

**REPUBLIC OF AZERBAIJAN**

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**ABSTRACT**

of the dissertation for the degree of Doctor of Philosophy

**ADMINISTRATIVE-LEGAL REGULATION OF  
MIGRATION PROCESSES: COMPARATIVE  
ANALYSIS OF MIGRATION LEGISLATION OF  
EUROPEAN COUNTRIES AND AZERBAIJAN**

Speciality: 5614.01 - “Administrative Law;  
Financial Law;  
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## GENERAL CHARACTERIZATION OF THE DISSERTATION

**The relevance and elaboration level of the topic.** It is known that during the last ten years, the increase in the number and scope of military conflicts, especially in the Middle East region, has resulted in a strong flow of immigrants from that region to Europe. As the flow of immigrants to Europe continues, migration issues have remained relevant. For this reason, migration legislation in European countries has undergone a remarkable development in recent years and has been rapidly adapted to the geopolitical conditions of the modern era. Also, due to the demand, master's and doctoral programs on migration law have been established in numerous higher education institutions in Europe, and the institutions involved in this field have been studied in more detail. Migration processes have gained relevance in Azerbaijan in recent years, so one of the most important and historical events here is the establishment of the State Migration Service of the Republic of Azerbaijan on March 19, 2007 by the decree of the President of the Republic of Azerbaijan<sup>1</sup>. Therefore, there is a need for extensive research and legal regulation in the relevant field. Also, the implementation of state policy in the field of migration in the Republic of Azerbaijan, improvement of legislation in accordance with international norms and requirements of the modern era, ensuring the national security and stable socio-economic and demographic development of the Republic of Azerbaijan in the application of laws, using the intellectual and labor potential of migrants, negative effects of unregulated migration processes "The State Migration Program of the Republic of Azerbaijan (2006-2008 years)" was approved by the Order of the President of the Republic of Azerbaijan dated July 25, 2006, in order to eliminate its influence

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<sup>1</sup> Azərbaycan Respublikası Prezidentinin "Azərbaycan Respublikası Dövlət Miqrasiya Xidmətinin yaradılması haqqında" Fərmanı: [Elektron resurs] // 19 mart 2007-ci il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

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and prevent illegal migration, including human trafficking<sup>2</sup>. In addition, in order to regulate migration processes on the basis of uniform and flexible procedures, the President of the Republic of Azerbaijan signed the Decree dated March 4, 2009 "On the application of the "one window" principle in the management of migration processes"<sup>3</sup>.

Personnel policy is one of the main issues related to increasing the effectiveness of state management in the field of migration. Because the improvement of the legislation is not enough to ensure the administrative-legal regulation and management, it is especially important to increase the professionalism of the persons who will apply the norms, as well as to determine their legal status. In this regard, the regulations and conditions of service in the migration authorities of the Republic of Azerbaijan, as well as the basics of the legal status of the employees of these authorities, were determined by the Regulation "On Service in Migration Authorities" approved by the Law dated December 4, 2009<sup>4</sup>.

The importance of the issue from the point of view of the Constitution is reflected in Article 28, which is called the right to freedom. According to this article, everyone has the right to freedom, and the right to freedom can be limited only by arrest, detention or deprivation of freedom in accordance with the law<sup>5</sup>.

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<sup>2</sup> Azərbaycan Respublikası Prezidentinin "Azərbaycan Respublikasının Dövlət Miqrasiya Proqramının (2006-2008-ci illər) təsdiq edilməsi haqqında" Sərəncamı: [Elektron resurs] // 25 iyul 2006-cı il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

URL: <http://e-qanun.az/framework/11800> (son giriş 06.01.2024)

<sup>3</sup> Azərbaycan Respublikası Prezidentinin "Miqrasiya proseslərinin idarə olunmasında "bir pəncərə" prinsipinin tətbiqi haqqında" Fərmanı: [Elektron resurs] // 4 mart 2009-cu il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

URL: <http://e-qanun.az/framework/16401> (son giriş 05.01.2024)

<sup>4</sup> Azərbaycan Respublikasının "Miqrasiya orqanlarında qulluq keçmə haqqında Əsasnamənin təsdiq edilməsi barədə" Qanunu: [Elektron resurs] // 4 dekabr 2009-cu il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

URL: <http://e-qanun.az/framework/18953> (son giriş 05.01.2024)

<sup>5</sup> Azərbaycan Respublikasının Konstitusiyası // 12 noyabr 1995-ci ildə qəbul

Part III of the article emphasizes the right of everyone who is legally in the territory of the Republic of Azerbaijan to move freely and choose their place of residence and to go outside the territory of the Republic of Azerbaijan. It can be understood from here that the right to freedom coincides with the free movement of an individual, but here, although the possibility of free movement of an individual is a component of the right to freedom, it does not mean all of it<sup>6</sup>. Part IV of Article 28 establishes the right of citizens of the Republic of Azerbaijan to return to their country at any time without hindrance.

