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Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
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# Description of the legal basis for the protection of labor rights of migrants

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*Kozin Serhii* \*  
*Tatarova Tetiana* \*\*  
*Korzh-Ikaieva Taisiia* \*\*\*  
*Sokurenko Olena* \*\*\*\*  
*Maltsev Vitalii* \*\*\*\*\*

## Abstract

The objective of the article under analysis is the legal framework for the protection of migrants' labour rights, identifying a specific range of category-related regulations and their main provisions. The theme of the study is the analysis of the legal basis for the protection of migrants' labour rights. The research methodology includes and agreed on the following general and special and legal methods: dialectical, logical, systematic, and legal, normative and canine, comparative and legal and legal method. The results of the study are identified by key regulations, including documents of international importance and the Ukrainian legal system, whose rules are dedicated to the regulation of social relations arising in the labour field of migrants. In terms of its practical implications, based on scientists' analyses, the focus is on the meaning of the term "migrant". An alternative definition is proposed. Finally, attention is paid to the declaratory nature of international law in the field of the protection of the labour rights of migrants and is part of the importance of acts of national law in regulating this matter.

**Keywords:** legal basis for migration; migrants' labour rights; protection of labour rights; concept of migrant; comparative right.

\* PhD in Law, Assistant of the Department of Theory and History of State and Law of the National University of Life and Environmental Sciences of Ukraine. ORCID ID: <https://orcid.org/0000-0001-7640-4579>. Email: [vstup@nubip.edu.ua](mailto:vstup@nubip.edu.ua)

\*\* PhD in Law, Associate Professor of the Department of Public Administration of the National Academy of Internal Affairs. ORCID ID: <https://orcid.org/0000-0003-3143-0700>. Email: [koo4@naiau.kiev.ua](mailto:koo4@naiau.kiev.ua)

\*\*\* PhD in Law, Associate Professor, Head of the Department of analytical work and management organization of the National Academy of Internal Affairs. ORCID ID: <https://orcid.org/0000-0002-4993-9129>. Email: [voark@naiau.kiev.ua](mailto:voark@naiau.kiev.ua)

\*\*\*\* PhD in Law, Associate Professor of Sectoral Law and Law Enforcement Department of Volodymyr Vynnychenko Central Ukrainian State Pedagogical University. ORCID ID: <https://orcid.org/0000-0002-8169-3720>. Email: [kspu@kspu.kr.ua](mailto:kspu@kspu.kr.ua)

\*\*\*\*\* PhD in Law, Senior Research Fellow of the Scientific Institute of Public Law. ORCID ID: <https://orcid.org/0000-0002-5052-2697>. Email: [siplasl2019@gmail.com](mailto:siplasl2019@gmail.com)

## Descripción de la base legal para la protección de los derechos laborales de los migrantes

### Resumen

El objetivo del artículo es analizar el marco legal para la protección de los derechos laborales de los migrantes, identificando un rango específico de normativas relacionadas con esta categoría y considerando sus principales disposiciones. El tema del estudio es el análisis de la base legal para la protección de los derechos laborales de los migrantes. La metodología de investigación incluye y convino los siguientes métodos generales y especiales y legales: dialéctico, lógico, sistemático y legal, normativo y dogmático, comparativo y legal y método de modelización jurídica. Los resultados del estudio logran identificar las normativas clave, que incluyen documentos de importancia internacional y el ordenamiento jurídico ucraniano, cuyas normas están dedicadas a la regulación de las relaciones sociales que surgen en el ámbito laboral de los migrantes. En términos de sus implicaciones prácticas, sobre la base del análisis de las opiniones de los científicos, la atención se centra en el significado del término “migrante”. Se propone una definición alternativa. Finalmente, se llama la atención sobre el carácter declarativo del derecho internacional en el ámbito de la protección de los derechos laborales de los migrantes y se enfatiza en la importancia de los actos de la legislación nacional para regular esta materia.

**Palabras clave:** bases legales de la migración; derechos laborales de los migrantes; protección de los derechos laborales; concepto de migrante; derecho comparado.

