz nationals working abroad.
3. We recommend that a program be developed whereby Kyrgyz nationals working abroad will be informed about the benefits of participating in the pension provision system. Such persons should be able to access any information about regulatory acts and decisions online, which will help them choose the most appealing option for participating in the forming of their pensions.
4. It is important to develop a system for recording Kyrgyz nationals going abroad in order to engage in working activities.
5. We recommend that a program be developed that will help to form an independent reserve source for financing pensions of labor migrants working in Russia who have no record of work and who pay no contributions to the pension fund. One of the ways of creating such a source can be using a combination of both state and private pension systems. For example, there is a possibility of transferring the accumulated part of pensions to private pension funds, etc.
6. It is important to develop a program which, if implemented, will help take into account the situation of each labor migrant from Kyrgyzstan, his/her anticipated type of activities and the region where he/she is planning to work, etc. As it is possible to work with each participant personally within the framework of a private pension system, a preference program may be developed for the participants of such a system. This will allow involving those working, including illegal aliens, in the pension insurance system.



7. The solution of problems related to the existence of illegal labor migration is contingent directly on Kyrgyzstan's migration policies. In this regard, a concept on reducing the number of illegal aliens may be developed by minimizing restrictions prescribed in the legislation of the Russian Federation in relation to labor migrants from the Kyrgyz Republic.
8. It is important to pay a particular attention to signing bilateral international agreements, because in reality such agreements help take into account specific features of each state, and monitor their implementation.

## **2. Access of Labor Migrants from Tajikistan in Russia to Pension Accumulation System**

### **2.1. Introduction**

Tajiks are one of the largest communities in the Russian Federation. According to the data of the Federal Migration Service of the RF, 929 000 citizens of Tajikistan<sup>12</sup> entered Russia in 2009. 762 000 Tajik citizens entered the RF for eight months of 2010. According to forecasts of the FMS of the RF, by the end of 2010, the number of Tajik citizens who entered the RF can make up about 1 million people. Because part of migrant workers (35–40%)<sup>13</sup> is not the seasonal labor force and has a regular whole year's work, the overall number of migrant workers from Tajikistan in the Russian Federation can make up 1.4–1.5 million people<sup>14</sup>.

The main part of migrant workers from Tajikistan is illegal migrants. In 2009, 213 000 people or 23% of the overall number of migrant workers who entered Russia were officially employed. For eight months of 2010 only 17%<sup>15</sup> of all migrants were officially employed. Thus, of the overall number of migrants 77% remained illegal in 2009, 83%<sup>16</sup> – in 2010. This situation can be assessed as exclusively negative, since illegal migrants are cruelly exploited by criminal structures, representatives of the law enforcement agencies and employers.

Although the mass external labor migration (ELM) from Tajikistan began as early as in the mid-nineties of the last century, one cannot say that this process is being managed. Up to now it is of a spontaneous nature. The level of manageability of the ELM is extremely low and does not cover even 1% of the overall number of migrants.

Such a situation exerts an extremely negative influence on the social protection of migrants. Basically, the overwhelming majority of migrant workers in the RF are completely unprotected. Recent events (December 0f 2010) in Moscow, Saint Petersburg and other cities of Russia showed that the problem of social protection of migrant workers against the background of the growing nationalistic and fascist attitudes in this country becomes more and more acute. Moreover, migrants from Tajikistan and other republics of Central Asia are used largely for hard and harmful work. They perform the most dangerous work, but, at the same time, receive extremely low salaries insufficient to keep their families. All of this makes it important to create a harmonious and flexible system of social insurance of migrants and, in particular, to provide access for this category of citizens to pension funds.

### **2.2. Situation overview**

Pension provision for migrant workers from Tajikistan who work in the Russian Federation is one of the most painful and difficult issues. On the insistence of the Government of

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<sup>12</sup> Data of the Migration Service of the RF.

<sup>13</sup> Data of investigation performed by the author.

<sup>14</sup> Calculations performed by the author.

<sup>15</sup> Data of the Migration Service of the MIA of Tajikistan.

<sup>16</sup> Calculation performed by the author.

the Republic of Tajikistan this issue is constantly discussed during negotiations between the relevant delegations of the two countries. The Tajik government would like migrant workers from Tajikistan who have been working and are working in Russia for a long time to have guaranteed sources for financial provision of their lives when they reach the pension age.

A certain action is taken in this direction; however, it is not full and far from being adequate for modern needs and established international practice. A State migration fund for payment of social subsidies to migrant workers has been created in Russia. It has been planned that pensions should also be paid from this fund. However, from their earnings migrants hardly pay any contributions to this fund that by their nature are accumulated.

For the time being this system does not work properly, since its mechanism is not adjusted and migrant workers do not understand it. The latter are not sure that when they return home the means from this accumulation fund will be regularly transferred to them in the form of pensions, since there are numerous cases when persons with double citizenship being pensioners of the RF and residing outside Russia in other post-Soviet states have to spend a lot of money to enter the territory of Russia to receive their pensions.

From November 30 to December of 2010 in the city of Dushanbe took place the negotiations between participants of the joint working group of the Russian Federation and the Republic of Tajikistan on the regulation of labor migration. The head of the Russian delegation, deputy-chairman of the FMS A. Kuznetsov, responding to the request of the Tajik side to discuss the issue of the pension provision insisted that the discussion of this issue be postponed to the next meeting of the working group. Instead he proposed to discuss one of the provisions of the draft law of the RF on readmission that says that the forced sending of illegal migrant to the home country should be paid from the budget means of the respective states. Naturally, the Tajik side rejected this provision directed against the interests of the countries exporting workforce and migrants themselves. Instead the Tajik side presented suggestions on facilitating legalization of migrant workers, which is the fundamental principle of the creation of an effective system of social insurance, including the pension provision for migrants coming from Tajikistan.

In early December of 2011, during the meeting with K.O. Romodanovskiy, the chairman of the FMS of the Russian Federation, the president of Tajikistan Emomaly Rakhmon brought up the issue on the creation of legal mechanisms of the pension provision of migrant workers, their social insurance and transfer of the corresponding sums to pension funds of the Republic of Tajikistan. The head of FMS noted that currently this issue was being developed by responsible state organizations of the RF and would be solved.

Back in 2007, the Government of the RT submitted to the Government of the RF a Project Agreement between the Government of the Republic of Tajikistan and the Government of the Russian Federation on cooperation in social insurance. However, the consideration of this project by the Russian Government is postponed indefinitely. As of now the situation is that a huge number of migrants return home because of different diseases caused by adverse climatic conditions of Russia, harmful work conditions, injuries suffered at work or delivered by members of nationalist organizations. These people receive free treatment at health facilities that are funded from the budget of the RT. Only those persons receive pensions who are citizens of Russia but reside in Tajikistan. In this case we are talking about those who receive pensions from budgetary funds, not from accumulation funds.

As of now migrant workers are not covered by the laws on pension provision neither in the Russian Federation, nor in Tajikistan. Even those Tajik migrants who have high earnings in Russia when they return to Tajikistan are left here without reliable sources of means for existence (meaning those who reached the retirement age).

Currently, the Russian Federation has created a peculiar system of "legalization" of migrant workers: they may be legalized by paying 1000 rubles for the acquisition of an appropriate patent. However, this system has no relation to social insurance, particularly, health care and pensions. Neither the employers nor the migrants themselves bother to open accounts in certain pension funds in Russia or Tajikistan, and do not transfer money to accumulation funds.

