

# MIGRANT WORKERS AND THE RIGHT TO THEIR FAMILY SUPPORT AS IMPORTANT COMPONENTS OF INTERNATIONAL MIGRATION – THE EXAMPLE OF UKRAINE AND CANADA

VOLODYMYR VATRAS,\* MYKOLA STEFANCHUK,\*\* NADIIA BONDARENKO-ZELINSKA,\*\*\* NADIIA CHUDYK-BILOUSOVA\*\*\*\* & MARIIA LOHVINOVA\*\*\*\*\*

*This article analyses the regulation of the legal status of migrant workers and their families, in particular the right to family support using Ukraine and Canada as case studies. The legal framework for regulating the legal status of migrant workers and members of their families was established; the specific features of the regulation of this legal status, and the peculiarities of the right to family support were determined. Attention was paid to the impact of Russo-Ukrainian war on migration in Ukraine and Canada. It was noted that since February 24, 2022, many Ukrainians left their homeland, and Canada was one of the countries that adopted legislative changes to secure employment of people from Ukraine.*

**Keywords:** *economic migration; migration points system; labour market; migration policy; human rights.*

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## I INTRODUCTION

Modern society has globalisation and integration processes, in connection with which the migration of the world's population is increasing. A significant part of the existing types of migration is labour migration. In an effort to improve their lives, a large number of people move from their country of citizenship to another country in search of work. The beginning of the XXI century is characterised by the presence of problems associated with this international labour migration. In this regard, addressing the issue of international labour migration is becoming a priority. The main reasons for the increasing importance and solution of labour migration in the world is that in developed countries, in labour markets, there is such a

phenomenon as "disparity."<sup>1</sup> Every year, there is a global tendency to find work for people who are dissatisfied with employment conditions, the level of the economy and wages in their country. In the doctrine of international law, such persons have the status of "labour migrant", "migrant worker" or "migrant worker."<sup>2</sup>

Currently, in the world, labour migration is one of the largest migratory flows. One of the reasons for this level of migration is the globalisation processes taking place in the world, and the economy, politics, domestic and national problems in many countries. After Ukraine gained independence, the citizens of Ukraine had the opportunity to travel to other countries, in particular for employment and many did due to the economic situation in Ukraine after its independence. According to a survey conducted by the State Statistics Service of Ukraine in 2021 at the beginning of the new millennium, approximately 10% of Ukraine's population left Ukraine in search of work. Employment of Ukrainian citizens in other countries, in other words, the outflow of labour outside of Ukraine, ultimately leads to a loss of professional and labour professionals, shortage in Ukraine of professionals such as teachers, doctors, drivers, builders, scientists, creative workers; and a lower unemployment rate in Ukraine. This position was confirmed in a study by the Institute of Demography of NASU which found that in the absence of labour migration, the level of unemployment in Ukraine would be 1.6 times higher than at present.

More recently, Ukraine has seen an increased labour migration to other countries. This became most noticeable after the start of hostilities in eastern Ukraine. At present, Ukraine is one of the countries-suppliers of employment to other countries of the world, i.e., the country-supplier of labour migrants. According to data, in 2018 alone, companies with the appropriate licenses employed about 97,000 Ukrainian people in other countries, not counting those who do not work legally in foreign countries.<sup>3</sup> As never before, the issues facing migrant workers became relevant after February 24 2022 with the first rocket attacks on Ukraine. It was the full-scale war that led to mass migration and emigration of

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\* Department of Civil Law and Procedure, Leonid Yuzkov Khmelnytskyi University of Management and Law, Ukraine

\*\* Department of Private Law Problems, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, Ukraine

\*\*\* Department of Civil Law and Procedure, Leonid Yuzkov Khmelnytskyi University of Management and Law, Ukraine

\*\*\*\* Department of Labor, Land and Commercial Law, Leonid Yuzkov Khmelnytskyi University of Management and Law, Ukraine

\*\*\*\*\* Department of Civil Law, Vasyl Stefanyk Precarpathian National University, Ukraine

<sup>1</sup> N. Zemlyanska and T. Semigina, 'Migrant Workers from Ukraine: The Role of Social Work at Different Stages of Migration' (2020). 6(7). *Path of Science* 3012-3019.

<sup>2</sup> K. Naumenko, 'Features of judicial protection of labor rights of migrants' . (2020). 8 *Legal Scientific Electronic Journal*, 217-220.