From the point of view of Administrative Law, it should be noted that the regulation of migration issues is one of the issues included in the subject of state administration. It is the legislative body of the state that adopts the relevant normative-legal acts in this field. The executive authorities ensure the implementation of the normative-legal and other acts adopted by themselves along with those normative-legal acts, and the judicial bodies are responsible for the resolution of controversial points that arise during their application and also perform the function of protection and restoration of violated human rights and freedoms. However, along with all these mentioned, it would be wrong to say that migration processes are only related to Administrative Law. Other fields of law, even other fields of science besides law, study migration according to their subjects. In the dissertation, a study was conducted in this regard, and the results were reflected.

One of the most important steps taken in this field is the Agreement on the readmission of persons living without permission between the Republic of Azerbaijan and the European Union (hereafter EU), signed on February 28, 2014. The signing of this Agreement intends to strengthen cooperation between them in order

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edilmişdir (24 avqust 2002-ci il tarixdə olan dəyişiklik və əlavələr, 18 mart 2009-cu il tarixdə olan dəyişiklik və əlavələr, 26 sentyabr 2016-cı il tarixdə olan əlavə və dəyişikliklər). – Bakı: Hüquq Yayın Evi, – 2018, – 92 s.

<sup>6</sup> Əsgərov Z.A. Konstitusiya hüququ. Dərslük / Z.A.Əliyev. – Bakı: Bakı Universiteti Nəşriyyatı, – 2011. – 760 s.

to fight against illegal immigration more effectively<sup>7</sup>. Finally, on March 17, 2021, the Agreement on the organization's status in the Republic of Azerbaijan was signed between the State Migration Service and the International Center for the Development of Migration Policy (ICMID). In addition to contributing to the deepening of Azerbaijan's cooperation with the CISM and the European Union, the document is of great importance in terms of increasing our country's ability to use international aid instruments<sup>8</sup>.

We must note that migration processes can undergo major changes in short periods of time, and in this regard, mechanisms capable of responding flexibly to these transformations at the local and international level should be implemented. The occurrence of an event that occurs in any small region and determines the flow of migration can have its effect at the global level.

Although the topic has not been comprehensively studied in the science of Azerbaijani law, certain aspects of it have been investigated. For example, the representation of the International Organization for Migration and the UN in the Republic of Azerbaijan regarding the situation of family members of Azerbaijani migrants in Azerbaijan, A. Suleymanov regarding labor migration, A. Allahverenov, R. Aliyeva and T. Sadigov regarding migration issues in Central and Eastern Europe, R. Efendiyev conducted research on migration issues. However, the administrative-legal regulation of migration processes in the Republic of Azerbaijan (compared with the legislation of European countries) has never been the subject of an independent complex monographic study. In this regard, while writing the dissertation, the migration legislation of 18 European countries, as well as the European Union, and the management policy implemented in the

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<sup>7</sup> “Azərbaycan Respublikası ilə Avropa İttifaqı arasında icazəsiz yaşayan şəxslərin readmissiyası haqqında” Sazişin təsdiq edilməsi barədə Qanun: [Elektron resurs] // 30 may 2014-cü il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

URL: <http://e-qanun.az/framework/27934> (son giriş 05.01.2024)

<sup>8</sup> Xəbərlər. [Elektron resurs]

[https://migration.gov.az/az/news\\_detail/14450](https://migration.gov.az/az/news_detail/14450) (son giriş 06.01.2024)

relevant field were studied. Six of the European countries studied were selected from non-EU countries, which served to increase the diversity for the comparative analysis. Proposals regarding the improvement of the migration legislation of the Republic of Azerbaijan were made based on the experience of the studied European countries. In order to obtain the current versions of the migration legislation, single electronic databases of the legal acts of the countries were used during the research.

**The object and subject of the research.** As the object, we can mention the social relations that arise during the administrative-legal regulation of migration processes, and as the subject, the features of the administrative-legal regulation of migration processes in European countries and Azerbaijan, as well as the concept, essence and content of migration.

