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# Legal aspects of gender Migration (prospects for Ukraine).

**Daria Bulgakova**

V.N. Karazin Kharkiv National University, Ukraine

## Abstract

Among a great number of challenges the EU faces is a weakly controlled and legally regulated migration process that certainly requires a serious consideration and legal changes.

One of the aspects of this process that hasn't practically been the subject of serious studies is gender migration in general and its specific peculiarities in each country (the country of migrants' origin and the country-recipient) in particular. It may be partially explained by a weak level of awareness of the problem since until the mid -1980s; migration was regarded as a male phenomenon. The phrase "migrants and their families" was a code for "male migrants and their wives and children." Research in the 1970s and the 1980s began to include women, but did not cause a dramatic shift in thinking. One of the central questions about women during this period was whether migration "modernized" women, emancipating them from their assumed traditional values and behaviors.

Ukraine's strategic goal is to join the EU and it makes this country be more active and persistent in ensuring equal rights and opportunities for men and women. However, these efforts have been very declarative so far and there are no substantially developed legal grounds but a few recently adopted laws. But labor migration from Ukraine to the EU has been rather active since the collapse of the USSR and if not legally regulated it may cause a number of serious social and economic problems both in Ukraine and in the EU.

The purpose of the article is to identify the main reasons leading to labour migration from Ukraine, to scrutinize the gender peculiarities of Ukrainian labour migration and its legal aspects both in Ukraine and in the EU where most of the Ukrainian migrants settle.

**Key words: migration, gender, equal rights, employment potential, Ukrainian perspectives.**

## Introduction.

According to the international law, adopted by the international community, the human right to freedom of movement, regardless of gender, ethnic or social origin, place of residence, is an integral and essential part of human rights. However, the efforts made in recent years in the international community to ensure equal rights and equal opportunities for women and men even at the level of legislation are limited (1). Among the huge number of problems facing the world today, one can identify a particular problem, which is poorly monitored and regulated by law – this is the process of migration in general and the female migration in particular. The same is true for Ukraine.

Ukraine occupies a special place in the process of migration among the former Soviet Union countries, as it takes the 5th place in the world among the countries with the largest number of emigrants. Today migration is very important for Ukraine, because it is a significant resource for human development.

But, however, it remains a problem area for government and public life since it is poorly understood in general and there is no serious research on gender migration and its specific features in this country in particular. This can be partially explained by the low level of awareness of the problem, because until the mid-1980s migration was considered only as a male phenomenon. A typical phrase "migrants and their families" meant and still traditionally means "a migrant man with his wife and children."

Studies conducted in the 70's, 80's of the last century in Europe marked the beginning of a new concept «a migrant-woman," but, nevertheless, it hasn't brought any significant changes to the understanding that women can migrate separately from men. (2)

At present a significant change in migration quality characteristics is its feminization, that is, an increase in the proportion of women and children in the total number of migrants.

According to the theory of gender migration, the most common types of female migration are:

- ✓ marriage migration (reunification of migrant men with his family or migration of women to create a family with a man from another country);
- ✓ migration as a result of human trafficking (employment, that is, one that is often fraught with sex-services);
- ✓ and independent labor migration of women.

We can't make a clear distinction between these types of migration, because the true purpose of migration is employment and the improvement of the financial situation of migrants. On the one hand, migration provides women with an access to the international employment; ensures their own independent income, prosperity for their families through remittances. But

on the other hand, women are often exposed to various forms of discrimination in the labor market. They have a limited access to the full social protection and to the services of the health care sector. (3)

**The main purpose of this article** is to analyze the main aspects of contemporary international migration of women and to identify the steps to protect the rights of migrant women and promote their employment potential from the Ukrainian perspective.

According to the IOM report, since 1990 the number of international migrants in the world, as a whole, has increased by almost 40 million, and only in the period from 2005 to 2010 up to 10.5 million people.

Currently, 214 million migrants are officially registered worldwide. Ukraine occupies the 5th place in the world among the countries with the largest number of emigrants. 6.5 million workers (67% of men, 33% of women that is more than 2 million) work outside Ukraine. It is equal to 14.4% of the total Ukrainian population. (4)

Among the main factors in the spread of female migration in Ukraine are:

- the fight against poverty;
- improvement of living conditions;
- an adequate provision for children;
- the growth in demand for female labor in the markets of foreign countries;
- unemployment and limited social and economic opportunities in Ukraine;
- more opportunities for self-realization of highly qualified women-migrants abroad.

One can not forget about the individual factors, including:

- the fight against the restriction of personal freedom and discrimination;
- domestic violence;
- the pursuit of equal opportunities;
- a search for opportunities to get married abroad.