<sup>3</sup> Zemlyanska n.1.

people from Ukraine. According to the United Nations (UN), at the beginning of May 2022, 5,707,967 people had fled their homes, hiding from the war in other countries.<sup>4</sup> Most Ukrainians went to the European Union (EU), where they were provided with housing, access to health care, material support, educational services, and some secured jobs. Therefore, in the framework of this study, the authors will analyse the employment of people outside Ukraine after the start of a full-scale war in Ukraine.

Migrant workers in other countries, especially without proper permits or documents, may be at risk of discrimination or exploitation, and family members of such migrant workers may be exposed to these risks when moving and traveling with them.<sup>5</sup> Jobseekers in other countries often come across fraudsters who act as intermediaries between a potential employer and an employee. The essence of these fraudulent activities is that fraudulent intermediaries take money from a job seeker and then simply disappear with the money. In this regard, the regulation of the status and employment of migrant workers, and the support of their family members, requires research and regulation. Following the outbreak of full-scale war in Ukraine, Canada has simplified entry and employment, and the Canadian government has adopted a migration programme for people who want to emigrate to Canada and who already have relatives in the country, including those who work for territory of Canada. This explains the selection of Canada as a case study here.

The relevance of the study on labour migration is that the number of people wishing to work in Canada is growing every year. In this regard, it is advisable to conduct a study of the procedure and features of employment in the country, and to clarify and establish the rights enjoyed by family members of the migrant worker. The purpose of this article is to study the features that arise when regulating the rights and legal status of migrant workers and their families in Ukraine and Canada. The main objectives of this study are:

- establishing the legal framework through which the legal status of migrant workers and their family members is regulated in both Ukraine and Canada;
- study of the right to family support by family members of migrant workers in Ukraine and Canada; and
- identifying the specific features of protecting the rights of migrant workers and their families in Ukraine and Canada.

It is worth noting that the study explains the specifics of rights and legal status both of migrant workers within Ukraine as well as Ukrainians and others migrating to Canada. One of the most important methods used in this study is the dialectical

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<sup>4</sup> Refugees fleeing Ukraine, 2022, <https://data2.unhcr.org/en/situations/ukraine>, accessed 2 June 2023.

<sup>5</sup> Y.-T. Li, “‘It’s not discrimination’: Chinese migrant workers’ perceptions of and reactions to racial microaggressions in Australia” (2019).62(4). *Sociological Perspectives*, 554.

method,<sup>6</sup> which was used to analyse the determinants of labour migration in Ukraine, Canada and the world. The development of legal regulation of the migrant workers and their families' legal status, and the specific features of family support by family members during employment and work by a migrant worker, the specific features of such regulation were determined. The formal-legal method of research was used to analyse the features that arise during the relocation of a migrant worker in search of work,<sup>7</sup> in particular, highlighted features that appear during the regulation of this area and determined the legal framework for migration, labour and family law; using the system method, the range of researched problems was determined and proposals for their solution were made. Also, to effectively and comprehensively study this topic and solve these problems, the comparative law method was used,<sup>8</sup> which became the basis for research and comparison of the legal status of migrant workers and their families in different countries, including Ukraine and Canada.

This study consists of six parts. The first one is this Introduction where the general state of the work migration process in Canada and Ukraine is shown, the purpose and objectives of the study are stated and the choice of Canada as a case study is explained. In Part II, the migration policy of Ukraine is analysed and important legal acts are described. Existing issues in protections for migrant workers and their families in the country are shown. Canadian migration policy for foreign employment, as well as Canadian and international law on the protection of migrants are described in Part III. In Part IV, the specifics of labour migrants' protection in Ukraine and Canada at the national and international levels are identified, international conventions and EU directives implemented by these countries are studied. Part V pays close attention to the current situation in Ukraine caused by the full-scale invasion by Russia and its impact on migration processes. Changes in the migration policy of Canada related to Ukrainian refugees are studied. Part VI concludes all the findings.

## II CURRENT STATE OF MIGRATION POLICY IN UKRAINE

The term "migrant" should be understood as a person who moves within the country

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<sup>6</sup> C.R. Vendramini, 'Migration from a dialectical and historical materialist perspective', (2018).21(2). *Revista Katálysis*, 250.