Numerous Tajik communities that exist in major cities, provincial and territorial centers of Russia do absolutely nothing to expand the access of migrant workers to the pension accumulation system. Moreover, migrants themselves do not have sufficient information of the conditions of functioning of the social provision accumulation system and do not seek such information. Lack of interest of migrants in transferring funds for future pensions is caused by, firstly, low wages of migrants and, consequently, low average amounts of remittances (according to recent studies – \$145 per month for a sender i.e. a migrant worker)<sup>17</sup>. Second, the average age of migrant workers is 31, there are a lot of comparatively young people, and they tend to care less concern less about future pensions and possible hardship in their old age. And, thirdly, this is connected with the lack of effective practical mechanisms for accumulation of means in pension accumulation funds and social insurance funds and the lack of mechanisms for relevant payments.

In Tajikistan, there is already a functioning system of private and state agencies providing assistance to Tajik citizens in obtaining employment abroad. There are more than twenty such agencies. They deal with the organized sending the work force to the RF, RK and some Arab countries as well. However, in the agreements concluded between them and their partners in these countries, there is no clause regarding the provision of assistance to migrant workers in accumulating pensions, social and health insurance. A conversation with migrant workers revealed that they viewed the organized employment as a condition of an automatic extension to them of measures for social protection that apply in the countries that receive foreign work force. The employment agencies do not reveal the fact that in the cross-country aspect in the post-Soviet space provision of pensions and social insurance for migrant workers are not worked out.

As for health insurance, the situation also remains uncertain. Russian medical institutions do not recognize certificates issued to those leaving Tajikistan in one of the five medical examination centers and it minimizes the effectiveness of health insurance policies issued to legal migrant workers in Russia.

### **2.3. Current legislative practice**

Legislative practice in social protection and provision of pensions for migrant workers is inadequate and does not meet international standards.

In the interstate aspect the following legislative acts are in force:

- Agreement on Guarantees of the Rights of Citizens of Member States of the CIS in pension provision (signed by Member States of the CIS on March 13, 1992);
- Agreement on Cooperation in labor migration and social protection of migrant workers (signed by Member States of the CIS on April 15, 1994);
- Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms (signed by heads of Member States of the CIS on May 26, 1995).

Bilaterally, the legislative practice is represented by only one document – the Agreement between the Government of the Republic of Tajikistan and the Government of the Russian Federation "On labor activity and protection of the rights of citizens of the Republic of Tajikistan in the Russian Federation and citizens of the Russian Federation in the Republic of Tajikistan" (signed on October 16, 2004).

As already noted, another document that in a greater degree specifies the above-mentioned agreement – Draft Agreement between the Government of the Republic of Tajikistan and the Government of the Russian Federation on cooperation in Social Insurance presented by the Tajik side as early as 2007 has not yet been considered by the government of the RF and is postponed for future consideration.

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<sup>17</sup> Umarov Kh. Tajik Labor Migration During the Global Economic Crisis: Causes and Consequences, IOM, Dushanbe, 2010, p. 24

In all documents that are currently in force the issue of access of citizens to pension accumulation systems is formulated in the most general form. Unfortunately, neither the governing bodies of the CIS nor the Governments of Tajikistan and Russia show interest in creating mechanisms for implementation of the aforementioned documents. The last is possible through the development and approval of a set of specific practical steps for each agreement regarding implementing each of their provisions related to pensions for migrants. And before the creation of such mechanisms it is necessary that in every country the corresponding country laws or government regulations be prepared, approved or passed on the basis of signed and ratified multilateral and bilateral agreements. Only after that it is possible to begin to form mechanisms for implementing inter-country agreements, conventions, laws and other documents.

Provisions related to pensions for migrant workers in the above documents are not only of a general nature, but also are declarative. They do not contain clauses on the formation of mechanisms for the implementation of the provisions on pensions for migrants which would be supplemented by appendixes that define the timeframe and executors of provisions of these agreements, regulations, instructions, etc. Mechanisms for implementation of main provisions related to access of migrant workers to the pension accumulation system should be manifested in the creation and operation of joint working groups to meet the requirements of agreements, laws and relevant regulations. Mechanisms should be developed for accumulation of pension contributions in the relevant financial institutions, mechanisms for creating personal accounts and for transferring sums from them received from the recipient country of foreign workforce (RF) to the workforce exporting country. Also, the issue of transparency of information regarding financial status and operation of pension funds, savings banks and other financial institutions where the funds transferred to personal accounts of migrant workers are accumulated is very important. The latter should have all the information on the scope of application of their money, on the profitability of such application, on the absolute amount of dividends, growth of savings and the financial situation of the institution.

It seems necessary to continue to improve the draft joint documents which the Tajik side is going to present to the Russian side for discussion and adoption. In these documents (and perhaps in the appendixes to the draft joint document as well) such issues as the creation of transnational or joint pension funds which could expand their activities both in the territory of the Russian Federation and in Tajikistan should be reflected. In addition, it is necessary to organize extensive explanatory work in every populated place in Tajikistan to convince members of the households of migrant workers that it is of vital importance to transfer part of domestic savings to pension funds. This will allow them to have reliable sources of guaranteed funds for existence and use funds accumulated in pension funds in case of emergency. It is necessary that banking institutions that receive remittances of migrant workers be involved in this work, since by regular giving out cash to the families of migrants they have already managed to win a certain confidence and favor of the latter.

In addressing the issue of pension provision for migrant workers there is a big role to play for communities of Tajik migrants in the Russian Federation. In recent years, they have won authority not only at home but also among the general public in the countries receiving Tajik migrant workers. The leadership of communities can carry out effective explanatory work not only among the migrant workers themselves, but also among businesses so that they may recruit foreign workers on a legal basis and regularly transfer social taxes to the budget of the RF. Involving, through diasporas, employers and pension funds working on the basis of the accumulation principle in awareness raising campaigns seems no less important.

#### **2.4. Identified areas of concern**

Of the total number of Tajik workers who are in labor migration, according to our studies, 95.4% work in the Russian Federation. It makes up about 1.3 mln people. 39.3% of the total number of migrant workers have been migrants from 5 to 10 years, from 10 to 15 years – 4,8% of this contingent of workers. Studies have shown that 79.3% of migrant workers send on

average per month from 150 to 1000 US dollars<sup>18</sup> to their families. Thus, the potential of accumulation of pensions by migrant workers from Tajikistan can be assessed as very significant. According to our study, the total amount of remittances of migrant workers (remittances + *hawala* + sending money through relatives, couriers, etc.) in the pre-crisis 2008 was 3.5 billion U.S. dollars. At the same time the wages fund in Tajikistan in the same year amounted to 1.7 billion U.S. dollars, or 48.6% of the total remittances of migrant workers, or 32.7% of total labor income of the population<sup>19</sup>. This means that, subject to the transfer of potential pension accumulations of migrant workers to the pension fund of the country an average monthly pension would increase by more than 2 times.

However, calculations can only indicate such possibilities. In reality, the solution of the problem remains very complicated and is unlikely to occur in the next 5 years. As previously noted, neither from Tajikistan, and of course nor from Russia can one feel a strong political will for addressing this problem.