**The purpose and objectives of the research.** The purpose of the dissertation research is to investigate the issues of administrative and legal regulation in the field of migration, to study the experience of European countries, and to compare the obtained results with the provisions of the migration legislation of the Republic of Azerbaijan. Also, as a result of the comparative analysis to be conducted, the main goal of the dissertation is to prepare relevant proposals for further improvement of the national legislation in this field and to ensure that it complies with international norms. In order to achieve the indicated goals, the following tasks were set in the research work:

- first of all, to analyze the concept of migration, its characteristics, other legal concepts related to migration processes;
- to study the history of the development of migration processes in Europe in the 20th century;
- to analyze the progress of migration processes in the background of the Karabakh conflict in the Republic of Azerbaijan;
- to analyze the stages of migration processes and, in general, the issue of non-legal factors affecting it;
- to investigate and analyze the role of readmission agreements in the regulation of migration processes;
- to analyze the readmission agreement signed by the Republic of

Azerbaijan with the European Union, its essence and possible directions of future development between the parties in this field;

- to analyze the migration policy of the European Union at the organizational level, the measures implemented to overcome the crisis;
- to examine the importance and the process of organizing the integration of migrants into the society in the new place of residence;
- to investigate and analyze the state management experience of advanced European countries in the field of migration;
- to analyze the features of state management in the field of migration in the Republic of Azerbaijan;
- to study and analyze the migration legislation of advanced European countries;
- to study and analyze the migration legislation of the Republic of Azerbaijan.

**Research methods.** When writing a research paper, general legal methods - systematic analysis, generalization of normative, scientific and practical materials, historical approach, unique scientific methods - comparative jurisprudence, etc. methods were used. Theoretical and empirical issues, as well as information, were analyzed in a coordinated manner in the research work.

**The main provisions for the defense.** The following main provisions of the dissertation work are submitted for public defense:

1. Although different definitions of migration are defined in the theoretical literature, various legal documents, and national normative-legal acts, the common feature of each is that migration is characterized as a person's change of residence. In this regard, in our opinion, migration can be defined as the legal movement of a natural person within the territory of the country where (s)he is a citizen or permanent resident or by crossing a state border recognized by international law. It is known that the free movement of not only people, but also goods and services is ensured within the Schengen zone in Europe. From this point of view, the movement from one of the countries included in the zone to another takes place in the form of internal displacement outside the general border



procedures, but it is theoretically included in the concept of migration.

2. Migration processes are investigated and studied not by a single field of science – law, but by a wide variety of different fields. Economics, history, political science and numerous institutions within them propose different approaches to migration processes and its elements and try to confirm their truth by experimenting. During the comparative analysis, in each case, it is necessary to study not only the issues of legal regulation, but also the factors affecting migration processes.

3. A number of theories put forward in the literature in the study of migration processes show that various factors also play an important role in legal regulation. It is possible to say that all these theories are based on the concept of "laws of migration" founded by E.C. Ravenstein. When investigating the administrative-legal regulation of migration processes, the inclusion of the mentioned laws in the scope of research should form the fundamental basis of approaches from the theoretical aspect.

4. The signing of readmission agreements during the regulation of migration processes by the states continues to maintain its importance from the past centuries to the present day, and as a manifestation of this, Europe ensures stability of the migration policy by concluding this agreement with non-member countries at the level of the Union. Readmission agreements can play an important role in improving the migration policy and legislative mechanism in the Republic of Azerbaijan. In this regard, it is necessary to sign relevant agreements with a number of states in the near future.

5. In the socio-economic situation of migrants, various problems such as lack of education, low employment level, social isolation, poverty and sometimes over-specialization have a bad effect on the integration process. Barriers to education and the labor market indirectly increase the risk of social exclusion and increase negative attitudes towards immigrants in society. Although similar problems were observed in internal migration in Azerbaijan in the 1990s, especially with regard to internally displaced persons, they

were gradually eliminated with the policies implemented in the following years.

6. The success of administrative-legal regulation in any field also depends on the form of organization and implementation of administrative management. From this point of view, it is particularly important to define the powers and functions of state bodies that play a role in the management of migration processes, and to improve them using the experience of foreign countries with effective management systems.

7. The migration legislation of most European countries, unlike Azerbaijan and other post-Soviet countries, includes both of them under the term alien or foreigner, without making a serious distinction between foreigners and stateless persons. Covering only the citizens of foreign countries with the concept of foreigners shows that the narrow approach is preferred in the migration legislation of Azerbaijan.

8. When looking at the migration legislation of European countries, it is possible to say that the requirements for granting temporary and permanent residence permits are mainly related to the validity of the purpose indicated by the person in his application and his behavior during his previous temporary stay. On the other hand, increasing the effectiveness of the administrative-legal regulation of migration processes cannot be achieved only by improving the migration legislation. Here, in accordance with the social relations arising from migration processes, there is a need to make a number of changes to the family, criminal and criminal-procedural legislation.