<sup>7</sup> E. Underhill, D. Groutsis, D. van den Broek, M. Rimmer, 'Migration intermediaries and codes of conduct: Temporary migrant workers in Australian horticulture', (2018). 153 *Journal of Business Ethics*, 675.

<sup>8</sup> F. Rowe, M. Bell, A. Bernard, et al 'Impact of internal migration on population redistribution in Europe: Urbanisation, counterurbanisation or spatial equilibrium?' (2019) 44. *Comparative Population Studies*, 201.

or across an international border, temporarily or permanently for various reasons.<sup>9</sup> The national and international laws that regulate the labour sphere and the rights of migrant workers in Ukraine and the world include: Constitution of Ukraine (1996), Labour Code of Ukraine (1971), Law of Ukraine No. 5067-VI "On employment" (2012), Law of Ukraine No. 761-VIII "On External Labor Migration" (2015), Convention on the Legal Status of Migrant Workers and Members of Their Families of the Member States of the Commonwealth of Independent States (2008), Recommendation for Migrant Workers (1949), and European Convention on the Legal Status of Migrant Workers (1977). Labour migration is divided into two types: external and internal. Internal labour migration is characterised by the search for work within one country, for external labour migration, in turn, is characterised by employment of a citizen of one country in another country.<sup>10</sup> In the framework of this study, in the vast majority, labour external migration was studied. The main factors that lead to the departure of the population of Ukraine in search of work in other countries are primarily: economic crisis, military action in Ukraine, unsatisfactory wages in Ukraine compared to Europe or other countries, decline in production, working conditions and lack of jobs, lack of proper government policies that promote self-realization and development of their capabilities within Ukraine, etc.<sup>11</sup> The precondition for mass labour migration of Ukrainian citizens was the signing of the Association agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, (2014) and the granting of visa-free travel to Ukraine in a number of countries.<sup>12</sup>

Understanding the consequences of the mass exodus of Ukrainian citizens, the government of Ukraine has adopted a number of important decisions and regulations that would promote the employment of people who worked in other countries in Ukraine to develop Ukraine's economy and improve people's lives. In this regard, adopted the Order of the Cabinet of Ministers of Ukraine No. 257-r "On approval of the action plan to ensure the reintegration into society of migrant workers and their families" (2017) set out a number of actions and measures for reintegration and employment in Ukraine of potential migrant workers and members of their working families outside Ukraine. Among the main measures that were enshrined in this Order were assistance in employment of returning migrant workers and members of their families; provision of legal and social protection to

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<sup>9</sup> International Organization for Migration 'Who is a migrant?' (2019). <https://www.iom.int/who-migrant-0>, accessed 6 June 2023.

<sup>10</sup> D.H., Bearce and A.F. Hart, 'Labor migration numbers and rights: do they trade off or advance together?' (2019).45(1) *International Interactions*, 28.

<sup>11</sup> Rowe et al, n.8; Zemlyanska, n.1; H. Brückner, 'War in the Ukraine: Consequences for the governance of refugee migration and integration' , (2022).23(4). *CESifo Forum*, 41.

<sup>12</sup> Association agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. (2014). [https://zakon.rada.gov.ua/laws/show/984\\_011?lang=en#Text](https://zakon.rada.gov.ua/laws/show/984_011?lang=en#Text)

migrant workers and members of their families; provision of medical care in municipal and state medical institutions; and stimulating immigration flows to Ukraine, taking into account the investment, scientific and cultural needs of the state.

Also, the Cabinet of Ministers of Ukraine in 2018 adopted an action plan aimed at implementing the Strategy of State Migration Policy of Ukraine.<sup>13</sup> Although the Ordinances of the Cabinet of Ministers of Ukraine from 2017 and 2018 are aimed at protecting the rights of migrant workers and their families, the 2018 ordinance details the employment of migrant workers who have returned to Ukraine. Thus, according to this order, it is necessary to assist in the employment of citizens of Ukraine and members of their families who worked outside Ukraine and returned to Ukraine, considering the needs of the labour market, qualifications and education of such persons and their professional experience. According to researchers, migration is divided into three types: temporary, cyclical, and permanent.<sup>14</sup> Within the European Union, and in other regions and countries, there has been an increase in labour migration in recent years. Moreover, the vast majority is dominated by temporary employment, namely seasonal work. Also common is cyclical employment – that is, workers who go to work in another country, work there for some time, return and then go back to work in another country, and so on for a long time. Permanent migration should be understood as long-term time and stable in nature. There are two other types of migration: voluntary and forced. Voluntary migration is migration that is carried out at one's own will and desire. In turn, forced migration should be understood as moving within or outside one's country of citizenship for a variety of reasons, such as natural disasters or hostilities.

