

## CONSTITUTIONAL AND LEGAL BASIS OF REPATRIATION (HOMECOMING)

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### **Abstract**

*In article, under investigation are the legal bases of repatriation (homecoming) in the Republic of Azerbaijan, the analysis of the normative legal acts adopted in connection with its application, the legal nature of the concept of repatriation (homecomings).*

*The author has also carried out comparisons of similar and distinctive features of legislations of Israel, Germany and Poland in the sphere of repatriation (homecoming) and makes a number of scientific proposals for the purpose of improvement of the national legislation.*

**Keywords:** *repatriation (homecoming), repatriates, refugees, displaced persons, emigrants, visa*

One of the legal terms used in modern legal literature is connected with the concept of repatriation. Meaning of the word "repatriation" (lat. "re" – again, back and "patria" – homeland) is understood as return of the prisoners of war, displaced persons, refugees, emigrants home [9, p.888].

The Department of Repatriation of the State Committee of the Republic of Azerbaijan for Affairs of Refugees and Internally Displaced Persons (IDP) deals with the issues of repatriation (homecoming) in the Republic of Azerbaijan. The department has been created by the Order of the Cabinet of the Republic of Azerbaijan №180 on October 30, 1998. The main objective of the Department of Repatriation consists in return of refugees and displaced persons homes or their resettlement to more acceptable places of residence, resettlement on the former or new places of residence, and solution of other problems.

Aiming to bring the questions of repatriation (homecoming) in compliance with modern standards in the Azerbaijan Republic a number of changes have been made in the national legislation. Among these changes, it would be desirable to note the amendment in the Law of the Azerbaijan Republic "On introducing amendments to the Law of the Azerbaijan Republic "On fight against human trafficking" of April 19, 2013, №609 – IVQD of Article 20 - "Repatriation of the foreigners and persons without citizenship who are victims of human trafficking" in the Law of the Azerbaijan Republic "On fight against human trafficking" in Article 20.4-1.

So, in the mentioned article it is stated: "20.4-1. For the purpose of coordination of activities of the public authorities involved for repatriation of the foreigners or persons without citizenship who have become the victims of human trafficking, and prevention of repeated transforming these persons into the victims of human trafficking, the appropriate authority of executive power adopts rules of repatriation of the victims of human trafficking. These rules also provide taking measures in connection with providing the children who were injured from human trafficking, opportunity to use the right for education and providing necessary care to them, and acceptance of them by families or the relevant structures of guardianship."

On paragraph 3 of the Decree of the President of the Azerbaijan Republic of May 7, 2013, №887 on application of the Law of the Azerbaijan Republic "On introduction of amendments to the Law of the Azerbaijan Republic "On fight against human trafficking" of April 19, 2013, №609 – IVQD as the body adopting rules of repatriation of the victims of human trafficking in the mentioned Article 20.4-1, is established the Cabinet of the Azerbaijan Republic [5, p.3].

It should be noted that though in a number of the countries which are closely cooperating with the Azerbaijan Republic, laws on repatriation have been adopted, in our country the law on repatriation is still not adopted, in this sphere still there are problems with application of procedural rules. For example, while in Georgia the relevant law for return of the Meskhetian Turks deported from the country has been adopted, in Azerbaijan the relevant law has not been adopted and in this connection there are difficulties with return of these subjects living in our country to their homeland - to Georgia. In this context, it is necessary to adopt such a law for return of the Meshetian Turks living in Azerbaijan without nationality.

We believe that acceptance in our country of the Law "On Repatriation" should be considered expedient. Deportation in 1988-1992s from their homes in Armenia of 250 thousand ethnic Azerbaijanis, expatriation in 1992-1993s as a result of the armed aggression of Armenia against Azerbaijan from the Nagorno-Karabakh Autonomous Region and 7 adjacent regions of 750 thousand Azerbaijanis and their becoming displaced persons in their own country, resettlement of 50 thousand Meskhetian Turks expelled from Uzbekistan in Azerbaijan as refugees, in general resettlement of more than 1 million of our compatriots in the country who became refugees and displaced persons gives a legal ground for adoption of law "On repatriation". Adoption of this Law could promote the correct regulation of questions of repatriation of citizens of the Azerbaijan Republic to places of full-time residence.