**The scientific novelty of the dissertation work** can be explained by the fact that until now the issue of administrative-legal regulation of migration processes in the legal doctrine of Azerbaijan has not been the subject of any complex scientific research.

Guided by a complex analysis of theoretical sources and empirical materials, many concepts and conclusions are substantiated as an element of innovation, and new rules for solving a number of important issues related to the regulation of migration processes are proposed.

**The theoretical and practical significance of the dissertation research** consists of the following:

- 1) The theoretical proposals put forward in the dissertation can enrich the scientific base of the field of migration law;
- 2) Proposals and conclusions put forward in a justified way in the thesis work can be used during the improvement of the legislation;
- 3) The results of the dissertation work can be used in further scientific research.

**Approbation and implementation of research results.** The main provisions of the dissertation are widely interpreted in the published scientific works of the author. Certain aspects of the research were included in speeches made at international and republican level scientific-practical conferences held in foreign countries and in the Republic of Azerbaijan.

9 scientific works were published based on the materials of the dissertation. Among them, 5 articles, including 1 abroad, and 4 conference materials, including 1 abroad, were published.

**The name of the organization in which the dissertation work was carried out.** The dissertation work was performed at the Department of Constitutional Law, Faculty of Law, Baku State University. This topic was approved at the meeting of the Problem Council on Social Sciences of the Council for the Organization and Coordination of Scientific Research of the Republic of Azerbaijan.

**The structure of the dissertation work** is determined by the goals, tasks and methodology of the research. The dissertation consists of an introduction, three chapters, including 7 paragraphs, a conclusion, and a list of references.

## **MAIN CONTENT OF THE DISSERTATION**

**In the "Introduction" part,** the relevance of the topic is justified, the degree of development and the source base are given. The object, subject, goals and tasks of the research, the methods used during the writing of the work were discussed. Information was provided on the main provisions and innovations that were defended, and the theoretical and practical importance of the

research was justified. Here, the approval and application of the work, the name of the organization where it was performed, the volume of the structural sections of the dissertation, and the total volume of the dissertation are indicated.

**Chapter I** is called "**The concept of migration, history and stages of migration processes**". It consists of 2 paragraphs. In the first paragraph of chapter I, the concept of migration is examined, as well as other concepts related to migration, the signs and characteristics of migration are reviewed. Some authors define migration simply as a movement from one geographic location to another<sup>9</sup>. It goes without saying that this term includes both internal migration within one country from one region to another, and international migration – a movement from one country to another. However, international organizations and national laws define migration differently. The International Organization of Migration (IOM) in its Glossary on Migration published in 2019 used the following definition: *“the movement of persons away from their place of usual residence, either across an international border or within a State”*<sup>10</sup>. However, it is worth to mention that over the years IOM’s definition of migration has undergone changes. For instance, in 2003 the IOM defined migration as *“the movement of a person or group of persons across an administrative or political border, wishing to settle definitely or temporarily in a place other than their place of origin”*<sup>11</sup>. Interestingly, the Migration Code of the Republic of Azerbaijan establishes the definition of only labor migration. According to Article 3.0.9 of the Code, labor migration is

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<sup>9</sup> Mavroudi E. Global migration: patterns, processes, and policies / E.Mavroudi, Nagel C.R. – New York: Routledge, – 2016. – 262 p.

<sup>10</sup> International Migration Law. Glossary on Migration / ed. A.Sironi, C.Bauloz, M.Emmanuel. – Geneva: International Organization for Migration (IOM), – 2019. – 248 p. [Electronic resource]

[https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf) (son giriş 02.01.2024)

<sup>11</sup> World Migration: An overview of international migration / International Organization for Migration. – Geneva – 2003. – 396 p. [Electronic resource]

[https://publications.iom.int/system/files/pdf/wmr\\_2003\\_1.pdf](https://publications.iom.int/system/files/pdf/wmr_2003_1.pdf) (son giriş 02.01.2024)

a change of place of residence by lawful relocation of a natural person from one country to another in order to engage in paid labor<sup>12</sup>. Considering above-mentioned diverse definitions one can define migration as a movement on legal grounds of a natural person within the territory of his/her country of nationality or permanent residence or by crossing a foreign state border for various reasons. Also, in this paragraph, issues related to the recent past of migration processes in our country have been touched upon. As is known, over the past 30 years particular activity has been observed in the internal migration in Azerbaijan, the main reason being the Karabakh war that happened during 1988-1994. During the six-year war around 1 million persons were expelled both from Karabakh and Armenia and became refugees and internally displaced persons<sup>13</sup>. This issue that led to a serious crisis during the first years of independence found its temporary solution in settlements built for the refugees and IDPs. However, the reignition of the war on 27 September 2020, conclusion of a Trilateral Statement and subsequent liberation of 7 regions and a number of settlements secured the return of IDPs to their homes in near future.