In Tajikistan, the main obstacle to solving this issue is the absence of institutions interested in it. When the average monthly pension in the country remains extremely low (25.6 US dollars compared with 31.5 dollars in Kyrgyzstan, 62.2 dollars in Moldova, 125.7 dollars in Kazakhstan, 154.7 in the Russian Federation, 177.0 U.S. dollars in Belarus)<sup>20</sup>, the pension fund is very low (18 mln U.S. dollars)<sup>21</sup> and it would seem that republican bodies should make every possible effort to increase access of migrants workers engaged in labor activity in Russia to the pension accumulation system. However, there are a number of circumstances that prevent state agencies and state bureaucrats to begin actively addressing this issue.

The first circumstance is that even now no less than 70% of Tajik migrants are *de facto* illegal, since they do not work under employment agreements with employers and are not members of trade unions. *De jure*, they are considered legal migrant workers as in the Russian Federation a migrant who paid 1000 rubles and received a patent in the FMS is considered legal. Such “legalization” has no effect on the situation with the accumulation of pensions by migrants. Such “legal” migrants are still the objects of harsh exploitation by employers and representatives of power structures, they are not covered by labor legislation of the Russian Federation, they do not avail themselves of health insurance. Moreover, state bodies of the Russian Federation do not show absolutely no interest in solving this issue, since they know that it requires to solve the issue of actual legalization of foreign labor force, and this is extremely difficult for them too. These bodies have no real motivation and hence no interest in both real legalization of migrant workers and creation of mechanisms for formation of the pension accumulation system for this category of workers.

The problems are complicated by the fact that within Tajikistan itself the enactment of the Law “On Insurance and State pensions” that was adopted by the Parliament (Majlisi Namoyandagon) last year. This law was supposed to come into force on January 1, 2011. However, according to the Division of Pension Policy of the Ministry of Labor and Social Protection of Tajikistan, the entry into force of this law is postponed to January 1, 2013. This delay is connected with limited possibilities of the state budget of the country. It is paradoxical that it was the Ministry of Labor and Social Protection of Population that requested the Government of Tajikistan to postpone the entry into force of the law, not the Ministry of Finance. This once again confirms our assumption that relevant ministries have low interest in addressing the problems of pension funds, including the access of migrant workers to the pension accumulation system. The Law of RT “On Insurance and State Pensions” provides an

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<sup>18</sup> Umarov Kh. Tajik Labor Migration During the Global Economic Crisis: Causes and Consequences, IOM, Dushanbe, 2010, p. 51-53

<sup>19</sup> Statistical Yearbook of the Republic of Tajikistan. Dushanbe, 2009, p. 11

<sup>20</sup> Tajikistan and CIS countries. Dushanbe, 2009, p. 78

<sup>21</sup> Statistical Yearbook of the Republic of Tajikistan. Dushanbe, 2009, p. 405

opportunity for migrant workers to participate in the pension insurance system. The Law stipulates that this category of workers may insure a certain part of their earnings.

Unfortunately, in this regard, there is no proper coordination between bilateral and international or regional agreements and the rule of international and regional regulatory legal acts is not observed in practice at all. For example, the CIS member states back in 1992 signed an Agreement on Guarantees of the Rights of Citizens of Member States of the CIS in pension provision, and in 1994 – an Agreement on Cooperation in labor migration and social protection of migrant workers. Further, in fact, no concrete steps were taken. Within the implementation of these documents bilateral documents were not signed that, taking into account the specific situation in the sphere of inter-country movement of the labor force, would cover such issues as social insurance of migrants, their medical service in the recipient country, would provide sanctions for those employers who hide the real number of foreign labor force the use and do not transfer certain amounts to the corresponding pension and insurance funds with the purpose of social protection of migrants, including medical care. It is this circumstance that is the cause of high mortality among migrant workers from Tajikistan.

Between 2005 and 2010 Tajikistan annually received from 550 to 650 units<sup>22</sup> of the so-called "cargo No. 200", i.e. coffins with dead bodies. According to studies, 84% of deaths among this contingent of population are caused by the absence of adequate treatment in the recipient country, i.e. in Russia. The latter is due to actually illegal situation of migrant workers and legal impossibility to transfer money to the State Migration Fund of Russia to pay social grants to migrant workers.

Both Russia and Tajikistan long time ago, back in the 1990s, had to sign the relevant agreements and begin to create mechanisms for operation of pension accumulation funds for migrant workers. Such mechanisms should include:

- a) appropriation of funds for social insurance, including health insurance that will be used exclusively in the recipient country. These funds should be sufficient for the implementation of preventive and curative measures to maintain physical and mental health of migrants who work in Russia;
- b) transfer of another part of those funds to pension accumulation funds and social insurance funds of the RT. Organization of work in order to use the above-mentioned mechanism appears to be very complicated. The situation is exacerbated by the fact that migrant workers themselves are not aware of the need for this because they have no experience of participation in such schemes and believe that the attempts of Tajik bureaucrats and regional communities to create such mechanisms are not sincere and reflect only the interests of the ideologists of creation of the said mechanisms.

It should be emphasized that the previously mentioned agreements and conventions need mechanisms for implementation. (With regard to the laws this mechanism is understood to mean subordinate legislation.) This is about instructions, all sorts of regulations, road maps, guides, etc. It is recognized in Tajikistan that there is a serious lag in the development and implementation of those documents that together constitute the mechanism for the implementation of laws, agreements, conventions and other fundamental documents. This can lead to an increase in inertial force not only in the preparation and signing of the aforementioned bilateral agreements between Russia and Tajikistan, but also in creation of mechanisms for their implementation.

The bad thing is that international and regional and also bilateral agreements that regulate the processes of labor migration do not contain norms and definitions of social protection mechanisms. This fully applies to the creation of pension funds for migrant workers and of

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<sup>22</sup> Umarov Kh. Tajik Labor Migration During the Global Economic Crisis: Causes and Consequences, IOM, Dushanbe, 2010, p. 22.

course requires the most rapid development and introduction of mechanisms for implementation of fundamental documents on social protection of migrant workers.

All the above suggests that the relevant agencies of state power in Russia and Tajikistan should not be relied on when addressing the issue of access of migrant workers to the pension accumulation system. More correct way is the mobilization of efforts of civil society organizations, trade unions and the business community in Tajikistan in order to accelerate the solution of this issue. The said social institutions are able to exert pressure on the responsible state agencies of Tajikistan so that they accelerate the signing and approval of the entire package of necessary fundamental documents. They can also establish contacts with adequate organizations of civil society in Russia, to lobby with them in the government, legislative bodies and business associations of the Russian Federation the acceleration of preparation and signing of necessary documents creating legal and regulatory framework for pension provision of migrant workers. Moreover, they can develop by attracting grants from international organizations all necessary documentation forming the mechanism for implementation of laws, agreements, conventions, etc. on access of migrant workers to the pension accumulation system.

However, those actions are not enough to solve the above problems. It is that the system of mandatory formation of pension funds for this category of workers (migrant workers) cannot be justified. Russia and Tajikistan are democratic countries and will not use coercive methods of formation of pension and insurance funds. In the post-Soviet time the development of accumulation systems of pension provision have a real chance. They are increasingly replacing old systems based on mandatory contributions.

To address this problem, civil society organizations in Russia and Tajikistan should contribute to the creation of trade unions of migrant workers. In doing so, they may rely on both trade union organizations across industries and regions, and communities of Tajik migrants themselves. The most desirable option is self-transformation of local and regional communities to trade union organizations. This requires a huge organizational and technical work that implies the transformation in every city and every region where there is a certain concentration of Tajik migrant workers. Trade union organizations of Tajikistan do not have the necessary financial and organizational resources to implement this idea. Organizations of civil society in Tajikistan do not have them either. In recipient countries of migrant workers neither trade unions nor civil society organizations are able to do similar work. Thus, the ideologists of the described idea should turn to international organizations, including NGOs, to obtain a grant for advancement of this work.

