



The System Of Employing Migrant Workers In Uzbekistan Through Private Employment Agencies: An Analysis Of Existing Problems

Bekzod Musaev

Researcher At Tashkent State University Of Law, PhD, Uzbekistan

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ABSTRACT

The consequences and reasons of the activities of private employment agencies in regulation of migration in the context of demographic, environmental, social and general legal approaches in society are studied in this article. Migrants who left Uzbekistan to work abroad for twenty-five years, their geography and its main reasons are analyzed. In the last two years, permission for private employment agencies in Uzbekistan to carry out their activities, their activity of sending migrants abroad has been based on insufficient legal and economic protection of migrants. At the same time, various specialists, skilled workers and simply passionate people (creators of their own destiny) left their homeland for political or economic reasons. Some of them leave to earn money temporarily and some leave to live in a new place. As a result, these individuals tried to find their place in another society. The activities of private employment agencies and the reasons for emigration from Uzbekistan show that only through concrete economic and legal measures Uzbekistan can protect its citizens from human trafficking and fraud.

KEYWORDS

Private employment agency; migration policy; temporary work agency; job placement; labour contract; International Labour Organization, labour administration; labour legislation, Uzbekistan.

INTRODUCTION

In the process of globalization of the world economy, the demand for qualified personnel is growing. In addition, some countries have surplus labour, while others have cheap labour

demand. Today, in the context of the COVID-19 pandemic, the demand for qualified personnel, professionals in their specialties is growing all over the world. This is due to the fact that the

remote work method has taken a strong place in the labour process.

It should be noted that private employment agencies play an important role in organizing external labour migration. The Institute of Private Employment Agencies is a new institution for Uzbekistan. Over the years, the recruitment of employees within the country and abroad has been carried out by the competent state body. The system of market economy, in turn, led to the entry of non-governmental organizations in this sphere as a full-fledged entity.

In world practice, the formation and development of private employment agencies dates back to the last century. Its global spread has been influenced by the following factors: a rapidly changing and moving labour market; restrictions on employment as a civil servant, i.e. limited jobs and special requirements; the expansion of labour migration process as a result of integration, and others.

The role of the Government as an employment agency has been slowly diminishing over the years, a trend observed throughout the world. “The majority of recruitment for employment abroad was once undertaken by the official recruitment bodies, often in the form of Government-sponsored transfer. In recent years however, the increasing role of private recruitment agencies has had the effect of ‘commercialising’ recruitment for foreign employment, and far fewer migrants than before are being recruited through Government channels”ⁱⁱ

Although the Institute of Private Employment Agencies has been little studied by epy CIS and Uzbek scholars, it has not been analyzed in terms of the current reality and problems encountered in implementation of the current law.

Scientists from foreign countries have been studying this issue for many years. The results

of the study were published by T.Martínez, DE Balducchi, RW Eberts, CJ O’Leary, P Craig, M Freedland, C Jacqueson, N Kountouris, JB Seymourⁱⁱ and others. WAPES (World Association of Public Employment Services) has been working in this area for many yearsⁱⁱⁱ.

If we focus on cross-sectoral study on this theme, in recent years the problem of private employment agencies has become not only a major subject in human resource management and organizing entrepreneurship (e.g. Lund-Thomsen^{iv}, Niforou^v), but have also been studied as objects of research in human and economic geography and social anthropology (Carswell va De Neve^{vi}, Coe va Hess^{vii}) or in the spheres of development and international political economy (Alford M., Barrientos S., Visser M.^{viii}, Brookes^{ix}, Egels-Zandén va Merk^x, Selwyn^{xi}).

The application of international labour standards to the activities of employees of transnational companies employed through private employment agencies is also a theme of extensive analysis. A study by Bartley va Egels-Zandén concluded that the ratio of transnational companies and collective agreements in 120 Indonesian companies was effective^{xii}.

The article, published in 2020 by J. C.Graz, N.Helmerich and C.Prébandier, is one of the broadest studies to develop the role of employment agencies in transnational private management process, their interdependence, the structure of mixed (hybrid) production regimes^{xiii}.

In addition, if we focus on research in this area, the legal regulatory experiences of private employment agencies were analyzed on Australia^{xiv} by O’Donnell, A., & Mitchell, Indonesia^{xv} by B. H. Juliawan, China^{xvi} by Liu G., Sweden^{xvii} by B.Nystrom, the Netherlands, Spain, and Sweden by van Liemt G. In these studies, the formation of this institution, the problems encountered and the specifics of the

legislation are analyzed.

To date, the issues of legal regulation of private employment agencies in Uzbekistan and Central Asia in general, the problems encountered in the application of legislation in this sphere have not been conceptually, theoretically and practically analyzed.