According to Ukrainian law, the term "labour migrant" should be understood as a citizen of Ukraine who carries out certain activities that are not prohibited in his country of residence, outside the territory of Ukraine.<sup>15</sup> Scholars have given the following definition of "migrant worker", according to which a migrant worker should be understood as a person who has moved from one country to another for the purpose of lawful employment.<sup>16</sup> Therefore, we adopt the definition of migrant worker as "persons who move outside the country of their citizenship to another country for legal employment". "Labour migration" should be understood as the

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<sup>13</sup> Order of the Cabinet of Ministers of Ukraine No. 602-r "On approval of the action plan for 2018-2021 for the implementation of the Strategy of State Migration Policy of Ukraine until 2025". (2018). <https://zakon.rada.gov.ua/laws/show/602-2018-%D1%80#Text>.

<sup>14</sup> Zemlyanska n.1

<sup>15</sup> Law of Ukraine No. 761-VIII "On External Labor Migration". (2015). <https://zakon.rada.gov.ua/laws/show/761-19#Text>.

<sup>16</sup> Naumenko, n.2 .

movement of persons to another country in order to find work and employment.<sup>17</sup> Along with the concept of "labour migration", there is also "economic migration". Some scholars consider these two concepts to be interconnected and inseparable. Thus, "economic migration" should be understood as relocation, or relocation for a while, to another country conditioned upon deteriorating living conditions or for economic or social reasons.<sup>18</sup>

In Ukraine, there are a number of problems in the regulation of the rights of migrant workers who come to Ukraine for employment. To solve the problems with migrant workers in Ukraine, it is necessary to bring migration legislation in line with international standards. In 1997, Ukraine ratified one of the most important international documents in the field of human rights protection, namely the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). The main purpose of this Convention is to protect and ensure the human rights and freedoms provided for in it. The regional treaty regulating the status of migrant workers is the European Convention on the Legal Status of Migrant Workers (1977) which was ratified by Ukraine in 2007.

Law of Ukraine No. 3773-VI "On the Legal Status of Foreigners and Stateless Persons" (2011) regulates the entry and exit of foreigners to the territory of Ukraine, in particular for the purpose of employment. In order for a foreigner to be able to enter the territory of Ukraine, they must have a document of permanent or temporary residence, obtain a visa, and have sufficient financial security. Ukrainian legislation is imperfect in the issue of equal regulation of the status of migrant workers and a workers who are citizens of Ukraine. Thus, in Ukraine there are problems and gaps in the legislation in the labour sphere, namely there are different requirements for employment of citizens of Ukraine and foreigners, in terms of working conditions, remuneration, etc. According to the legislation of Ukraine, foreign citizens have the right to employment in Ukraine in the manner and on the grounds provided for citizens of Ukraine.<sup>19</sup> However, to work in Ukraine under an employment contract, foreigners must have a special employment permit issued by the commissioners and the authorities or persons.<sup>20</sup>

### III SPECIFICS OF MIGRATION POLICY IN CANADA

One of the countries whose experience in the field of labour migration was

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<sup>17</sup> Law of Ukraine No. 761-VIII "On External Labor Migration". (2015). <https://zakon.rada.gov.ua/laws/show/761-19#Text>.

<sup>18</sup> J. Volosko., *International labor migration: causes and consequences for the economy*. Lviv: Educational and Scientific Institute of Law and Psychology of the National University "Lviv Polytechnic", (2015).

<sup>19</sup> Law of Ukraine No. 3773-VI "On the Legal Status of Foreigners and Stateless Persons". (2011). <https://zakon.rada.gov.ua/laws/show/3773-17#Text>.