We consider that each person who forcedly has left for one reason or another his country has the right to be returned to the country of full-time residence on the basis of rules of international law. In paragraph 2 of Article 13 of the Universal Declaration of Human Rights of December 10, 1948 of the United Nations General Assembly, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and Article 12 of the International Covenant on Civil and Political Rights of 1966 as the fundamental human rights fixed in this area, it is specified the right of all citizens for repatriation (homecoming) to their countries [4, p.2; 15-16; 10, 8].

It should be noted that the Republic of Azerbaijan has joined a number of the international conventions connected with regulation of the migration of citizens, foreigners and persons without citizenship, granting to them the status of refugees, displaced persons and a political asylum and also deportation, repatriation of these subjects, etc. questions, has signed unilateral, bilateral or multilateral agreements. One of the normative legal acts adopted in the direction of solution of the matters is the Law of the Azerbaijan Republic on adoption of the Constitution of International Organization For Migration of December 8, 2000, adopted in 1953/№33-IIQ [3, p.3].

Besides, by the Law of the Azerbaijan Republic of February 8, 2000, №806-IQ it was approved "The cooperation agreement concluded between the Government of the Azerbaijan Republic and International Organization For Migration". On the basis of this Agreement, the Government of the Azerbaijan Republic, recognizing the role and experience of International Organization For Migration (IOM) in the field of migration, the purposes and the IOM functions and also activity of this organization and its workers, considers granting IOM and its workers of the same privileges and immunities, as other international intergovernmental organizations in Azerbaijan [1, p.14].

One of the legislative acts adopted in this sphere is the Law of the Azerbaijan Republic of October 24, 2000, №943-IQ. This Law has approved with dissenting opinion the Regulations on the "Provision on the general database on illegal migrants and persons" signed on January 25, 2000 in Moscow, entrance by which to the State Parties of the Cooperation Agreement of the CIS in fight against illegal migration is closed according to their existing national legislation, and the order of exchange of information about illegal migration [7, p.61].

Equally as around in the world, in the Azerbaijan Republic there are the government institutions regulating migration processes. The structure regulating questions in this sphere in our country is the State Migration Service created on the basis of the Decree of the President of

the Azerbaijan Republic of March 19, 2007, №560. The State Migration Service is engaged in the activity connected with implementation of state policy, development of a control system in the field of migration, regulation and forecasting of migration processes.

According to the regulations of the State Migration Service, one of the directions of its activity consists in participation in questions of repatriation of refugees.

Apparently, because of absence of the law on repatriation, the structure and single mechanism, in complex resolving issues of repatriation (homecoming), it hasn't been created. We consider that repatriation (homecoming) has to concern not only refugees, but also all citizens of the country falling under a sphere of influence of questions of repatriation.

It should be specified that for further increase in efficiency of cooperation with the world countries in questions of migration in the Azerbaijan Republic, it is of great importance the Order of the President of the Azerbaijan Republic of August 17, 2006, №1628. This Order approves the Cooperation agreement concluded between the Government of the Azerbaijan Republic and the International Center of Development of Migration Policy (ICDMP). The Agreement pursues the aim of further strengthening and development of friendship and cooperation between the Azerbaijan Republic and the Organization for acceptance of the additional measures connected with migration, repatriation, shelter, visa policy and border control [11, p.31].

It should also be noted especially that in the Azerbaijan Republic effective measures against illegal migration are also taken. For timely and expeditious implementation in our country of fight against illegal migration, the solution of the relevant matters is assigned to the State Border Service. So, on the basis of the Order of the President of the Azerbaijan Republic of April 15, 2009, №235, the power of signing "The memorandum of understanding between the State Border Service of the Azerbaijan Republic and Service of Repatriation and Deportation of the Kingdom of the Netherlands on Fight against Illegal Migration" has been provided to the State Border Service of the Azerbaijan Republic [8, with.120].