### Introduction

Modern Ukraine is a democratic, progressive State of the 21<sup>st</sup> century, which is in a state of active development in all spheres of its internal life, namely: political, economic, legal, etc. The aspirations of the Ukrainian community for freedom and progress are actively supported by the world community, as exemplified by the numerous European integration processes. At the same time, the national legal system is still at the stage of ridding of many soviet norms and institutions, which had been regulating public relations in criminal, administrative, labor and other areas of legal reality for almost a century. The accession of our state to the world and, in particular, the European community requires a change in the format of regulation of many domestic processes and standards of their legal expression and regulations. Thus, cooperation with foreign countries provides opportunities for foreigners, interested in working in Ukraine, to

come to our country. The issue of labor migration has been of interest only to Ukrainians who wanted to work abroad for a long time. Based on the above, the issue of legal regulation, provision, and protection of labor rights of migrants becomes relevant.

So, the purpose of the article is to analyze the legal framework for the protection of labor rights of migrants by defining a specific range of regulations related to this issue and considering their main provisions.

## 1. Methodology

The research uses general and special methods of scientific knowledge. Logical method was used to reveal the content of such concepts as “labor migrant” and “labor migration”. The application of the system and legal method made it possible to analyze the concept, content and legislative consolidation of the legal status of labor migrant.

Normative and dogmatic method was helpful in analyzing international and domestic legal acts ensuring the rights of labor migrants in Ukraine. Comparative and legal method was used to compare the provisions of various legislative acts regulating the issue under consideration. Legal modeling method was applied to formulate the relevant conclusions and propositions.

## 2. Literature Review

The issues of labor migration, as well as the peculiarities of ensuring the basic rights of migrants, have been studied by a large number of scientists. For example, Blynova *et al.* (2020) claim that a marginal status of labor migrant makes him (her) feel frustration and dissatisfaction with the work. So, they identified three main strategies to help labor migrants to adjust to new environment: integration, assimilation and marginalization.

Avato, Koettl and Sabates-Wheeler (2010) attribute the status of social protection of international migrants to one of four different regimes and characterize the features of each of these regimes.

MacDonald and Cholewinski (2007) examined the situation with the implementation of the Migrant workers convention in Europe in number European States (France, Germany, Italy, Poland, Spain, the United Kingdom and Norway). To achieve this aim as well as to determine the causes that hinder the ratification of this international legal act the authors

interviewed officials of State agencies, representatives of political parties and civil societies.

Ruchkin *et al.* (2019) study the relationship between migration flows and the level of socio-economic development of territories. The authors state that a conflict between residents and migrants is inevitable without a competent migration policy; in particular the governments should into account the interests of labor migrants in order to prevent social conflicts due to ill-conceived migration policy.

Ruhs (2012) examines international documents ensuring the rights of labor migrants and marks their low level of ratification. The author explains such situation by unwillingness of the governments of the States to enhance labor migrants' rights because this requires the allocation of additional resources.

Sakharuk *et al.* (2019) prove that in order to protect the rights of labor migrants the State has to introduce the system of collecting and analyzing the statistical information; to improve the economic well-being of the employees; to conclude bilateral agreements with other countries in the indicated area.

Tolmacheva (2020) investigates the substance of international migration and identifies the factors affecting the trends in economic dynamics as well as changes in migration flows.

Hasenau (1991) and Vittin-Balima (2002) study ILO standards for migrant workers. Hasenau indicates the reasons that triggered the emergence of ILO standards. Vittin-Balima notes that the problem of protection of their rights (these problems are becoming ever more complex and varied nowadays) was addressed as soon as the ILO was founded.

As we see, the researchers examined a wide range of issues related to labor migration, the mechanism of legal regulation of labor rights of migrants, aspects of protection of the rights of citizens of Ukraine in the area of international labor. The aim of our study, however, is to analyze the legal framework for the protection of labor rights of migrants, by defining a specific range of regulations related to this issue and considering their main provisions.

### **3. Results and Discussion**

The term “migrant” is interpreted as a person who voluntarily moves from the territory of the State of his (her) citizenship or who does not have citizenship or from the territory of his (her) permanent residence to the

territory of another State with the intention to settle their temporarily or permanently (Rymarenko, 1998). However, according to the view of many scientists, this term has a slightly different meaning. Thus, (Zhurba, 2008) believes that a migrant is a person who is legally engaged in employment for the purpose of making a profit in the territory of the State of which he is not a national and in which he does not permanently reside. The same view is held by (Horban, 2009) who emphasizes that a migrant is a person who permanently resides in the country of departure and is legally engaged in paid activities in the country of employment.

Thus, a migrant, according to the general definition and scientific interpretations, is a foreigner or stateless person, or, in other words, any subject, who does not have Ukrainian citizenship, but moves to the territory of our State for permanent residence and further employment on legal grounds.