Returning to the theory of gender migration let's consider the most vibrant sectors of female migration and possible solutions:

**Marriage migration** (reunification of migrant men with their family or migration of women to create a family with a man from another country).

This is a specific type of movement for women from Ukraine. Of course, the phenomenon is not new, but its size was almost unnoticeable before and it didn't cause any resentment in society. However, the situation has changed nowadays.

The democratization of social life in the country has increased the chances of international contacts and brought the issue of marriage migration to the level of social visibility.

Brides and "imported" bridegrooms have turned from a taboo into a fashionable topic widespread in the media and on the Internet. However, so far this problem remains unattended in sociological and legal studies and there isn't any fundamental research into this topic in Ukraine.

At the moment, we are dealing with a life strategy aimed at emigrating through marriage with a foreign citizen. Marriage emigration and a previous search for a partner is a kind of "Strategies for Success", an alternative to such personal "programs" for women, as a desire for leadership and professional growth. From this perspective, the marriage migration can not be considered as an undesirable migration, since it contributes to the democratization of life and a greater variety of choices of behavioral models for women.

Marriage migrants are mainly represented by young women:

60% - at the age of 30, of which 7% - younger than 20; 30% - at the age of 30-40. The analysis and the study of the material on the subject reveal that marriage migrants have rather a high level of education. More than half of the women have a university education. This is an unusually high level of education for this type of migration in the world.(5)

It is also worth noting that sometimes marriages of convenience are concluded to disguise the real purpose of migration that is employment and improvement of the financial position and the family well-being.

Marriage migration (not for the purpose of family reunification) sometimes turns into the compulsion to sex work or domestic violence women often can not find protection from. In many countries there are certain time requirements for obtaining the right for permanent residence and for the recognition of a valid marriage. All this time the woman is forced to live with a man no matter who he might turn out to be .

An opposite option is also possible where professional goals and intentions occupy a primary place in the hierarchy of motives for marriage migrants. One in five marriage migrants said that she had decided to emigrate to realize her professional abilities and ambitions. All this confirms that there is a common "Strategies for Success". And every woman finds a certain form of this strategy realization depending on her individual characteristics, goals and opportunities.

The studies of **labor migration in Ukraine** including marriage migration require a well-developed methodology and conceptual instruments. Specific peculiarities of the female labor migration in Ukraine have never been the subject of any serious research.

Labour migration is the fastest growing model of migration nowadays. All groups of population of the country regardless of their ethnicity or other specific features are involved in labour migration. According to experts the number of labour migrants exceeds the number of permanent residence seekers by several times in Ukraine.

Both men and women migrant workers are concentrated in different sectors of the global economy. While men make up the majority of professionals in the field of science and information technology, women are concentrated in the area of education, social services and health care. Most of the migrant workers, both men and women, do not work in their specialty.

Most women occupy positions of cleaners, waitresses or work in the entertainment industry; others are actively engaged in the retail trade and work in labor-intensive manufacturing sector. The main sector of employment for women-workers in the world is the household sphere, which is considered to be a predominantly shadow sector of employment where employment relations are not registered officially. This makes women especially vulnerable to situations of slave labor, psychological and sexual violence, and deprives them of any access to social and health services, including specialized services related to pregnancy and childbirth.

Women migrant workers as well as migrant men are making a great contribution to the economic and social development of the countries of their destination, sending part of their earnings home to support their family. In its turn, migration opens up new opportunities for women, both in terms of material support and in terms of their education, career, independence. However, only a few women noted that migration is a step forward in a professional career while the majority believes it is a way to improve their well-being.(6)

Migrant women have a number of specific challenges that they have to face. The main problems of migrant women which require an in-depth study are:

- lack of employment contracts or contracts inadequate from a legal point of view;
- lower wages;
- extremely limited opportunities to send children to kindergartens and schools;
- limited access to free basic health care;
- sexual exploitation;
- and extortion by employers and corrupted officials.

In addition, women - migrant workers suffer from a negative image in society associated with the fact that some of them are involved in prostitution and entertainment industry. The established stereotype that migrants do not contribute to the budget but apply for social security benefits, including maternity leave, creates a negative attitude to female migrants. Migrant women together with all their problems remain "invisible" to government agencies responsible for migration policy.

Mention should also be made of a very limited number of professions offered for women-migrants. They are mainly in the service and entertainment industry. It is next to impossible for highly educated women to find a job without a loss of their professional status. Highly educated professionals often agree to do unskilled work abroad in exchange for a salary that is several times as high as the cost of skilled labor at home.