Only the establishment of migrant trade union organizations makes it possible to move from the formal legalization of migrant workers to real legalization. The communities transformed to trade unions of migrant workers themselves are able to provide ubiquitous practice of concluding employment agreements between migrant workers and employers, to take measures to expand coverage of migrants with mandatory health insurance and provision of access for migrants and their families (if members of their families are also in the Russian Federation) to medical services in the country of stay. There is no doubt that such self-organization of migrant workers in Russia will contribute to a dramatic reduction of social risks, such as, in particular, labor injuries, loss of health due to harmful working conditions, early disability and in many cases – death. The proposed mechanism will create more favorable organizational and ideological possibilities for voluntary participation of migrants in the pension and social insurance system.

## **2.5. Conclusions**

1. Neither Tajik nor Russian authorities exhibit the proper level of interest in finishing up all work related to signing the required package of bilateral agreements on social protection of migrants as soon as possible, which also includes the establishment of pension accumulation and insurance funds for this category of Tajik nationals.

2. Even if this process is expedited, the issue of labor migrants gaining access to pension accumulation system will remain unsolved in the near future due to a plethora of serious obstacles. These include a high level of illegal labor migration, severe fragmentation of Tajik communities and contradictions between them, the need for more time to launch a mechanism for signing bilateral and multilateral agreements, the difficulty of dividing pension accumulation and insurance funds into various parts that should function on the territory of the Russian Federation and Tajikistan, etc.
3. The international and bilateral agreements on regulating labor migration and social protection of migrants that have been signed are imperfect, and they don't contain the norms of social protection, and fail to identify its mechanisms.
4. Due to insufficient finances in the state budget of Tajikistan, the process of giving effect to the law on insurance and state pensions passed by the Parliament, as well as all relevant by-laws, has been postponed.
5. The role of civil society organizations and trade unions in both countries may be crucial for expediting the solution of this issue. They have all necessary means for exerting pressure and lobbying the interests of labor migrants in relevant government institutions of both countries.

## **2.6. Recommendations**

1. It is imperative that an interagency working group be established as soon as possible that would be comprised of experts from relevant ministries and agencies in order to find ways to expedite the signing of the entire agreement package on social protection for labor migrants, and their access to pension accumulation system.
2. The same working group that can facilitate government institutions in their work should be established from among representatives of trade unions and civil society organizations, which may employ such levers as political pressure and lobbying.
3. It will be meaningful to approach international organizations on the issue of financing a separate project on identifying the capacity of Tajik communities in the Russian Federation in order to figure out what they can do to increase access of labor migrants to the pension accumulation system. Another option may be the launching of such a project all throughout Central Asia.
4. It is important to carry out a pilot study in a number of regions of the Russian Federation in terms of transfiguring migrant communities into migrant trade unions. This issue should, preliminarily, be discussed with experts and specialists in trade unions, Ministry of Labor and Social Protection, as well as the Republican Migration Service. It is also crucial to know the opinion of those in charge of various communities.
5. Specialists and scholars should work out the issue of mechanisms for forming pension accumulation funds for labor migrants, and distributing such funds between the Russian Federation and Tajikistan taking into account all issues related to such distribution.
6. It is important that finances be allocated for raising awareness among labor migrants both in Tajikistan and the Russian Federation about the significance of establishing pension



accumulation funds for them. Talks should be held with the existing pension funds in Russia for them to raise awareness among labor migrants.

7. It is necessary to analyze the possibilities of the Russian State Migration Fund as regards social subsidies for labor migrants, pension accumulation for this category of persons, and the distribution of finances between the Russian Federation and Tajikistan depending on the actual situation.
8. It is important to ruminate over the issue of establishing a pension fund for labor migrants in Tajikistan that would be functioning on the basis of accumulation. This issue should be discussed broadly in the media with the participation of scholars, civil society activists, Tajik Ministry of Finance, pension funds and insurance companies.
9. Civil society organizations should carry out a series of meetings with heads of *jamoats*, committees for *jamoat* support and *mahallya* councils on raising awareness among migrant household members in order to convince them that there is a need to contribute some of their regular remittances to pension accumulation funds and opening personal accounts in such funds.
10. It is important to encourage Tajik migrant communities to work with businessmen and employers, labor migrants and trade unions in order to raise awareness about contributing some money transferred by labor migrants to pensions funds in the Russian Federation, which can be later transferred to relevant pension funds in Tajikistan, if such migrants decide to return to their home country for the rest of their life.

### **3. Access of Labor Migrants from Uzbekistan in Russia to Pension Accumulation System**

#### **3.1. Introduction**

Economic reforms aimed at transitioning to market-based economy that have been carried out over the last twenty years enabled full-scale changes in all areas of Uzbekistan's national economy. Thanks to creating a new market-based institutional structures for management of national economy and the formation of free market mechanisms Uzbekistan today may consider itself a full member of the world economic community, seeking to further improve and liberalize economic relations in other spheres of activity. Among them the main priority is social policy of the state aimed at further increasing welfare of the population, improving and stabilizing income of citizens and providing employment. However, structural changes in the national economy do not always have a positive influence on employment level and on a derivative of it – unemployment. Unemployment, especially among the young rural population, causes a constant concern of the leadership of the country. Although a “State program of employment” adopted in Uzbekistan in 2007 contributed to maximization of coverage of the population with employment, yet could not solve all the issues of employment of the population. This forces the mobile part of Uzbek citizens to immigrate to the Russian Federation, Asian countries and the Arab world.

Most of migrant workers of Uzbekistan who went abroad are now in the Russian Federation. Why are business structures and some state structure in the Russian Federation interested in using migrant workers from Uzbekistan? In our opinion, this interest can be explained by two basic reasons:

1. Most of the migrants go to Russia using informal/illegal channels, thereby depriving themselves of state support and having no access to social assistance whatsoever. Employers are perfectly aware of the vulnerable status of illegal migrants and often treat them ruthlessly and exploit them.

2. Since most of the migrants come from rural areas, their level of proficiency in Russian is often quite low, which in turn makes them an attractive target for the police which uses the legal illiteracy of migrants in their own selfish purposes practicing extortion.

According to the RosStat (Federal State Statistics Service; see table 1), by the end of 2010 the number of officially registered migrant workers from Uzbekistan working in Russia made up about 511.5 thousand people. This is 31.2% of all officially registered migrant workers working in Russia who came from the CIS countries. The share of migrant workers from Uzbekistan who work officially – of overall number of migrants from Uzbekistan residing in Russia – is 41.3%, i.e. of 1 240.0 thousand people who came from Uzbekistan, 728.5 thousand people continue to work illegally (without official employment contracts).