As for the legal basis for the protection of migrants' rights, they are formed by an extensive system of regulations, where numerous international documents come first.

Some regulations of the International Labor Organization (hereinafter – the ILO) are devoted to this issue. For example, the ILO Convention on Migrant Workers No. 97 (International Labour Organization, 1949) stipulates that each ILO Member State, for which the Convention is in force, undertakes to provide to immigrants, who legally arrives in its territory, the conditions are no less favorable than those enjoyed by the citizens of the country concerned without discrimination on grounds of nationality, race, religion or sex, on the following issues:

- Wages, including assistance to large families in the case where this assistance is part of the salary.
- Working hours, overtime work, paid leave, restrictions on homework.
- Age of employment, apprenticeship and vocational training, a special approach to the organization of women and adolescent work.
- Trade union membership and the use of benefits provided by collective agreements.
- Focusing, social security (which means the provisions of the law on the accidents at work, maternity, illness, disability, old age, death, unemployment and family responsibilities, as well as all other cases that, according to national law, are included in the social security systems).
- Taxes, fees, or contributions paid for the employee, etc.

The legal basis for the protection of migrants' rights also includes the ILO Convention No. 143 (International Labour Organization, 1975) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers and the Recommendation concerning Migrant Workers No. 151 (International Labour Organization, 1975). Both acts emphasize that governments should ensure that enactment of promotional rather than discriminatory legislation is in place to ensure equal opportunities and corresponding attitude in the area of employment, social security, trade union and cultural rights, personal rights and collective freedoms of migrant workers.

The legal framework for the protection of the labor rights of migrants includes also certain United Nations acts. UN General Assembly adopted the Declaration on the Human Rights of Individuals who are not nationals of the country in which they live (UN General Assembly Resolution, 1985). According to this Declaration, foreigners legally residing in the territory of the state enjoy, in accordance with national laws, the following rights:

- Firstly, the right to working conditions that meet safety and hygiene requirements, to a fair wage, equal pay for work of equal value without any distinction; in particular, women should be guaranteed working conditions not worse than those enjoyed by men, with equal pay for equal work.
- Secondly, the right to join trade unions and other organizations or associations of their choice and to participate in their activities. The exercise of this right shall not be subject to any restrictions other than those provided by law and required in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
- Thirdly, the right to health care, medical care, social security, social services, education and recreation, provided that they meet the requirements of the relevant rules and do not impose an excessive burden on the resources of the State.

European Social Charter (Council of Europe, 1996) is also an important international legal act in the area of protection of migrant labor rights. Article 18 of this act states that in order to ensure effective exercise of the right to be engaged in profitable activities on the territory of any party to the document, States are obliged: to simplify existing formalities and reduce or abolish State duties and other charges paid by foreign workers or their employers; liberalize the rules governing the work of foreign workers unilaterally or collectively, etc.

Besides, the Charter obliges each party to the document to pursue the following measures and policies to ensure effective implementation of the right to protection and assistance of migrant workers and members of their families:

- To maintain or ensure the functioning of appropriate and free services to assist such workers, in particular in obtaining accurate information within national laws and regulations, and to take all relevant measures to prevent misinformation of this category of people about emigration and immigration.
- To take appropriate measures to facilitate departure, relocation and reception of such workers and members of their families, and to provide appropriate sanitary and medical services and hygiene within the jurisdiction.
- To promote, if necessary, cooperation between public and private social services in the countries of emigration and immigration.
- To provide such workers with the treatment no less favourable than that accorded to their own nationals in respect of the following issues: remuneration and other conditions of employment; trade union membership and benefits of collective agreements; dwelling if such matters are governed by law or regulation or subject to control by the administrative authorities and if such people are lawfully present in the territory of the State.
- To promote, as far as possible, the reunification of the family of a foreign worker who has an authorization to stay in the relevant territory, etc.

Thus, international documents form a significant legal basis of guarantees for the protection of the rights of migrant workers in Ukraine and a number of other States that have included these international acts in their legal systems. At the same time, the legal guarantees defined in such documents are rather limited in legal force. In fact, they will in no way help a foreigner to protect his (her) labor interests if appropriate mechanisms for the use of such international guarantees are not developed in the territory of the State where he (she) works. That is why the second and most important part of the legal framework for the protection of labor rights of migrants are the acts of national legislation of Ukraine.