**The second paragraph of Chapter I** is called "Stages of migration processes and factors affecting it". It must be said, that migration as a process starts not when a person, who migrates for certain reasons, arrives at the border of the target country he/she chose, but way before. Thus, challenges that migrant faces in his/her own country and decision to migrate constitutes the first stage of the process<sup>14</sup>. In the second stage specific reasons behind the desire of a person who intends to move are explored. On the one hand, these reasons are mainly backed by the lack of employment opportunities,

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<sup>12</sup> Azərbaycan Respublikasının Miqrasiya Məcəlləsi: [Elektron resurs] // 2 iyul 2013-cü il tarixdə qəbul edilmişdir. – Azərbaycan Respublikasının Ədliyyə Nazirliyinin hüquqi aktların vahid elektron bazası.

URL: <http://e-qanun.az/framework/46959> (son giriş 05.01.2024)

<sup>13</sup> Abdullahzade C. Hukuki yönleriyle Dağlık Karabağ sorunu / C.Abdullahzade. – Ankara: Adalet Yayınevi, – 2014. – 330 s.

<sup>14</sup> Segal U.A. Immigration worldwide: policies, practices, and trends / U.A.Segal, D.Elliott, N.S.Mayadas. – Oxford; New York: Oxford University Press, – 2010. – 473 p.

persecution, natural disasters and the desire to risk and start a new life. On the other hand, poor employment options, provision for rights and freedoms, safety and high family values become factors dissuading a person who plans to move. The third stage studies matter related to the moving person's departure from his/her place of residence and arrival at the target country. Migrant's departure from his/her country of nationality or permanent residency can be planned or unplanned, voluntary or forced, legal or illegal, safe or dangerous, easy or difficult. The fourth stage of migration process is called reaction and comprises both the resources available to a migrant, and the level of readiness of the country accepting him/her. A migrant's resources include his/her psychological strength, social support, language and professional skills, economic resources, etc. Finally, the fifth stage of the migration process is about the adjustment to the lifestyle and culture of a receiving country and its implications. This stage encompasses such elements as acculturation and assimilation, integration, segmented assimilation, accommodation, separation and social marginalization, rejection. Its implications include such matters as public policy and law, health, level of social welfare, education and vocational training, social and economic development, development of private and public services. Thus, migration processes are researched and studied not only by jurisprudence, but widely by various and different areas. Economy, history, political science, geography, social science, philosophy and various institutions within them suggest different approaches regarding migration processes and its elements and try to prove them in practice. In addition, administrative and legal regulation themselves are influenced by above-listed areas and social relations they study.

**The second chapter called "Legal basis of cooperation in the field of migration between European countries and the Republic of Azerbaijan and management of migration processes"** consists of 3 paragraphs.

**Paragraph 1** is entitled "The readmission agreement concluded with the European Union and future prospects". Readmission agreements are of particular practical importance in

migration law and play a key role in the regulation of relationships that arise between states in this regard. These agreements facilitate the expulsion of unauthorized immigrants by establishing obligations and procedures regarding readmission between the contracting parties, which are mostly states. Agreements of this kind were concluded since the early nineteenth century. During the said period, more than two hundred bilateral readmission agreements were concluded world-wide in the nineteenth century alone, a large number of which by the current European Union Member States. The proliferation of these agreements has continued unremittingly<sup>15</sup>. In the preamble of the Agreement signed between the European Union and the Republic of Azerbaijan on February 28, 2014 and which entered into force on May 30 of that year, the intentions and goals of the parties were determined. This readmission agreement regulates provisions related to the return - readmission of persons living illegally in the party states and has a special place in the relations of the Union with the Republic of Azerbaijan. Article 2 titled Fundamental Principles sets the requirement to respect obligations following from a number of important international instruments in the application of the Agreement. The last part of Article 2 states that the requesting state should give preference to voluntary return over forced return where there are no reasons to believe that this would undermine the return of a person to the requested state<sup>16</sup>. Voluntary return is understood as an assisted or independent departure to the country of origin, transit or another third country based on the will of the returnee. Whereas a forced return means compulsory return to the country of origin, transit or another third country, on the basis of an administrative or judicial act.

**Paragraph 2** talks about some difficulties caused by

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<sup>15</sup> Coleman N. *European Readmission Policy: Third Country Interests and Refugee Rights* / N.Coleman. – Leiden: Martinus Nijhoff Publishers, – 2009. – 396 p.