This phenomenon is called "the phenomenon of brain waste».(7)

Economists and migration specialists often point out to positive sides of foreign labor migration such as:

- increase of revenues and decrease of "a poverty zone" in society;
- investment of migrants to their country's economy (many immigrants, well-settled abroad, invest their funds in their own country);
- cuts in social spending after the departure of migrants (social welfare payments, expenses on education, health services, security, etc. are not covered any more);
- reduction of unemployment (outflow of citizens abroad reduces the intensity of unemployment in the country reducing the supply of labor).

However, foreign labor migration has a number of negative consequences for the economy and social sphere of the country, some of which have a clear gender component. The negative effects of and risks associated with migration include:

- loss of the most active age group (20 to 45 years old) which have the highest employment potential;
- brain drain(the outflow of highly skilled labor force abroad, the lack of intellectual highly educated specialists needed by the country);
- reduction of the number of jobs, unemployment among the local population (immigrants offer cheaper labor than locals);
- illegal migration (social tension, decrease of the security level, rise of unemployment);
- losses associated with money transfers to other countries (the more immigrants in the country, the greater the cash outflow to other countries);
- external labor migration leads to a huge loss of human capital;
- social tension in the country.

According to a sample survey, about half of all women migrants are mostly single women, 15% of the "independent" migrants leave their husbands responsible for their households. This migration is often seen as a challenge to a traditional division of gender roles and public morality.

Though the average earnings of migrant women are much lower than those of men they send home more money and they live on a smaller proportion of their wages. That is why many families prefer sending abroad their daughters rather than sons who usually send less money and do it less regularly.

To efficiently develop and promote migration policies, those responsible for this work should be well aware of the needs of migrant workers and realize that their management decisions should be tailored to the concrete needs of different categories of migrant workers, including men and women .

The analysis of the needs of women migrant workers should be based on the complete data on the socio-demographic composition of migrants (gender, status, education, marital status) and take into account objective factors and subjective reasons and motives for departure abroad in search for a job, an employment specification and all the phases of the migration process, typical crisis situations migrant workers may turn out to get into.(8)

The most common crisis situations:

- Illegal money extortion at the entrance to airports, railway stations, etc.
- Obstacles for registration in the country of arrival
- Reluctance to enter into contract relations and / or a forced termination of employment contracts on the initiative of workers or employers
- Violations of labor legislation
- Retention of documents by an employer or an intermediary, or the loss of documents in the host country
- Detention and keeping in isolation centers, and deportation
- Sickness (pregnancy) or a work injury
- Loss of a temporary shelter
- Violent acts of the employer

However, despite all this, labor migration is attractive to women, since, as a rule, it gives them an opportunity to provide themselves and their family with a higher standard of living. The officials responsible for migration policy both in the countries of origin and the countries receiving migrants should be well aware of the needs of migrant workers and realize that their management decisions should be based on a clear understanding of these needs for different categories of migrant workers, including men and women.

As for **"human trafficking"** or **"trafficking"** the situation is not so simple. On the one hand, this trade is a violation of human rights and as such is punishable by law in most countries.

On the other hand, there exist two points of view on "sex work in the international community."

- The first one is dominant and it states that any prostitution is a forced action and it is not organized in the interests of those who practice it, but in the interests of the third parties and, therefore, it is necessary to fight with it by sending its organizers to prison and the victims home.
- According to the second point of view part of women and men, as well as people who changed their sex are engaged in sex work voluntarily, and the main concern in this case is more about providing them with an appropriate payment and normal working conditions rather than a complete termination of their activities(9)

The proponents of the second point of view believe that police raids and the deportation of victims of trafficking to their home country, that is to return them to the same conditions that had once brought them "into the hands of" traffickers", are a fundamentally wrong practice. In their opinion, it is necessary to develop and apply other methods, more liberal and more effective.

Sometimes migration in this case is just a matter of physical survival if migrants are threatened by famine, environmental disaster or any abuse by relatives or political authorities in their own country. In some cases trafficking seems more attractive to women and girls than what they may experience in their homeland. However, trafficking, as a rule, does not justify the expectations and the reality leads to a life which is essentially no better than at home.

At present, more and more women migrants travel with their families or children (about 15% of all women surveyed and 30% of women with children). Host countries are interested in such a migration, since migrants with a family, especially with children, faster integrate into their new environment and it creates a comfortable psychological atmosphere; prevents the loss of cultural attitudes and counteracts marginalization. Women and families coming with children demand a number of specific requirements from the migration and social institutions of the host country and thus challenge their host society, its social and civic responsibility.