The first of them is, clearly, the Constitution – the Basic Law of our State, which is the “cornerstone” of the entire system of legal regulation of social relations, in particular in the area of labor. Thus, Article 43 of the Constitution (Law of Ukraine, 1996) states that everyone has the right to work, which includes the opportunity to make a living by work which he (she) freely chooses or freely agrees to.

The State creates conditions for the full realization of the right to work by its citizens, guarantees equal opportunities in choosing a profession and type of employment, implements programs of vocational training, training and retraining in accordance with social needs. Everyone has the right to



adequate, safe and healthy working conditions, to a salary not lower than that prescribed by law. In addition to the above basic norm, the Constitution of Ukraine states that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable. The rights and freedoms of an individual and a citizen enshrined in the Constitution are not exhaustive. Constitutional rights and freedoms are guaranteed and cannot be revoked.

Thus, the Constitution is an important legal basis for the protection of labor rights of migrants. After all, this normative act establishes national standard in the area of human rights, by defining these rights and forming the constitutional principles of their inviolability. That is, according to the Constitution of Ukraine, migrants, along with the citizens of our State, have the same inalienable and inviolable labor rights.

The Labor Code of Ukraine (Law of Ukraine, 1971), which is the main codified normative document in the labor sector, significantly complements the provisions of the Constitution, as well as establishes the content and features of labor in our country. This act regulates labor relations of all workers, promoting productivity, improving the quality of work, improving the efficiency of social production and raising material and cultural standard of living of workers, strengthening labor discipline and the gradual transformation of labor for the benefit of any able-bodied man.

Article 2-1 of the Labor Code states the following: any discrimination in the area of labor is prohibited, including violation of the principle of equality of rights and opportunities, direct or indirect restriction of workers' rights depending on race, color, political, religious and other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or presence of HIV / AIDS, marital and property status, family responsibilities, place of residence, trade union membership or another association of citizens, participating in a strike, appealing or intending to go to court or other bodies to protect their rights or providing support to other employees in defending their rights, reporting possible facts of corruption or corruption-related offenses, as well as assisting a person in the submission of such a report, on the basis of language or other grounds, which are not related to the nature of the work or the conditions of its implementation.

Therefore, in accordance with the provisions of the Labor Code, the employment of foreign citizens on the territory of Ukraine is legal, and its restriction is illegal and discriminatory. In this regard, the regulation of labor relations, one of the parties to which is a migrant person, is generally subject to the regulatory influence of general labor law, which at the same time imposes on them appropriate guarantees to protect their legal opportunities in the area of labor.

At the same time, some normative legal acts enshrine some differences in the legal regulation of labor interests of migrants, in particular, in terms of access to the right to work. Thus, in accordance with the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” (Law of Ukraine, 2011) foreigners and stateless persons who permanently reside in Ukraine, as well as who have been granted refugee status in Ukraine, have the right to work in enterprises, institutions and organizations or be engaged in other employment on the grounds and in the manner prescribed for the citizens of Ukraine.

According to another legal acts, namely the Law of Ukraine “On Employment” (Law of Ukraine, 2012) employers have the right to employ foreigners and stateless persons in Ukraine on the basis of the authorization issued by the territorial bodies of the central executive body, which implements State policy in the area of employment and labor migration. The work of foreigners and stateless persons may be used in various capacities by one or more employers, subject to obtaining work authorization for foreigners and stateless persons for each position. The work of foreign highly paid professionals can be used without an authorization for part-time positions, if the term of the employment contract for a part-time position does not exceed the term of the authorization for the main place of work.

## Conclusion

One of the features of the modern globalized world is the mass movement of significant human flows. It is safe to say that modern society is a society of migrants. However, it should be noted that today population migration is a socio-economic and legal phenomenon, ambiguous in nature and content. Labor migration is of paramount importance of all the forms and types of migration processes, as the development and functioning of the economy is impossible without the involvement of migrant workers. In that regard, the issue of protection of labor migrants’ rights was of paramount importance and should be addressed as a matter of urgency.

Nowadays, the legal framework for the protection of labor rights of migrants is represented by a wide range of regulations, both of international legal significance and national legal system. At the same time, it should be noted that international documents, as a rule, contain declarative, abstract norms, which establish guarantees for the provision and protection of labor rights, however, do not have a proper implementation mechanism.

In turn, national law in this area is more specific, as it regulates technical aspects of migrants’ access to work in Ukraine; fundamental legal capabilities of this category of employees; technical aspects of their legal

registration at enterprises, institutions and organizations of Ukraine as the subjects of labor activity, etc.

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