<sup>20</sup> Law of Ukraine No. 5067-VI "On employment". (2012). <https://zakon.rada.gov.ua/laws/show/5067-17#Text>.

considered by the authors is Canada. Canada is one of the countries in the world that receives a large number of migrant workers each year. Thus, almost every year, approximately 800,000 people come to Canada in search of work and employment.<sup>21</sup> The Canadian Migration Policy for Foreign Employment has a so-called "migration point-based system". This "migration point-based system" is aimed at emphasising and protecting the interests of migrant workers, including the selection and employment of qualified professionals in a particular area of public life. After Canada introduced the "migration point-based system", such a system was introduced in a number of other countries, including the Netherlands, Austria, Denmark, Japan, etc.<sup>22</sup> The difference between the "migration point-based system" in Canada and other countries is that migrant workers in Canada have been granted the right to permanent residence and transportation of their family members to live in Canada. This is unlike other countries in the world where migrant workers originally have to work in a certain country, then apply for permanent residence in that country and transport their family members to be with them. The specific feature of the "migration point system" is that the priority is given to attracting human capital to the country.

One of the most important recent innovations in Canada's migration policy is the so-called "Express Entry"<sup>23</sup> which has replaced the CEC (Canadian Experience Class), FSTP (Federal Skilled Trade Program). The specific feature of "Express Entry" is that a migrant worker wishing to get a job in Canada must fill out a special online profile, which should indicate the level of proficiency in French or English, work experience, skills, qualifications, and indicate whether they have an invitation to work within Canada. If a person who has expressed a desire to work in Canada does not have an invitation from a potential employer, they have 30 days to register with the Canadian Job Bank.<sup>24</sup> Another feature that affects labour migration in Canada is that migrant workers have a higher level of participation in the labour market than in Europe and the United States.<sup>25</sup> Also, according to Canada's migration policy, migrant workers from NAFTA (North American Free Trade Agreement) countries do not play an important role and are not as important as, for example, migrant workers in the United States. A tripartite working group was set up based on and within the framework of the North American Free Trade

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<sup>21</sup> R. Stakanov, 'Canada migration system as an example of the development of a migration system based on labor supply' . (2017).4(9) *World Economy and International Economic Relations*, 14.

<sup>22</sup> A. Donald, 'Immigration points-based systems compared' (2016). <https://www.bbc.com/news/uk-politics-29594642>

<sup>23</sup> (2016). D. Hiebert, *The Canadian express entry system for selecting economic immigrants: Progress and persistent challenges*. Brussels: Migration Policy Institute, 2019.

<sup>24</sup> Stakanov, n.21.

<sup>25</sup> OECD, 'Labour force participation rate'. (2021). <https://data.oecd.org/emp/labour-force-participation-rate.htm>



Agreement (2021) to regulate the temporary entry of workers. However, the North American Free Trade Agreement does not establish any privileges for family members of NAFTA migrant workers who leave under the North American Free Trade Agreement, as this Agreement is intended primarily for temporary migration.

An important point in this study is to establish the status and rights of family members of migrant workers. Thus, Council Directive 2003/86/EC "On the right to family reunification" (2003) was adopted within the European Union ('EU'). This Directive regulates the family rights and rights of not only migrants but also members of their families. One of the most important provisions of this Directive is the granting of the right to third-country nationals who are lawfully present in the European Union to reunite with their family members, and the provisions governing "integration policy", according to which, third-country nationals should be granted the same and equal rights as nationals of EU Member States. The Directive contains provisions enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and in the Charter of Fundamental Rights of the European Union (2000), it can be concluded that this Directive complements and continues to regulate rights and provisions set forth in these international instruments. The right to family reunification, in particular of migrant workers with their family members, must be fundamental, recognised and enshrined in all countries of the world.

One of the most important international organisations in the field of regulating the status of migrant workers is the International Labour Organization. Thus, according to international instruments adopted by this organisation, the term "migrant worker" should be understood as a person who moves from one country to another in search of work.<sup>26</sup> There are also other international bodies and organisations that regulate labour and workers' rights and, in this regard, create legal acts in this area. The European Court of Human Rights also described and defined the concept of "migrant worker". According to the definition given by the European Court, the term "migrant worker" should be understood as:

- a person who performs work or is looking for work in another country, outside his/her citizenship;
- persons who perform work for a fee in another country; and
- persons who have received the status of the unemployed in the territory of another state, which is not the state of citizenship of such a person.<sup>27</sup>

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<sup>26</sup> International Labour Organization, Migration for Employment Convention. (1949). [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100\\_instrument\\_id:312242](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312242)

<sup>27</sup> S. Burak, 'Legal status of migrant workers in the European Union' (2014) 36(2). *Bulletin of Ivan Franko National University of Lviv. International Relations Series*, 114.