<sup>16</sup> Kancs D. *Long-term Social, Economic and Fiscal Effects of Immigration into the EU: The Role of the Integration Policy (JRC Working Papers in Economics and Finance)* / D.Kancs, P.Lecca. – Luxembourg: Publications Office of the European Union, – 2017. – 46 p.

migration processes in Europe and the integration problems of migrants. It is clear that the growing number of military confrontations in the Middle East and migration caused major migration influx to Europe. As a result, migration rules of European countries underwent serious evolution and were adjusted to the geopolitical situation of the recent years. There are still certain practical issues which require the improvement of both international agreements and domestic regulations. To this end, the matter of integration requires special attention, as it is of particular importance in the European countries that are subjected to migratory waves. In terms of migration policy, first political signals came from the EU after the beginning of the refugee crisis at the end of 2014. Thereafter, migration has become one of the 10 priorities of the European Commission established on 1 November 2014 under Jean-Claude Juncker's leadership. The European Agenda on Migration, which was proposed in May 2015, recognizes migration both as an opportunity and challenge for the EU. The Agenda sets out medium to long-term priorities that will help EU Member States to manage migration challenges and, looking beyond crises and emergencies, to capitalise opportunities. Serious steps towards solving all these problems started to be taken in 2015 and 2016, and significant work has been done in recent years, both in terms of legal regulations and practical work. Although each of these developments has its own goals and objectives, the main goal is to ensure the integration of migrants into society in general and to prevent social exclusion. Moreover, these developments have given great support not only at the national level, but also at the level of the entire European Union, and even many non-governmental organizations have initiated or implemented projects.

**In the 3rd paragraph,** the features of state management in the field of migration in European countries and Azerbaijan are analyzed. In any area the efficient application of existing laws depends on how the public administration is built and carried out. That is why when studying the administrative and legal regulation of migration processes the forms of administration states apply are important in order to arrive at certain scientific conclusions.



Generally speaking, administration is an organization established for a specific purpose or a planned human activity carried out for this purpose. It is safe to say, that administration implies both an organization and its activities. While considering the administration of migration issues in the EU, first of all, Frontex – European Border and Coast Guard Agency must be mentioned. The main aim of the Agency is to facilitate the application and increase the efficiency of current and future activities of the Union in relation to the management of external borders. It also complements to the state border management systems of EU Member States, and helps to ensure freedom and security of EU citizens<sup>17</sup>. One more agency to mention is the European Asylum Support Office (EASO). EASO plays the role of a center providing scientific and technical support to the Member States, particularly those whose asylum and admission systems are under particular pressure. Having considered public administration of migration processes in the leading European countries we saw that these processes are mostly carried out by various structural units under the ministries of internal affairs and justice. However, in some countries separate ministries of migration are established which carry out overall administration in the said area and arrange the development and implementation of uniform state policy. In the Republic of Azerbaijan, when we examine the state administration in the field of migration, we can see that 3 bodies come to the fore. The first and most important of them is the State Migration Service (SMS), the central executive power body included in the Cabinet of Ministers. The service was established according to the Decree No. 560 dated March 19, 2007 of the President of the Republic of Azerbaijan "On the establishment of the State Migration Service of the Republic of Azerbaijan". According to the Regulation on SMS, it is a central executive power body with the status of a law enforcement agency, which implements the state policy in the field of migration, the powers defined by the legislation of the Republic of Azerbaijan in

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<sup>17</sup> Agencies - Migration and Home Affairs - European Commission. [Electronic resource]

[https://ec.europa.eu/home-affairs/what-we-do/agencies\\_en](https://ec.europa.eu/home-affairs/what-we-do/agencies_en) (son giriş 02.01.2024)

the management and regulation of migration processes.

**Chapter III** is called "**Administrative-legal regulation of migration processes in European countries and Azerbaijan**".

**In the 1st paragraph**, the features of the administrative-legal regulation of migration processes in European countries are studied. In order to understand how states regulated migration processes from administrative and legal perspectives, one must look into corresponding legal and regulatory acts they adopted. Naturally, rather than investigating the regulation of all migration processes one must choose a specific area and focus on the provisions in the legislation that apply to that area. In the second decade of the past XX century European states paid particular attention to the problem of issuance of temporary and permanent residence permits. Moreover, there are quite a few examples of interstate cooperation in this area in the region. It needs to be mentioned that the migration crisis the EU countries experienced in 2015 led to the development of the migration laws both at national and regional levels and increase of mutual cooperation among these countries. One of the interesting moments during the research was that most of the European countries do not differentiate between foreign nationals and stateless persons, attributing to both of them the term alien or foreigner. Another important point is the absence of single migration code, and having instead separate regulatory acts at the law level. These acts were amended in parallel with migration processes especially in the second decade of XXI century. Particularly in the example of Sweden, one can say that these additions and amendments became relevantly restrictive in nature after the refugee crisis of 2015. On the other hand, requirements for issuing temporary and permanent residence permits depend on the validity of the purpose indicated in the application and the behavior during the previous period of temporary residence.