To this end, this research process seeks to answer three questions: **first**, how effective is the legislation of Uzbekistan on private employment agencies; **second**, how the two-year law enforcement practice in this area was formed; **third**, whether there is a need to fill the gaps in the legislation on the basis of international experience.

In response to these questions, an author's position will be developed and proposals will be made to fill the gaps in the legislation of Uzbekistan. Therefore, this article focuses on the conceptual, theoretical and practical understanding of the establishment of private employment agencies in Uzbekistan.

THEORETICAL AND LAW BASIS

Despite the fact that private employment agencies fill the traditional labour market, today they are emerging as a new form of development of human resource management services, contributing to the improvement of working conditions.

After the Second World War, as the main goal of many countries was to reduce the unemployment rate, such agencies began to emerge as labour market managers^{xviii}. It is clear from this view that the socio-economic development of the state had a special impact on expansion of the functions of private employment agencies and the growth of their place in society.

The formation of legislation governing the activities of governmental and non-governmental organizations in the field of

employment promotion dates back to the 50s of the last century^{xix}.

In 1949, the ILO became the center of discussion of these two different positions. Given these two unacceptable perspectives, ILO Convention No. 96 supports a neutral point of view. According to it, the ILO gives states the right to ratify the Convention by choosing one of the two points of view, without objecting to the monopoly of states in the field of employment^{xx}.

At the same time, some experts are skeptical about the further development of the liberal attitude of the ILO in this form. One third of the states that have ratified this Convention have refused to recognize it. These states include a number of developed countries, including Spain, Portugal and the Scandinavian countries^{xxi}.

With the adoption of the ILO Convention No. 181 on Private Employment Agencies in 1997, the process of recognition and development of these agencies by states began. This is due to the fact that the convention contains norms aimed at regulating the activities of agencies, the legal regulation of issues related to their employment. To date, the convention has been ratified by 20 states^{xxii}.

This convention, by its very nature, aims to set common standards in this sphere, the norms of which are flexible and can be applied depending on the specifics of the state.

In order to implement the provisions of this Convention in national legislation and the effective implementation of the activities of agencies, it is expedient to analyze the norms, regulations and positive experience of foreign countries in this sphere.

In the world experience, the development of private employment agencies is associated with a number of factors: rapid volatility and mobility of the labour market; monopolization

of public administration in the sphere of employment and inability to use all its opportunities; formation of innovative methods aimed at regulating the employment process.

M. Abella, the head of the ILO's International Department, in his book "Sending workers abroad" notes that states would be better placed to manage foreign employment if they had well-functioning public employment services that can also undertake recruitment and placement activities for foreign employers.

It noted that participation of the private non-governmental sector in employment issues has the following advantages:

- No funds are spent from the state budget for the selection and recruitment of highly qualified personnel by private employment agencies. On the contrary, income from the provision of services by agencies is taxed by the state;
- Private companies need to change their activities quickly in accordance with market conditions and apply new innovative methods independently without any administrative process. Public authorities may carry out this work after concluding administrative agreements with public authorities. This means that the activities of private agencies are characterized by flexibility.
- The private sector will always be interested in improving its activities, introducing new forms of migration.
- It is known from world experience that foreign employers in most cases prefer to work with private employment agencies^{xxiii}.

It should be noted that the issue of labour migration has been of particular importance for Uzbekistan over the past fifteen years. This

is due to the expansion of the labour market, the legal regulation of labour in foreign countries and the inflow of capital from foreign countries. That is why private employment agencies are mostly approached by migrant workers.

In 2019, the volume of international remittances of the population of Uzbekistan amounted to 5.2 billion dollars. Of this amount, the population sent \$4.5 billion from foreign countries to Uzbekistan through the international money transfer system. It was reported that the volume of foreign currency inflows through international money transfers increased by 18% compared to the same period in 2018: in 2018, that amount was \$3.8 billion^{xxiv}.

The growing demand of companies for fast and efficient staff in the last decade has been accompanied by an increase in the process of sending foreigners to other countries to work through various programs, influencing the growth of the role and place of private employment agencies in the labour market.

Agencies such as TEKsystems US, Hays plc, Cegos France, Modis, Harvey Nash, Michael Page International UK, Heidrick&Struggles, Futurestep, Antal International, Michael Page International US^{xxv} are the leading organizations in the field of recruitment services^{xxvi}.

According to the International Confederation of Private Employment Agencies (CIETT), annual recruitment revenue is 450 billion euros, of which 70% is accounted for by recruitment services. Annual revenue from this service is 8.6%. As a result of this service, an average of 71.9 million people are employed in the labour market^{xxvii}.