One of the most important rights of migrant workers and members of their families is the right to free movement of workers and members of their families who are legally present in a country. This right fully accompanies the family members of the migrant worker. Within the European Union, this right is guaranteed by the Charter of Fundamental Rights of the European Union (2000) and the Treaty on the Functioning of the European Union.<sup>28</sup> According to these acts, any discrimination in the right to free movement on the grounds of nationality, pay, employment, etc. is prohibited. There are only two exceptions to the restriction of the right to free movement within the EU. Thus, the right to free movement may be restricted if the person is a civil servant or if there is a threat to public security, public order or public health. The right to free movement, which in turn guarantees the right to family support for a migrant worker, stipulates that a migrant worker must have a national passport or identity card for free movement, and his family members must have an entry visa, but, if the worker works within the European Union has received a residence permit, in which case his family members no longer need to obtain an entry visa.<sup>29</sup>

#### IV PROTECTIONS FOR MIGRANT WORKERS AND THEIR FAMILIES IN CANADA AND UKRAINE

To regulate in more detail the right to family support of a migrant worker by family members, it is necessary to identify persons who are classified as family members of a migrant worker. Thus, according to the legislation of Canada,<sup>30</sup> the category and list of family members of a migrant worker should include: wife or husband; a person who is a registered partner of a migrant worker, if the state of residence of the migrant worker equates a registered partnership with a legal marriage; persons dependent on a migrant worker; children of a migrant worker who has not reached the age of majority, namely eighteen years of age; other persons enshrined in the legislation of the country in which the migrant worker resides and works. According to Article 1 of the Family Code of Ukraine (2002), family members of a migrant worker are those who are married, children and other dependents. Also, in accordance with Article 3 of the Family Code of Ukraine (2002), the family consists of persons who live together, connected by common life, have mutual rights and responsibilities. Marriage is also considered a family when the wife and husband do not live together due to education, work, medical treatment, the need to

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<sup>28</sup> Consolidated version of the Treaty on the Functioning of the European Union. (2012). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

<sup>29</sup> Directive 2004/38/EC, 2004.

<sup>30</sup> Family member – 802-1-IPG-097. Labour standard IPG. (2019). <https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/family-member.html>

care for parents, children and other valid reasons. Thus, the family is created on the basis of marriage, adoption, indigenous kinship, and on other grounds that do not contradict the moral principles of society and legal acts of Ukraine and Canada.<sup>31</sup>

The spouse has the full right to stay and live with the migrant worker in his or her country of residence. The children of such a migrant worker enjoy a range of rights. Thus, in some countries of the world, children of migrant workers who accompany and live with them in the country of their work have the right to receive education in this country along with other children of citizens of a particular country. Under EU law,<sup>32</sup> a spouse of a migrant worker who resides and lives with him or her in the country where he or she works is entitled to reside in that country after the death of the migrant worker, if such a worker is entitled to remain territories of such a country. Migrant workers often face violations of their rights and discrimination, and Ukraine is no exception. Therefore, to protect and guarantee the rights of migrant workers in Ukraine, it is necessary to improve the legislation and develop standards for the protection and guarantee of the rights of migrant workers, firstly to guarantee them proper and effective judicial protection. The right to protection from discrimination is one of the fundamental rights not only in Ukraine but also in other countries, which is guaranteed and established by national legislation of each country and international acts, which is also a feature of this right.<sup>33</sup>

Protection of labour migrants at the national level is developed by each country independently, and at the international level instruments protecting migrant workers' rights have been developed by the ILO, the United Nations, the EU, etc. The right to protection in employment is fundamental as it allows citizens and migrant workers to fully protect against discrimination or other harms. Among the basic rights of migrant workers and their families are: the right to a pension; the right to rest and proper working conditions; the right to form public associations in the country where the migrant worker and members of his family reside; the right to assistance in meeting the national, cultural, educational, spiritual and linguistic needs of migrant workers; the right to information; the right to education; the right to state guarantees for consular assistance, etc.<sup>34</sup> One of the fundamental rights is the right to social protection and proper working conditions. Family members of

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<sup>31</sup> M.C. Kronby, *Canadian Family Law*. Hoboken: John Wiley and Sons, 2010.