**Paragraph 2** analyzes the issues of administrative and legal regulation of migration processes in the Republic of Azerbaijan. In the Republic of Azerbaijan, historically one of the migration hubs in the South Caucasus, legal aspects of regulation of migration processes, unfortunately, were not studied extensively. Research of

migration was mostly limited to its political and economic aspects, without necessary focus on its administrative and legal nature. However, there is need to improve the national migration law considering increasing cooperation and integration between Azerbaijan and Europe, benefiting from the practice of European states that have achieved the new level of development. There are 3 laws in relation to migration matters that were adopted in the early years of independence and currently not applied, first of which is the Law on the Legal status of foreigners and stateless persons adopted on 13 March 1996. Repealed on 2 July 2013 and consisting of 29 articles the Law governed public relations with regards to the legal situation of foreigners and stateless persons in the Republic of Azerbaijan. However, with the adoption of the Migration Code on the mentioned date, this division ended, and almost all of those normative-legal acts became invalid. However, in the current conditions, it is necessary to make some changes to the Code, which is related to adapting the administrative-legal regulation of migration processes to the requirements of the modern era and using the experience of leading European countries in the relevant field.

In the thesis, sufficient results of scientific innovation and practical importance have been obtained. Among them, the following results (suggestions) should be noted:

1. The readmission agreement signed between the EU and Azerbaijan regulates provisions related to the return and readmission of individuals residing in the contracting states without permission, and holds a special place in the relationship between the Union and Azerbaijan. However, it must be mentioned that it would be wrong to be limited to this agreement alone in mutual regulation of migration processes in this time of rapidly changing and developing social relations. There is need for signing readmission agreements with Eastern and Southern Member States of the EU, because the migration movements between these countries and Azerbaijan are significant which requires more specific regulation apart from general regulations at the EU level.

2. Concluding agreements with other Eastern Partnership countries in accordance with the international migration norms for

the readmission of individuals without residence permit may become one of the important future steps. On the other hand, we suggest including a section titled Responsibilities on readmission of refugees and political asylum seekers into the Readmission Agreement concluded with the EU.

3. To ensure the effective administration and single management over migration processes, to avoid any duplication of responsibilities and conflicts that may arise, and for budget saving purposes, we suggest the re-establishment of the SMS as the Ministry of Migration and Integration of the Republic of Azerbaijan, where transition from a service to a ministry status also implies transition from functionality to areal administration, subordination of the State Committee for the Affairs of Refugees and Internally Displaced Persons to the Ministry of Migration and Integration, and transfer of the migration responsibilities of the Main Passport, Registration and Migration Department of the Ministry of Internal Affairs to the above-mentioned Ministry.

4. Also, for the preparation of qualified specialists in this area, and promoting research in migration, it is reasonable to introduce Migration Law as a main subject into the bachelor programs in law at Azerbaijani universities and establishing master's degree programs on Migration Law.

5. A new paragraph 18 to be added to Article 3 of the Code with the following wording:

residence permit – a document issued by a relevant executive body ensuring temporary or permanent stay of a foreigner in the territory of the Republic of Azerbaijan pursuant to the provisions of this Code.

6. Paragraph 18 to be introduced to Article 3 of the Code defining the term high level specialist:

a foreigner who has high-level education (education level 5, 6, 7 or 8 in accordance with the International Classification Standard of Education) or professional experience with a level of skill or quality necessary for a highly qualified occupation (in accordance with skill levels 3 and 4 of the International Standard Classification of Occupations).

7. We believe that the Ministry of Migration and Integration that we previously proposed to be established on the basis of the SMS, must have the right to file an appeal to a court for a marriage to be declared invalid in certain circumstances. For this purpose, we propose the introduction of new paragraph 9 to the first part of Article 26 of the Family Code of the Republic of Azerbaijan with the following wording:

relevant executive body when a fake marriage is concluded with a foreigner for the purpose of reception, stay of a foreigner in the country and violation of the rules of issuance of a residence permit.

8. To address fake marriage cases with foreigners, Article 318-3 must be introduced to the Chapter on the Crimes against the administrative order of the Criminal Code of the Republic of Azerbaijan with the following wording:

318-2.1. Conclusion of a fake marriage with a foreigner for the purpose of violating the rules of reception, stay of a foreigner in the country and issuance of a residence permit or arrangement of such marriage by a citizen of the Republic of Azerbaijan- shall be punished with corrective labor for a period of up to three years or restriction of liberty up to three years or imprisonment up to three years.