Besides, on the basis of the Order of the President of the Azerbaijan Republic of October 1, 2009, №508, after the approval of "The memorandum of understanding signed on July 1, 2009 in the Hague between the State Border Service of the Azerbaijan Republic and Service of Repatriation and Deportation of the Kingdom of the Netherlands on Cooperation against Illegal Migration" ensuring implementation of this Memorandum, was entrusted to the State Border Service of the Azerbaijan Republic [12, with.14].

Apparently, from the agreements concluded between two countries, from the Government of Azerbaijan the illegal migration is combated by the State Border Service of the Azerbaijan Republic, while from the Kingdom of the Netherlands – by the Service of Repatriation and Deportation. We consider that it would be expedient creation and functioning in our country, as it takes place in the Kingdom of the Netherlands, of the Services of Repatriation and Deportation against illegal migration and it meet the requirements of the current situation. So, creation of the offered structure could render assistance to repatriation of refugees and displaced persons to their former places of full-time residence as the fundamental human rights enshrined in paragraph 2 of Article 13 of the Universal Declaration of Human Rights, paragraph 12 of the International Covenant on Civil and Political Rights of 1966.

We believe that from the above-noted it is possible to come to such a conclusion that the concept of repatriation can be perceived as homecoming and also as deportation. Questions of repatriation are applied in each certain state in a specific form.

Often the concept of repatriation is used usually concerning the persons wishing to return to the country as the refugees and emigrants who have replaced the place of residence. For example, in Israel, repatriation (homecoming) is expressed by the word "Aliyah".

"Aliyah" in Hebrew means "ascent" and which is the immigration of Jews from the diaspora to the Land of Israel. It is also defined as "the act of going up", that is, towards

Jerusalem "making Aliyah" by moving to the Land of Israel (Or, means return to Palestine till foundation of the State of Israel [15, p.114].

The word "Aliyah" is also reflected in the Law of Israel "On Return" and is one of the most basic tenets of Zionism. The opposite action, emigration from the Land of Israel, is called "yerida" ("descent") [15, p.114].

Apparently, the Jewish tradition views the returning to the land of Israel from the foreign countries as an "ascent", and the emigration from Israel – as a "descent".

The following 5 waves of repatriation (homecoming, migration) - Aliyah (return to Israel) has been identified: the first Aliyah took place in 1882-1903s. In this period, the Jews, escaping from the Jewish pogroms in Eastern Europe, have found shelter in Palestine. In 1882-1903s from the provinces of the Ottoman Empire 35 thousand Jews have been moved [13, p.212].

The second Aliyah took place in 1904-1914s. These years about 40 thousand Jews who have moved from Eastern Europe have been placed in Palestine. The third Aliyah covers 1919-1923s. In 1922, the League of Nations has provided to the Great Britain the mandate for creation in Palestine of political, administrative and economic conditions for safe education in the Jewish National Home in the country. After providing this mandate in 1923 40 thousand Jews have moved from the Eastern Europe to Palestine [13 have moved, with. 212].

The fourth Aliyah covers 1924-1929 s. These years, generally, from Poland and Hungary 82 thousand Jews have moved to Palestine. As a result of economic crisis in Poland the Jewish people were oppressed. It has caused migration of Jews to Palestine. In 1924 the Jewish immigration has introduced restrictions for departure to the USA. Therefore, the Jews could move not the USA, but to Palestine. The economic difficulties taking place those years in Israel have forced 23 thousand Jews to leave the country.

The fifth Aliyah covers 1929-1939s. These years because of the emergence of Nazism in Germany 250 thousand Jews have moved to Palestine. The restrictions introduced since 1936 by the British authorities on immigration were named illegal "Aliyah Bet" [13, with.213].