Female migration has an ambiguous effect on the family and parenthood institution. On the one hand, labor migration contributes to the strengthening of the family from the economic point of view. In the poorest households funds are used to meet everyday needs such as the purchase of food, clothing, medicines, and financial assistance to parents or children. Accumulated remittances are often used to buy a new house or an apartment or to repair the existing ones, to pay university or college tuition fees. On the other hand, the negative social and psychological aspects of migration undermine the traditional family moral values, reduce its stability, erode social norms and family values, complicate family relationships, alienate family members, change the mechanisms of education and socialization of children because of the prolonged absence of their parents. Migrant women who come with their children experience a great difficulty in finding pre-school and school educational establishments for their children and it is believed to be the main reason that many of today's "street children" are the children of undocumented migrant workers (10)

Women are not well informed of the issues related to social, socio-psychological problems of migration.(11) But these are the issues that contribute to their physical and psychological health, improvement of their relationships within the family, with their children, conflict management, line selection behavior in difficult situations and so forth.

One of the pressing issues in the context of mass migration is the question of the integration of migrant women in the host society.<sup>(12)</sup> This issue has only recently come to the attention of the migration policy makers. Until recently there has been no agency in the migration institution responsible for these problems in Ukraine. State-funded integration programs haven't been set up. At the same time, the integration issues can not be discussed and solved without taking into account the peculiarities of women migrant, their needs, their integration attitudes and behavior.

The migration policy in Ukraine is still under development. Mechanisms for monitoring migration are poorly developed. The vulnerable situation of migrants, lack of relevant laws and corruption in the regulation of migration processes allow many experts consider the migration in the NIS countries the sphere of mass violations of human rights. A profound study of the conditions of certain categories of migrants, particularly women and children, will contribute to a better understanding of the migration in general and to creation of a differentiated approach to different categories of migrants. It will also create a more "responsive" migration policy given gender differences in specific contingent of migrants.

Due to their illegal status, many migrants do not have access to justice and legal forms of protection. This applies particularly to migrant women who work in the informal sector and do not have any legal status. Human rights organizations that are ready to deal with the protection and restoration of violated rights of migrant workers are not numerous.

So far special research into female migration in Ukraine has not been conducted

At the same time the studies of female migration in the West have become a relatively independent field of scientific and practical activities. Scientific conferences are held on the issue and there are a number of government agencies, NGOs, social movements, and initiatives which deal with different aspects of this problem.

Individuals involved in the implementation of public policies are greatly responsible for making the government policies and legislation fair both for women and men. To fully perform these duties government officials should be well aware of the gender issues. Female experience in the development of society is often measured by men's standards. Civil servants must therefore confront these conflicting and competing values.

Recommendations aimed at improving policies on the regulation of labor migration, taking into account gender-based approaches:

1. To amend immigration laws by including such concepts and terms as "integration of migrants", "family reunification", "members of the migrant family", "migrant children with family members" (or "children of migrants") "women labour migrants" and harmonize Ukrainian legislation with internationally recognized standards and norms.
2. To develop and implement migration legislation family reunification programs based on the existing international practice paying special attention to migrant families, particularly women and children.
3. To provide a legal channel for changing the status of temporary residence permit to permanent residency with a priority for family migrants and women with children.
4. To consider the introduction of the so-called "Family residence permit" provided immediately to all family members.
5. To legally guarantee the access of migrant workers and their children to medical care in general and to free medical gynecological and obstetric care for migrant women.
6. To regularly conduct special in-depth research into the assessment of the contribution of migrants - women to the economy of the receiving State and their working and living conditions.
7. To make use of public councils at the embassies of donor countries for the promotion of the rights and concerns of women migrant workers and their families.

The migration-related problems in Ukraine are likely to increase due to the lack of a developed legal basis in this field, poor integration of our country into the world labour market, international labor, financial and legal relations. The government should be more engaged in regulating migration processes and policies in this area, and it will contribute to the stabilization of the situation on the labor markets of the country.

In my opinion, these goals can be achieved by the creation of an agency in the Government of Ukraine's central body (a Council, an Interdepartmental or a Government Committee) that can assist in putting into effect certain aspects of migration policy and carry out joint coordination work with all ministries, departments and organizations responsible for any activities relevant to the issue in question.

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### **Bio-note:**

Daria Bulgakova Assistant professor of the Department of International Law  
dashabul@ukr.net

Daria Bulgakova is assistant professor of the Department of International Law in the V.N. Karazin Kharkiv National University, Ukraine. She received her PhD degree in Law National University of the Interior of Ukraine, a part-time PhD program. Degree thesis: International treaties in the EU Law system. Theoretical Aspects (2014). She started her career in the Kharkov Regional Migration Service and went through all the professional stages up to the Head of the Migration and Citizenship department. She devoted a lot of time to make a deep study of the migration law in Ukraine and initiated a number of law initiatives to improve some of the legal practices in this area. At present she teaches certain aspects of International law in one of the best Ukrainian universities and more than a year ago started her research in Legal aspects of Gender Migration. During her work in the Regional migration service she has collected a great amount of information in this area and decided to devote her further research to this problem.