318-2.2. Same acts committed:

318-2.2.1. by an organized group;

318-2.2.2. by an official with the abuse of his/her powers;

318-2.2.3. repeatedly -

shall be punished with imprisonment for a period from three to five years with or without deprivation of the right to assume a certain position or engage in certain activities up to two years

9. We also find it appropriate to establish the Main Department of Investigation under the proposed Ministry of Migration and Integration for carrying out preliminary investigation of this offence and those described in Article 318-1.

10. In addition, Article 3 of the presidential decree “On the application of the Law of the Republic of Azerbaijan “On the approval, entering into force of the Code of Criminal Procedure of the Republic of Azerbaijan and related legal regulations” and the

Code of Criminal Procedure of the Republic of Azerbaijan by that Law” dated 25 August 2000 must be amended with the addition of the following provision:

The Ministry of Migration and Integration of the Republic of Azerbaijan in relation to criminal cases established in Articles 318-1 and 318-2 of the Criminal Code of the Republic of Azerbaijan.

11. To avoid possible conflicts that may arise between the relevant legislative materials Article 215.3.1 of the Code of Criminal Procedure of the Republic of Azerbaijan must be approved in the following wording:

Criminal offenses specified in articles 100—113, 120—125, 126.3, 135—138, 145, 146, 148-1, 149, 154-162, 162-1 (when a criminal case is opened by a prosecutor), 163, 164, 165.2, 165-2, 165-3, 166.2, 167-168, 169-1, 179, 189-1, 190, 191, 192-2, 193-1 (when a criminal case is opened by a prosecutor), 195, 195-1, 195-2, 202 - 203-1, 208, 210—212, 222, 223, 262, 268, 286—288, 290—302, 304, 307—315, 316-2.1, 317, 317-1.2, 318-1, 318-2, 321, 323 of the Criminal Code of the Republic of Azerbaijan.

**The main provisions of the dissertation are set out in the following scientific publications:**

1. Əliyev E.E. Avropa ölkələrinin əsas miqrasiya problemlərinə dair // “Dövlət atributlarından Konstitusiyaya” mövzusunda respublika elmi-praktiki konfransının materialları, – Bakı: Azərbaycan Respublikasının Dövlət Təhlükəsizliyi Xidmətinin Heydər Əliyev adına Akademiyası, – 12 noyabr 2019, – 394 s.
2. Aliyev E.E. Issues of migration integration in Europe // – Baku: International law and integration problems, – 2020. 01 (59), – 80 s.
3. Əliyev E.E. Avropa İttifaqının və Skandinaviya ölkələrinin miqrasiya proseslərinə hüquqi yanaşması məsələləri // – Bakı: Azərbaycan Hüquq jurnalı, – 2020. 03, – 270 s.
4. Əliyev E.E. Avropa İttifaqı ilə bağlı readmissiya sazişi və gələcək perspektivlər // “XXI əsrdə İnsan hüquq və azadlıqlarının müdafiəsi sahəsində müasir nəzəri və praktiki yanaşmalar” mövzusunda elmi-nəzəri konfransının materialları, – Bakı:

Azərbaycan Respublikasının Konstitusiyası Məhkəməsi, – 5 may 2020, – 578 s.

5. Əliyev E.E. Miqrasiya proseslərinin mərhələləri və ona təsir edən amillər // – Bakı: Qanun jurnalı, – 2020. 12 (314), – 159 s.

6. Aliyev E.E. Göç və ilgili konsepsiyalar // Uluslararası Bilimsel Araşdırmalar və Yenilikçi Çalışmalar Sempozyumu, – Bandırma: Bandırma Onyedli Eylül Üniversitesi, – 22-25 Şubat 2021, – 2021, – 2788 s.

7. Əliyev E.E. Azərbaycanda miqrasiya proseslərinin inzibati-hüquqi nizamlanmasına dair // – Bakı: Qanun jurnalı, – 2021. 03 (317), – 128 s.

8. Əliyev E.E. Avropa İttifaqı və bir sıra Avropa dövlətlərində miqrasiya prosesləri sahəsində dövlət idarəetməsi // “XXI əsrdə İnsan hüquq və azadlıqlarının müdafiəsi sahəsində müasir nəzəri və praktiki yanaşmalar” mövzusunda elmi-nəzəri konfransın materialları, – Bakı: Azərbaycan Respublikasının Konstitusiyası Məhkəməsi, – 5 may 2021, – 578 s.

9. Aliyev E.E. Some problems with issuing residence permits in Azerbaijan // – Kiev: Держава і право, – 2021. 36 (89), – 332 s.

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