Thus, in 1949-1950 s., Israel, saving more than 50 thousand Jews in Yemen, has returned them by air to the country. This operation has received the name "flying carpet" or "on wings of an eagle". Since September 1949, planes daily transported 500 Yemenites to Israel. Until the end of 1949 from Yemen 35 thousand refugees have moved to Israel [13, p.214].

It should be noted that in Israel, as well as in a number of world countries, the Law "On Repatriation" has been adopted. So, in this country in connection with questions of repatriation in 1950, it was adopted the Law "On Return". On the basis of this Law, homecoming and also obtaining nationality was applied to all persons of the Jewish origin. The government has undertaken to create an opportunity for their homecoming (repatriation). According to the changes made to the Law in 1970, repatriation extended to children and grandsons of persons of the Jewish origin and also to husbands and wives of children and grandsons. After the amendments made in this Law, many have fallen under the sphere of its influence. After 1950 some three million people have moved to Israel [2, p.201].

Repatriation of Jews continued also in the next years. At the time of the Soviet Union these processes continued in a special form. So, after establishment in 1968 of the relations between the former USSR and the State of Israel, according to the decision of the Central Committee of the Communist Party of the Soviet Union it was allowed to the Soviet Jews to emigrate from the country. In 1969-1975 s., it has been repatriated more than 100 thousand Jews from the USSR to Israel (they have returned home).

In Poland, it was adopted the Law "On Repatriation (Homecoming)" on January 1, 2000. This Law establishes bases of obtaining the Polish citizenship by homecoming, the rights of repatriates and also procedural rules of legal bases of the help to repatriates and members of their families.

The persons of the Polish origin moving to Poland on the basis of the repatriation visa are considered as repatriates. For obtaining the repatriation visa these persons or one of their parents

(the grandfather, the grandmother or the great-grandfather and the great-grandmother) have to be the Polish nationality. They are obliged to know the Polish language, customs and traditions. Besides, it is necessary the arguments proving the Polish origin of the person. So, they have to confirm presence of the Polish citizenship, or, at least, presence of the Polish citizenship by one of the parents, earlier (grandmothers, grandfathers, the great-grandmother, the great-grandfather). The decision on the matter is made by the consul [14, with.107].

By repatriation (homecoming) the repatriate's children can also obtain citizenship of Poland. If one of parents is a repatriate, then on the basis of the written statement of other parent the child with participation of the consul can obtain the Polish citizenship.

According to the national legislation of Poland, the minors who have reached 16-year age can on the basis of special consent obtain citizenship. According to the contract signed between Poland and the USSR, the persons repatriated to Poland in 1947-1951 s., have no right of homecoming.

Besides, to the persons undermining the interests of Poland, or violating human rights, the repatriation visa is not issued.

On the basis of the Polish laws, the persons, with the citizenship belonging to other nationality or not having citizenship (who doesn't have nationality), members of families of repatriates, persons interested to live in Poland, file an application for obtaining permission for residing in the territory of Poland during an established period. Permission to residence (homecoming) of these subjects in Poland is given by the chairman of management concerning foreigners and repatriation. According to procedural rules of issue of repatriation visas, these visas depending on the place of residence of the repatriate are given by the consul of the respective territory [14, p.192].

To the repatriates who have arrived in Poland from the former USSR or Asian territories, and who are interested to live in Poland and be provided with housing, the state provides financial assistance from the state budget. Repatriates can attend courses for studying of Polish and adaptation in society.

On the basis of the Law "On the Polish Citizenship" of February 15, 1962 the persons who have obtained the Polish citizenship till January 1, 2001 and being earlier citizens of one of the states formed after the collapse of the USSR, can be recognized as repatriates if until the end of 2001 they file a petition to Voevoda. According to the Polish laws, the female repatriate, who reached 60-year age, are to have length of service of 20 years, and the male repatriates who have reached 65-year age - 25 years. In Poland, for granting pension to repatriates it is considered length of service in foreign countries.