**Table 1. Number of labor migrants in Russia<sup>12</sup>**

	2010		2009 (for comparison)	
	<i>thousand people</i>	<i>in per cent compared to 2009</i>	<i>thousand people</i>	<i>in per cent compared to 2008</i>
<b>Total</b>	<b>1640,8</b>	<b>73,8</b>	<b>2223,6</b>	<b>91,7</b>
<b>From CIS member states</b>	<b>1246,9</b>	<b>75,8</b>	<b>1645,1</b>	<b>92,6</b>
including:				
Azerbaijan	40,3	66,5	60,7	79,5
Armenia	59,8	72,9	82,0	81,9
Kazakhstan	8,3	73,9	11,2	107,9
Kyrgyzstan	117,7	75,4	156,1	84,5
Republic of Moldova	72,2	70,9	101,9	83,5
Tajikistan	268,6	74,8	359,2	91,8
Turkmenistan	1,2	51,6	2,4	78,6
Uzbekistan	511,5	76,8	666,3	103,7
Ukraine	167,3	81,5	205,3	83,7
<b>From other countries</b>	<b>392,0</b>	<b>67,9</b>	<b>577,3</b>	<b>88,9</b>
including:				
Vietnam	46,0	47,2	97,5	102,4
China	186,5	69,1	169,9	95,8

Thus, 800 thousand Uzbek citizens still work at their own risk without any kind of guaranteed social protection, not having a good and properly secured pension upon retirement. Therefore, in this situation, despite the measures taken by the state agencies of Russia and Uzbekistan, the following problems remain:

- migrant workers, as a rule, are not registered in the relevant state agencies of Russia and Uzbekistan;
- migration is of chaotic and unregulated nature;
- detection of seasonal and constant migrants seems to be difficult.

Therefore, although there is an agreement on this issue concluded at the level of governments of Russia and Uzbekistan, the problem of social protection and pension provision of migrant workers from Uzbekistan remains unresolved. The government of the RF decided to create a State migration fund to pay future social subsidies to migrant workers, including pensions, but in the organizational-legal and financial aspect of this issue is far from being solved positively. Therefore, the issue of social protection of migrant workers and, what is more

<sup>12</sup> Federal State Statistics Service of the Russian Federation, <http://gks.ru/wps/wcm/connect/rosstat/rosstatsite/main/>

important, provision of pensions for them in the short term needs urgent solution by the governments of Uzbekistan and Russian Federation.

It is necessary to substantially revise the current situation as well as use new mechanisms that would correspond to the reality and needs of migrant workers themselves.

The goals of this report are as follows:

- 1) analysis of the existing legislation related to access of migrant workers to their pensions from the state;
- 2) development of policy recommendations aimed at improving the situation of migrant workers.

### **3.2. Situation overview**

Long before the new are across the territory of Uzbekistan, as in all Central Asia, there were migration flows of the largest continent of the world – Eurasia – from east to west, from south to north. It is possible to notice certain cycles in them connected with economic, political and demographic processes taking place in the world and individual countries.

With independence and transition to market relations, broad possibilities appeared for migration exchange between our republic and the outside world. President of Uzbekistan Islam Karimov when determining top priorities in implementing economic reforms for 2005–2008 described liberalization of economy and increase in incomes of the population as fundamental. Liberalization of economy and expansion of the external economic relations became a reliable basis for equal participation of Uzbek manufacturers in the world market the part of which is labor resources. Labor migration concentrates in itself many potential sources of economic benefits and risks so the main goal of the state in solving this problem should be attainment of a positive balance of migration in favor of social and economic priorities.

The Regulation “On improvement of registration of citizens of the Republic of Uzbekistan going abroad for effectuation of labor activity” adopted by the Cabinet of Ministers of Uzbekistan in May 2007 aroused interest in many citizens for who the problem of employment is important now and will remain so in the near future.

From the late 19<sup>th</sup> century until the 1970s, significant migration processes were stimulated not only by the conquest of Central Asia by the Russian Empire, but also by the industrialization of economy, World War II and liquidation of consequences of the Tashkent earthquake in 1996. The balance between immigration and emigration flows somewhat stabilized in 1975-1990. However, in the early nineties emigration flows for the first time began to exceed immigration in 1.7-1.8 times: in subsequent years, the gap began to increase, and in the mid-nineties emigration exceeded immigration in 4-5 times<sup>24</sup>.

A peculiarity of migration flows from Uzbekistan is the fact that they occur within the CIS (about 90%), and their number is dominated by ethnic Russian (74%). In 1991-2002, Russia has received more than 800 000 Uzbeks, which makes up 59.0% of the total emigration during this period<sup>25</sup>.

If we analyze the state of migration flows in 1992-2000, we can see that in EU countries the main problem was the need to substantially restrict the entry of migrants and in the countries of Eastern Europe and the CIS – the problem of going to these countries for high earnings. It was during this period that migration mobility of the population of Uzbekistan, too, began to form not on ethnicity basis, but on the basis of labor. However, the trends of labor migration began to be constrained by a number of factors and chief among them – making more difficult and complicated the migration connections with the CIS republics where largely the main migration exchange took place, the reorientation of potential migrants to distant foreign countries, organizational, legal, financial, language and other barriers.

If the migration potential of Uzbekistan's population, traditionally oriented on the emigration to Russia, in 1995-2005 annually amounted to 400-600 thousand of people, by 2007-

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<sup>24</sup> Alikhan Aman. Population migration in Uzbekistan. 1989–1998 (in eng.) Tashkent, 1999. p. 100–101

<sup>25</sup> Population of Uzbekistan. 2009, Statistical Handbook. Tashkent, 2009. p. 78.

2010 it made up from 840.0 thousand to 1 242.0 thousand of people<sup>26</sup>. This stream is formed mainly by middle-aged and older citizens fluent in Russian. However, since 2000, a new generation that grew up after the collapse of the Soviet Union has a poor command of Russian language, and it exerts a strong influence on the formation of labor migration flows from the Republic.

Sociological studies show that over 90% of labor migration of the population occurs on an illegal basis. Such a significant illegal migration to Russia is determined by capacious labor market, higher price of labor power, relative freedom of entrepreneurial activity, visa-free regime. It is difficult to assess the real extent of labor migration to Russia, however, some sociological studies and statistical data of migration services indicate that there is no region, including northern and remote, without migrant workers from Uzbekistan.

One of the reasons that prevents migration from development is that the process of legalizing the right to work abroad connected with the formation of the legislative framework and organizational and technical procedures for assistance to labor migration in Uzbekistan does not meet the pace of market liberalization. Society does not always understand correctly the need of labor exchange under market conditions, mass media covers incorrectly the problems of labor migration and all this also does not contribute to labor migration. For example, many people still think, as in the Soviet times, that labor migration is primarily the drain of the skilled personnel from the country, lack of patriotism and the desire for wealth. This is confirmed by the results of a sociological poll of the population on issues of labor migration carried out in 2009 by the Republican Center “Ijtimoiy Fikr.” The study showed that over 85% of people prefer to live and work in Uzbekistan. From the national and patriotic point of view this, of course, should be welcomed. However, some other thing is interesting too: potentially every fourth citizen of Uzbekistan who is over 18 years (23.8%)<sup>27</sup> would like to work in any country for some time in order to obtain higher wages. Therefore, under market conditions, economic motives of labor migration outweigh the patriotic feelings of citizens. This means that in the course of the further liberalization of economic relations in Uzbekistan and major changes in the national economy the dynamics of growth of labor migration will increase, which, in turn, will require addressing the issue of social guarantees for migrant workers, regardless of their place of residence and employment.

What can motivate the authorities to strive for a positive solution of urgent problems? The economic benefits of this process are as follows.

First, the problems of employment are being solved positively in the country, tension in employment is reducing significantly, especially in rural areas.