These positive developments have helped to eliminate the state monopoly in employment by changing the legislation of many countries. With the collapse of the former Soviet Union, it became possible to observe these positive

trends for the first time in the newly formed states.

The Institute of Private Employment Agencies is a new sphere and a new institution for Uzbekistan.

Initially, relations in this area are regulated by the Law of the Republic of Uzbekistan “On employment of the population” (1998). Article 13 of the law stipulates that “Citizens of the Republic of Uzbekistan have the right to engage in labour activity outside the territory of the Republic of Uzbekistan, to seek for job independently and employment”.

Based on this norm, it can be said that Uzbekistan citizens can look for job not only in the territory of the country, but also in foreign countries and freely pursue their chosen professions. The procedure for entering or leaving the territory of Uzbekistan for employment shall be determined by the domestic legislation of each state.

The fact that foreign citizens enter into various labour relations in one or another country, in turn, indicates the presence of a foreign element in these relations. This makes it necessary to regulate these relations through private international legal norms. There are separate studies in this sphere in Uzbekistan^{xxviii}.

Based on the above ILO Convention and international experience, the Law “On Private Employment Agencies” was adopted on October 16, 2018, granting the right to operate in the sphere of employment in the private sector in Uzbekistan^{xxix}. However, the implementation of the law in almost two years of practice has shown that there are many problems and issues that need to be addressed in this area.

RESULTS AND DISCUSSION

The scope of legislation governing the

activities of private employment agencies is interrelated with the forms of services they provide.

For example, while a number of states have enacted special laws regulating agencies engaged in temporary employment, in other cases they cover the employment of citizens in foreign countries, the third form of legislation is aimed at regulating other employment-related services of agencies.

Legislative regulation of employment is an important condition for the effective organization of this sector. Therefore, national legislation regulates the labour activity of citizens not only within the country but also in foreign countries.

It should be noted that the draft law “On recruitment activities” was first developed in the legislation of Uzbekistan and this project is based on international standards of the International Labour Organization Convention No. 181 on Private Employment Agencies adopted on June 19, 1997 and taking into account the foreign experience of development, this draft law was renamed^{xxx} and adopted as the Law of the Republic of Uzbekistan “On Private Employment” of October 16, 2018^{xxxi}.

Taking into account the special role of this law in the introduction of new market mechanisms for employment, it is necessary to study the issues of further improving the implementation of this new legal institution in Uzbekistan, analyzing the legislative experience, achievements and problems of countries that have achieved positive results in this sphere.

The Law of the Republic of Uzbekistan “On Private Employment Agencies” was adopted on October 16, 2018 in order to regulate non-governmental mechanisms for the provision of services to job seekers on job selection and employment, personnel selection for

employers, as well as providing information and consulting services in the field of employment.

The following are the requirements and conditions of the license for employment of citizens of the Republic of Uzbekistan abroad:

Compliance with the legislation of the Republic of Uzbekistan on labour and labour migration;

Reserve funds in the amount of **\$195,000** in the deposit account of the Fund for Support and Protection of the Rights and Interests of Citizens Working Abroad under the Ministry of Employment and Labor Relations of the Republic of Uzbekistan at the expense of the applicant's authorized fund;

Implementation of activities provided only by the Law of the Republic of Uzbekistan "On Private Employment Agencies";

Employment of at least two persons, including a manager with higher education;

Obtaining a qualification certificate by employees of the legal entity at least once every three years in accordance with the procedure established by the licensing authority;

Creation of necessary conditions for the implementation of this activity, including the availability of own or rented room, the use of appropriate material and technical base, other technical means.

If at the time of quarterly revaluation of the licensee's funds deposited in the deposit account, if the amount of funds deposited in the reserve is less than **\$195 thousand**, the licensee must transfer the missing part of the funds to the deposit account.

The fund supports migrant workers. The main purpose of these funds is to compensate the job seeker for the damage caused to him at the

expense of these funds, if they are victims of fraud, violence or human trafficking, asylum and unemployment in a foreign country.

However, during the implementation of this law for almost two years, a number of problems occurred that need to be legally addressed.

In accordance with the requirements of this law, **88 legal entities** are registered in the register of the Ministry of Labor as private employment agencies. **66 of them have been licensed to engage in employment abroad, and 59 of them are currently operating.**

In 2019, **1876** people were employed abroad by private employment agencies, **77** citizens were employed in the country, **33 838 people were provided with consulting and information services.**

As of December 2019, the number of citizens sent abroad by agencies was **1876**, including 1005 to the Russian Federation, 529 to Turkey, 6 to the UAE, 6 to Bulgaria, 6 to Estonia, 5 to Israel, 72 to Latvia, 213 to Lithuania, 25 to Poland, 1 to Qatar, 2 to Kazakhstan, 1 to Oman and 5 to Japan.