In the Federal Republic of Germany (FRG), as well as in a number of the European states, homecoming is regulated by provisions of the Constitution. According to Article 116 of the Constitution of Germany, resettlement to Germany and obtaining nationality is allowed to the persons of the German origin living in borders of Germany till December 31, 1937 as refugees and displaced persons, living in the territory of the USSR and Eastern Europe and also their spouses. After the World War II from Eastern Prussia, the countries of Central and Eastern Europe eighteen thousand ethnic Germans have moved to Germany [2, p.204].

Questions of repatriation (homecoming) in Germany are regulated both by the Constitution, and on the basis of the Federal Law "On Refugees and Exiles". Generally, the German emigrants get under this Law. The German emigrants are called the persons who, being persons of the German origin or citizens of Germany, get under the Law of Germany "On Refugees and Exiles" and also members of their families sent to Germany for full-time residence in quality of "emigrants". Subjects of this category in German are called "Auszidler".

**References:**

1. The Law of the Azerbaijan Republic of February 8, 2000, #806-IQ on approval of "The cooperation agreement concluded between the Government of the Azerbaijan Republic and International Organization For Migration" (in Azerbaijani).
2. Chirkin V.E. "Constitutional law of foreign countries", Baku, 2009 (in Azerbaijani).
3. The Law of the Azerbaijan Republic on adoption of the Constitution of International Organization For Migration", December 8, 2000, №33-IIQ (in Azerbaijani).
4. Universal Declaration of Human Rights., December 10, 1948 of the United Nations General Assembly, Baku, "Qanun", 2014 (in Azerbaijani).
5. Decree of the President of the Azerbaijan Republic of May 7, 2013, №887 on application of the Law of the Azerbaijan Republic "On introducing amendments to the Law of the Azerbaijan Republic "On fight against human trafficking" of April 19, 2013, № 609 – IVQD (in Azerbaijani).
6. The European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950. Baku, "Qanun", 2010 (in Azerbaijani).
7. The Law of the Azerbaijan Republic "On approval of the Regulations on the "Provision on the general database on illegal migrants and persons", entrance to whom the State Parties of the Cooperation Agreement of the CIS in fight against illegal migration is closed according to their existing national legislation, and the order of exchange of information about illegal migration" of October 24, 2000, №943-IQ (in Azerbaijani).
8. Order of the President of the Azerbaijan Republic "On granting powers of signing "The memorandum of understanding between the State Border Service of the Azerbaijan Republic and Service of Repatriation and Deportation of the Kingdom of the Netherlands on Fight against Illegal Migration", of April 15, 2009, №235 (in Azerbaijani).
9. Guliyev A.I. Legal Encyclopedia. Baku, "Qanun", 2007 (in Azerbaijani).
10. International Covenant on Civil and Political Rights of 1966. Baku, "Qanun", 2007 (in Azerbaijani).
11. Order of the President of the Azerbaijan Republic of August 17, 2006, №1628, "On approval of the "Cooperation agreement concluded between the Government of the Azerbaijan Republic and the International Center of Development of Migration Policy (ICDMP), signed on June 2006 in Baku (in Azerbaijani).
12. Order of the President of the Azerbaijan Republic of October 1, 2009, №508, "On the approval of "The memorandum of understanding signed on July 1, 2009 in The Hague between the State Border Service of the Azerbaijan Republic and Service of Repatriation and Deportation of the Kingdom of the Netherlands on Cooperation against Illegal Migration" (in Azerbaijani).
13. Gurevich A. M. Motivation of emigration. - SPb.: Speech, 2005. (Information on the first, second, third, fourth and fifth aliyah) (in Russian).
14. Kurkin B.A. International law: Manual. MSU Publishing House. 2008 (in Russian).
15. Gilbert, "Aliyah's statistics in 2011". 2005. P. 2.

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