Second, the level of incomes of the migrant worker’s family is increasing significantly without substantial support from the state.

Third, the flow of remittances to Uzbekistan is increasing, which contributes to the growth of investment opportunities. As is known, the largest recipients of remittances in the world are India and Mexico (over 10 billion of dollars a year), Philippines (6.5 billion), Morocco, Egypt and Turkey (3 billion each)<sup>28</sup>. In Uzbekistan, this indicator also has high pace of growth, for example, in 2010, remittances made up about 2.5 billion dollars. It is natural that now the flow of remittances from migrant workers exerts a substantial influence on the economy of the country. For instance, according to the data by the Central Bank of Russia, remittances from the Russian Federation to Uzbekistan only in accordance with the official data made up around 2.052 billion US dollars (see diagram 1). According to the statistical data, the growth of remittances to Uzbekistan made up in average 50% compared to 2006.

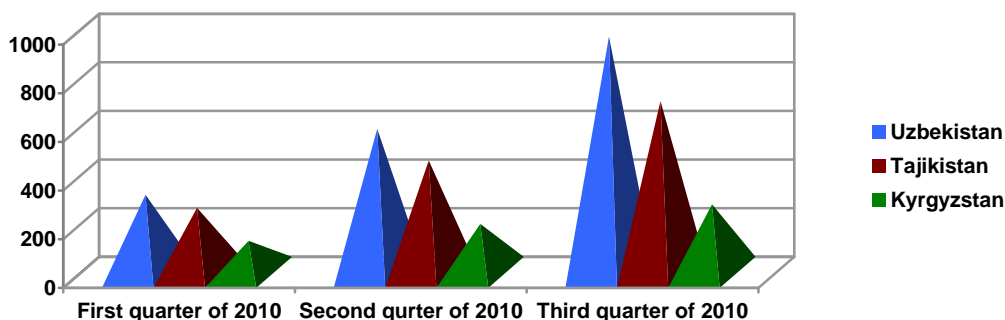
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<sup>26</sup> Mukomel V.I., Panna E.A., Does Russian society need migrants? Foundation “Liberal mission”, M., 2009. p. 7-30

<sup>27</sup> Data of the Center for Migration Studies of Uzbekistan, 2004-2010

<sup>28</sup> Economic Review, 2010, No. 2 (77). p. 13

**Diagram 1. Remittances from Russia to Uzbekistan, Tajikistan and Kyrgyzstan in 2010 (in million USD)<sup>13</sup>**



Fourth, returning to Uzbekistan, the migrants begin to use new knowledge, rich experience in organizing and evaluating work on high-tech industries, which contributes to the creation of conditions for the growth of innovation and efficiency in the national economy. One of six successful entrepreneurs operating in Uzbekistan today is a person who worked abroad. Over 30% of migrant workers want to earn an initial capital to organize or develop their own business. Upon returning home they do not take loans in the bank and start their own production companies or firms using their savings.

All these benefits make it necessary to improve the state policy on active regulation of migration processes in Uzbekistan. Given this situation, the Government of Uzbekistan after a lengthy exchange of views on issues of labor migration has proposed to the Government of the Russian Federation draft intergovernmental agreements. These agreements were executed during the visit in July of 2007 to Uzbekistan of the delegation of the Government of the Russian Federation headed by Sergey Ivanov, first deputy chairman of the Russian Federation. At that time three major documents on regulation of migration relations were signed – intergovernmental agreements “On readmission”, “On labor activity and protection of the rights of migrant workers of the Russian Federation in the Republic of Uzbekistan and migrant workers of the Republic of Uzbekistan in the Russian Federation” and “On combating illegal migration.” With the purpose of practical implementation of the signed documents, the development and intensification of relations in the field of labor migration the Agency under the Ministry of Labor of Uzbekistan for three years now have been processing numerous proposals of large industrial enterprises of the Russian Federation in order to study the conditions of employment. The agency also conducts organizational work studying the demand by Uzbek citizens for jobs in the Russian Federation. For persons who have expressed an interest in employment at the enterprises in the Russian Federation a “Form of an applicant for employment” has been developed. However, because of numerous bureaucratic obstacles as well as the global financial crisis that broke out in 2008-2010, the full implementation of intergovernmental agreements turned out to be impossible. Therefore, issues of improving the legal, institutional and financial framework for social protection of migrant workers remain open.

### **3.3. Current legislative practice**

Due to a large scale of the state pension provision program under the conditions of reforming and taking into account its complexity caused by the peculiarities of pension liabilities, the current pension system in Uzbekistan plays a special role not only in social and social-political life of the entire state, but also in the fiscal and budget system of the country, in the formation and redistribution of monetary resources in the regional, sectoral aspects, and even

<sup>13</sup> Central Bank of Russia, [http://www.cbr.ru/eng/statistics/crossborder/print.asp?file=Rem\\_countries\\_10-3\\_e.htm](http://www.cbr.ru/eng/statistics/crossborder/print.asp?file=Rem_countries_10-3_e.htm)

in interstate relations. Thus, the current pension system influences the stability of the entire financial system of the state as well as the balance of the state budget and the budgets of local authorities, etc.

As for ensuring more effective use of state funds allocated to social protection and to the pension provision of citizens, one of the first legislative documents of Uzbekistan was the Law "On Pension Provision of Citizens" of September 3, 1993.

It was market relations that exposed the flaws of the centralized state system of social and pension insurance caused first of all by:

- the absence of a scientifically based assessment of the financial load on payers;
- non-involvement of insurants in participation in fund management;
- the absence of assessments and correlation of professional and social risk with the amount of insurance contributions;
- the separation of the mechanism of determining the amount of pensions from the results of labor activity of an employee;
- the availability of unfoundedly broad privileges of retirement and additions for some categories of pensioners;
- the absence of interstate forms and agreements connected with the pension provision of the population involved in emigration and immigration, including migrant workers.

The pension system of Uzbekistan today should become an important mechanism in the market relations of states guaranteeing the permanent stabilization of the social balances in society between the employed and unemployed, including migrant workers in the territory of other countries.

The complexity of the financial mechanism of reciprocal payments determining pension accumulations begins to manifest itself in the absence of its organizational, legislative and legal foundations. This is connected with the fact that pension funds, unlike other state funds, are accumulated through the creation of special off-budget funds that organize the collection and financing of pension payments. If pension funds, depending on their financial capabilities, provide stable financing of pension payments, it is possible to talk about domestic financing of the pension fund. If additional means should be attracted from other sources for payments of pensions (e.g. interstate reciprocal payments from receipts into pension funds of migrant workers), we should talk about an external or "mixed funding" of pension payments.

The current structural and functional characteristics of the pension system of Uzbekistan are fundamentally different from each other only by sources of funding. In this aspect, the solidarity system being in fact the state system has three main sources: contributions of employees, mandatory deductions from the wage fund, state grants.

In the pension accumulation system operating since 2005, in accordance with the Law of the Republic of Uzbekistan "On Accumulated Pension Provision of Citizens," there are two sources: mandatory or voluntary contributions from employees, interest from investment of accumulations.

Private pension accumulation funds existing in Uzbekistan on the semi-legal basis whose volume is not large yet, operate on the basis of the following sources: contributions by employees; interest from the capitalization of contributions; transferring additional means from other social funds at the request of employees.