In 2021 **12 out of 106 private employment agencies** licensed to employ job seekers outside the Republic of Uzbekistan **have not sent any citizens to work abroad.**

In Uzbekistan, by mid-2019, the licenses of **8** private employment agencies were revoked, the **licenses of 3 agencies** were suspended and criminal proceedings were instituted against **3** of them.

In 2019, the Ministry of Internal Affairs opened a criminal case on the activities of the LLC «Human xususiy bandlik agentligi» (Human Private Employment Agency), officials of the «Profelite IMP xususiy bandlik agentligi» (Profelite IMP Private Employment Agency) and the LLC «Korean and migrations xususiy

bandlik agentligi» (Korean and Migration Private Employment Agency) are under investigation.

According to the Ministry of Internal Affairs of the Republic of Uzbekistan, 3 private employment agencies were opened criminal cases, causing **more than 50 billion soums (about \$5 million)** in damage to citizens and committing fraud.

However, the funds mentioned above do not cover this damage at all. It is clear that the private employment agencies that committed the crime took advantage of these loopholes in the legislation, in particular the ineffectiveness of the norms on the protection of workers' rights.

All this shows that there are gaps in the legislation in the sphere of private employment agencies in Uzbekistan, and as a result, some private employment agencies are using these gaps to cause material and moral damage to citizens.

The experience of foreign countries shows that the boundaries of the legal regulation of private employment agencies are clearly defined and the protection of citizens' rights is reliably ensured through the transparent organization of their activities.

Including, the legal documents on the activities of employment agencies such as the **Employment Agents Act of Australia adopted in 1976, the Employment Agencies Act of the United Kingdom adopted in 1973, the Employment Agencies Act of 1990 adopted in Canada, the Private Employment Agencies Act of 1981 adopted in Malaysia, the Employment Agencies Act of 1958 adopted in Singapore clearly define the scope of activities of agencies and the stages of state control.**

ILO Convention No. 181 on Private Employment Agencies, adopted on June 19, 1997, also sets out mechanisms to prevent discrimination in

relations of private banking agencies with citizens, transparency in the operation and control of the competent authorities.

The absence of these legal mechanisms in the national legislation leads to the violation of the legitimate rights and interests of our citizens by some private employment agencies.

Based on the above, it is proposed to make the following amendments and additions to the Law "On Private Employment Agencies" aimed at protecting the rights and interests of citizens:

- The law stipulates that a job seeker must make an advance payment of **not more than 20%** of the cost of the sending organization's services **within 5 working days** after signing a contract for employment of job seekers outside the Republic of Uzbekistan, and the remaining payment for services it is proposed to introduce only **after obtaining a work visa**;
- It is necessary **to introduce a procedure for registration** of the contract of employment in a foreign country **on a special website** of the Ministry of Employment and Labor Relations of the Republic of Uzbekistan;
- It is proposed to include in the obligations of the private employment agency provided for in the Article 17 of the law the norm of the obligation to insure civil liability for damage caused by non-performance of their contractual obligations to persons seeking work outside the Republic of Uzbekistan;

Implementation of these proposals will contribute to the full implementation of transparency in the activities of private employment agencies, to ensure the rights and interests of citizens.

CONCLUSION

People who apply to private employment agencies in Uzbekistan mainly aim to go abroad as labour migrants and enjoy legal guarantees in these countries.

It is not always correct to assess poverty as the main criterion in labour migration, because even if a person does not consider himself poor, gaining experience in another country or wanting to work on new technologies can also lead to going abroad as a labour migrant.

It should be noted that problems of labour migration have existed since the earliest times of human history, the factors that led to labour migration at that time are still preserved today^{xxxii}.

Labour migration organized through private employment agencies has advantages for both the migrant worker and the sending state, as well as for the receiving state. It also has a positive impact on the economic growth of the country that sends and hires labour.

Like any social phenomenon, international labour migration has a number of negative consequences. Among them is the growing tendency to consume funds earned abroad; desire to hide earned income; intellectual loss

resulting from the relocation of highly qualified individuals; the possibility of a decline in the skills of migrant workers from underdeveloped countries, and so on.

In our opinion, a number of services are provided to migrants and employers by governmental and non-governmental employment assistance organizations at all stages of the labour migration process. These include the selection of staff, obtaining permits, providing information and consulting services, medical and professional examinations, assistance in obtaining health insurance, and others.

In the context of the labour market based on the globalization in Uzbekistan, most migrant workers do not have sufficient legal knowledge about employment, the protection of their rights and obligations, their labour rights. And, it is natural for employers to have difficulty meeting their needs for skilled and productive personnel.

All these determines the prospects for the activities of non-governmental organizations to balance supply and demand in the labour market.

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