The issue of the organization of pension payments is also of importance. In the solidarity system – the state creates and controls the conditions, amount and time limit of pension payments. Subjects of the economic relations in this process are: state; pensioners; working members of society and enterprises deducting pension contributions. In other systems, pension payments, their amount, time limit and conditions are defined in a particular contract between employees and insurance agency.

Based on the dual nature of the system of the pension provision for citizens that operates in Uzbekistan, we can draw conclusions about peculiarities of pensions.

First, pensions are provided exclusively for disabled persons and are established strictly when the conditions happen that give the right to a pension for these persons.

Second, a pension is based on the pension contribution of a future pensioner and strictly regulated on the basis of volume and quality of this contribution.

Third, pensions are awarded only in monetary form and in national currency – sum.

Forth, pensions are paid to an individual pensioner for individual purposes.

Fifth, pension is paid for life and is of a constant nature. It may be revised only in cases when there are grounds or additional information regarding the participation or non-participation of a pensioner in labor activity.

So it is possible to definitely assert that despite the fact that the Agreement between the CIS countries of March 13, 1992 “On guarantees of the Rights of Citizens of the CIS in pension provision” provides the synchronization of pension contributions and access to pension funds in the territory of all CIS, this document loses all force when it is illegal migrant workers, since they are not registered as employees in any CIS countries.

Thus, the maturing need to adopt in Uzbekistan a law on labor migrants and conclude a bilateral agreement between Russia and Uzbekistan regarding migrant workers becomes evident. This law and the agreement will create a legislative framework for this category of persons as a whole, including the methodology for involving unregistered migrants in the social provision system. It is interesting to note that none of the former or present labor migrants has expressed concern regarding his exclusion from this system in the future. This can be explained by the fact that migrant workers are mostly young people, and by the fact that pensions in Uzbekistan remain at a very low level. Thus, potential benefits of participation in the pension accumulation system do not seem sufficiently attractive to migrant workers and they do not want to expend any effort in this direction.

### **3.4. Identified areas of concern**

What elements and mechanisms should now include state measures to regulate legal and social aspects of labor migration of the population?

1. When addressing the main legislative and organizational issues connected with labor migration first of all it is necessary to determine goals taking into account economic and social tasks facing the state and society in employment and growth of incomes of the population. According to the goals, it is necessary to form state programs (in this case programs of social provision of migrant workers).
2. The creation of programs of social, economic and legal support for labor migration should be based on the goals of improvement of the labor legislation of Uzbekistan where it is necessary to form special territorial programs for the development of regional markets of labor and employment. When addressing problems of external labor migration the strategy of the state should be assistance for (not stimulation of) its citizens in receiving social and economic benefit based on the results of labor activity abroad.
3. Arrangements for social, economic and legal support of labor migration cannot be provided without proper registration of migration flows so one of the most important tasks in the state regulation of migration processes are modern forms of registration of citizens who leave the country and return to it. Volumes, types and forms of social support for labor migrants depend on the reliability of the registration and timely analysis of the situation. Forms of social and other types of support from the state will depend on gender, age, family status and conditions of work of our migrants. It is most important and for migrants themselves not only when working abroad but also after return home.

4. When developing measures for regulation and social protection of labor migration it is necessary to divide tasks and functions between state organizations, trade union organizations, other social organizations and employers.

There is no doubt that the most important tasks should be performed by the state whose citizens going abroad. The state as a guarantor of the legal foundations creates necessary conditions for work and life of a citizen abroad through its legislative acts and international agreements with other countries or groups of other countries (for example, EAEC). A migrant worker should be sure that when unexpected circumstances arise he will not be left alone with his problems as it often happens and the state or his trade union will help him.

When a citizen who left Uzbekistan concludes an employment contract with organizations, firms and employment agencies, the state should guarantee him through its legislative acts the protection of health, social and pension insurance regardless the area and direction of activities of those organizations, length of their activities and their form of ownership.

The next important task is require from the receiving party the provision of protection of labor and such a salary that makes it possible for the employee to compensate his labor expenses, recover physical and psychological condition. It is also necessary to create conditions at the place of work of a migrant worker for accumulation and safekeeping of earned money in banking institutions with a subsequent transfer of them to the banks of Uzbekistan.

### **3.5. Conclusions**

1. The applicable law of the Republic of Uzbekistan does not cover the activities of its citizens involved in labor migration abroad. Draft laws “On Labor Migration” and “On Strengthening the Forms of Social and Pension Guarantees for Citizens Leaving Abroad on Labor Contracts” are scheduled for review by the Parliament in 2011-2012.
2. Run by the state, the functioning pension system in Uzbekistan consisting of one joint system and the accumulated part is far from covering Uzbek nationals living abroad.
3. A concatenation of agreements signed between the Russian Federation and the Republic of Uzbekistan in July 2007 governing migration relations between the two countries (“On Readmission,” “On Work Activities and Protecting the Rights of Labor Migrants from the Russian Federation in the Republic of Uzbekistan and Labor Migrants from the Republic of Uzbekistan in the Russian Federation” and “On Combatting Illegal Migration”) are, for a number of objective reasons, currently not fully effective.
4. The mechanisms and procedure for recording Uzbek nationals leaving abroad on a legal basis have not been defined yet. Therefore, any data on Uzbek nationals working abroad are not always accurate, and do not always reflect the real situation.
5. In May 2007, the Cabinet of Ministers of Uzbekistan adopted a Resolution “On Improving the Record of Uzbek Nationals Leaving Abroad for Work,” which raised a fair degree of interest among those willing to leave the country. However, due to excessive formalities and bureaucratic impediments, as well as mandatory payments related to insurance and training of those leaving abroad, the number of people leaving the country on an illegal basis increased (from 2007 to 2010 the number of illegal aliens increased by 350-400 thousand people).

### **3.6. Recommendations**



It is impossible to solve the problems of pension provision for labor migrants without appropriate arrangements regarding their social protection in those countries where they go. In this regard, the following seems necessary:

1. By means of legislative requirements, the state should oblige all organizations preparing labor migrants for departure, irrespective of what agency they belong to, to begin their interaction by providing training to those going abroad on how to depart to, and work in, foreign countries. This training should become part of a mandatory program on training workers and specialists, and its cost should be included in other costs related to preparing labor migrants for departure. Territorial and regional employment offices should, on a constant and open basis, inform the public about demand both in the domestic and external labor market.
2. To reduce the number of illegal aliens it is necessary to increase the number of non-state organizations and companies providing legal counselling and information to those willing to travel abroad for work. These organizations should meet all licensing requirements compliant with the state's policy in the area of labor and employment.
3. When issuing exit visas, territorial Departments of the Interior should differentiate those leaving abroad for work, and issue visas based on labor contracts signed between individuals and foreign companies and organizations inviting them for work. Currently, exit visas for those seeking employment in other countries are issued without specifying the purpose of the visit and according to the standard procedure.
4. The government should sign bilateral or multilateral agreements with all those countries that host Uzbek migrants on social, economic and legal guarantees for Uzbek nationals working in such countries based on labor contracts.
5. Similar agreements should be reached with trade union federations and confederations in these countries. The agreements should specify major requirements related to social protection, working conditions and secured minimum wages taking into account a person's qualifications and skills, and workloads.

The following major mechanisms of social, employment and legal support for labor migrants should be regulated in agreements between states and trade unions:

*A) Organization of pension insurance of migrant workers.* Pension insurance of migrants is an important factor in stimulating labor and social stability of their behavior. Moreover, the pension insurance abroad, particularly in the Russian Federation, is considered to be one of the essential elements of capital accumulation in contrast to other forms of insurance. An important peculiarity of the pension insurance in developed countries is a broad market of retirement services for able-bodied population. The forms of mandatory pension insurance do not apply to migrants from Uzbekistan working for hire. Therefore, when executing employment contracts migrants and their employers should specify in detail the conditions of mandatory or voluntary pension insurance of the migrants for the period of their employment in this country. In Russia there are no laws that determine the conditions of pension insurance of migrant workers, therefore, in accordance with the International Convention adopted by the General Conference of the ILO on June 2, 1982 the regulation of their pension insurance should be determined by interstate agreements.

First of all, these international agreements should determine the following:

– basic conditions and pension insurance programs (schemes of coverage, family insurance package);

- amounts and schedule of pension contributions, mechanism for arranging them with the employer (choose a short-term (1 year, 2 years or up to 5 years) pension insurance program that is in accordance with the employment contract);
- amounts of pension contributions transferred to the personal account of the Russian territorial pension fund;
- conditions for receipt of sum accumulated or transferring it to the personal account in the pension fund of Uzbekistan ;
- forms and mechanisms of reciprocal payments between the funds of the countries;
- methods of comparison of rates of national currencies at the time of reciprocal payments .

Regarding all aforementioned organizational and technical issues, migrant workers should receive a very detailed instruction before going abroad. Such consultations abroad are rather expensive and are not always in favor of migrants.

Often, migrants carry the money they earned in the form of cash or other material values at their own risk. At the request of a migrant the money earned can be regularly transferred in non-cash form through banking institutions. These funds can also be accumulated in the accounts of the banks where a migrant works with addition of interest, and after the end of the employment contract these funds can be transferred to the primary place of residence of a migrant. But there is also a third option: accumulation of money earned by a migrant in the accounts at his primary place of residence if, before he left the country for work abroad, he opened a special account in the bank and regularly transfers there part of money earned.

Taking these measures to step up the state regulation of labor migration and creating mechanisms for guaranteed social protection of migrant workers will lead to a substantial stabilization of the social situation in Russia and Uzbekistan, emergence of opportunities for continuation of market transformations in Uzbekistan, and to a significant extension of the labor market, the reduction of tension regarding employment, and an increase in the real income of Uzbek citizens.

Taking into account the results of the analysis of the current legislative and social practices of providing access to the pension accumulation system for migrant workers from Uzbekistan working in Russia it seems that the implementation of certain reform is inevitable. These reforms should include methodological and conceptual issues and be approved by the governments of Russia and Uzbekistan and also by NGO. Other steps such as making the general public aware through mass media of advantages of including migrant workers in the system of social provision, providing access to the pension system and pension payments through Internet, making possible for private pension funds to operate are required taking into account all needs of this target group.

Important tasks in forming market mechanisms for the pension system are also:

1. The opening by the Republic of Uzbekistan of branches of the pension fund in Moscow and other cities and regions with the largest concentration of migrant workers. This would allow insurance agents of the branches to form a sphere (market) of retirement services in the territory of the Russian Federation. And it is advisable to recruit agents from among the migrant workers themselves who have the desire and appropriate qualification. In this case, on the basis of the voluntary and compulsory principle, it is possible to reach a maximum number of migrant workers and their employers.
2. The opening of accumulation accounts for persons who have temporarily left for the Russian Federation in the branches of the People's Bank of Uzbekistan according to the current Law "On State Pension Accumulation System of Citizens". Once a year migrant workers will transfer contributions to the opened personal accounts the amount of which may be determined at wish of the migrant workers themselves by arrangement with the branches of the Peoples Bank of Uzbekistan.
3. The organization, on the basis of an insurance contract, of trilateral relations between a migrant worker, employer and pension insurance agency of the Russian Federation,

which makes it possible to address issues of short-term pension insurance of migrant workers under the current pension legislation of Russia.

4. The organization of pension insurance of migrant workers through joint Russian-Uzbek private pension insurance funds under the guarantees of the states. This direction will make it possible to further increase the coverage of migrants with insurance services taking into account the requirements of the mandatory social insurance for workers and members of their families.
5. The new above-mentioned directions for the development and improvement of the pension provision system under the functional tasks fully correspond to the scheme of a potential reform of the pension system of Uzbekistan that is provided below.

These and other measures for ordering the pension insurance of migrant workers will make it possible to form, in a near future, a modern organizational, legal and financial system of the guaranteed pension insurance of persons not provided with such guarantees by their states.

**Picture 1. Potential pension reform in Uzbekistan**



*B) Provision of social guarantees for migrant workers regardless of their pension contributions and the level of needs.* This is about the minimum amount of social services rendered in a specific situation connected with a temporary support for a migrant who arrived to work. Costs associated with these services are covered by future earnings of the employee. This includes a preliminary medical examination of the employee upon arrival at the place of work, provision of food, lodging, travel by transport, the subsequent employment for a specified term.

Other types of social guarantees are conditions of work, rest and pay of the employee. These guarantees should be explicitly stated in the employment contract taking into account the peculiarities of work and qualification of the employee. Strict conditions imply unquestioning performance of the contract; in case of breach of contract, the employer will inevitably apply financial and administrative sanctions – up to the premature termination of the employment contract.

Another important point regarding social guarantees is a special attitude towards members of migrant families. If the terms and conditions of the contract provide for the possibility of arrival of a migrant with family members, the amount of necessary social services

should be increased depending on the number of family members. In these cases, the employer takes part in providing accommodation, enrolling children in nursery or school, etc. And these costs are covered by future earnings of the employee.

The main issue in the provision of social guarantees is to determine the minimum wages. Foreign firms and companies are interested in inviting migrants from abroad mainly due to the possibility of establishing a level of remuneration that may be significantly lower than the level officially established in the country. Most illegal migrants are satisfied with these levels. In addition to providing minimum wages, the receiving party should guarantee regular indexation of wages of migrants in the same manner as for other citizens to protect against inflation the funds accumulated by migrants. Of course this issue should be the main issue to be addressed in the preparation of interstate agreements on labor migration.

*C) Organization of social insurance against different types of risks for migrants.* The peculiarity of social insurance abroad is the duration of the insurance period of an employee. The longer is the insurance period, the more advantageous it is for the insured person, since the possibilities for the worker and members of his family expand. If a migrant works for a short period, insurance contracts are executed according to the duration of the employment contract, which allows him to receive only the minimum amount of services when the insured event (illness, injury, accident) happens.

Conditions, extent and duration of social insurance of migrants should be determined based on two objectives. The first objective is to ensure the retention and recovery of the ability of a worker to work, including regular prevention and rehabilitation of health problems and maintenance of capacity for work. The second goal – financial provision for persons who have temporarily lost their ability to work due to illness (injury) or have lost their jobs because of a shutdown by fault of the employer. In these cases, the employee must be financially supported by the employer and trade union in accordance with the requirements of international conventions on labor.

It should be noted that the proposed types of social insurance should be implemented through mandatory and voluntary forms of social and health insurance that exist in the Russian Federation. The peculiarity of these forms of insurance is that a migrant may, if desired, to use both forms of social insurance, and after the end of the employment contract he can use funds accumulated as a result of voluntary social insurance at his discretion.

It is necessary to include a paragraph in interstate agreements providing for the transfer of funds of social insurance, if they were not used, at the request of the employee, to his/her retirement accumulation account or his/her other personal accounts.