<sup>32</sup> Directive 2004/38/EC, 2004.

<sup>33</sup> Volosko, n.17.

<sup>34</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (1990). <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>

the migrant worker and the worker concerned are entitled to compulsory social security and insurance, and to adequate and safe working conditions.<sup>35</sup>

Another important issue considered by the authors in this study is the issue of "protection of the rights of children of migrant workers". Thus, according to research conducted by various organisations: every year about 7-8 million children in Ukraine live without parents, who at that time work outside the country of their citizenship.<sup>36</sup> As a result, every year, the institution of the family experiences negative social phenomena and is subject to destruction. Also, the institution of "family" loses its social function and purpose. Necessary, in this case, is the development and improvement of the rights to family support of a migrant worker. According to the above, maximum and effective protection of the rights of children of migrant workers is necessary. Thus, every child who moves to or leaves Ukraine with a family member who will operate outside his or her country of citizenship is granted a number of rights, including: the right to social security; the right to a decent standard of living, the right to education; the right to information; the right to creative and cultural activities. Also, an important issue addressed by the authors in this study is the possibility of accompanying family members of a migrant worker who travels to Canada to find a job. Canadian law defines a migrant worker's family members as:

- the wife or husband of a migrant worker, and a person who is in a civil marriage with such a worker;
- the child of such a migrant worker; or
- grandchildren dependent on a migrant worker.

In turn, the parents and grandparents of such an employee may not accompany him or her during the performance of his or her work, except in certain cases, when their maintenance depends directly on such an employee.<sup>37</sup>

As noted above, one of the main regional judicial bodies is the European Court of Human Rights. The jurisdiction of this Court extends to countries that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Many migrant workers and their families face problems such as forced labour. The prohibition of forced labour is enshrined in Art. 4 of the Convention and has been repeatedly challenged before the European Court of Human Rights. Thus, according to the case law of the European Court of Human

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<sup>35</sup> Extending social protection to migrant workers, refugees and their families. (2021). [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_826684.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_826684.pdf)

<sup>36</sup> Naumenko, n.2.

<sup>37</sup> Family law. Government of Canada. (2020). <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/learn-about-canada/laws/family-law.html>

Rights, forced labour requires mental or physical coercion to perform certain work. Coercion consists not only in corporal punishment, but also in psychological actions. So in the case of *C.N. and V. v. France* (2012),<sup>38</sup> the court found a violation of Part 2 of Art. 4 of the Convention. In this case, Ms M. threatened to deport the applicants to their country of nationality, which constituted a threat for V. and meant separation from her sisters.

Consequently, in this case there is a "psychological coercion" on the part of the employer, and in this regard, there was a violation of Art. 4 of the Convention. In another case, *Siliadin v. France* (2005),<sup>39</sup> although the applicant was not directly threatened with punishment, she was in a similar situation to the above case and she took the threat seriously. In this case, the Court also found a violation of Art. 4 of the Convention.

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) also regulates the protection of the rights of the migrant worker's family members and, accordingly, the rights of the worker him/herself. Thus, in certain circumstances, a state may be required to grant entry to an individual when this is a precondition for the exercise of his or her rights under the Convention, in particular the right to respect for family life. The Court has summarised the applicable principles under Article 8 of the Convention concerning the reunification of the family of children who are nationals of another state with their parents or a parent established in a *Contracting State in the I.A.A. and Others v. United Kingdom* (2016).<sup>40</sup> Criteria, in particular the best interests of the child, should be sufficiently reflected in the justification of decisions of national authorities.<sup>41</sup>

The protection of the rights of migrants and their families by the European Court of Human Rights is one of the most important internationally. The jurisdiction of this Court and the effects of its decisions extend to the member States of the Council of Europe which have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). At the national level in Ukraine and Canada, as in many other countries around the world, the exercise of the right to protection is ensured by national courts. However, the presence of a foreign element in such cases (the migrant usually has citizenship of another state). This creates significant enforcement problems and reduces the effectiveness of jurisdictional remedies. Moreover, as noted above, cases of forced labour of migrants are not uncommon. In such situations, it is often extremely difficult to establish the exact moment of illegal border crossing or forced labour, so it is

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<sup>38</sup> [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22002-7230%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22002-7230%22]).

<sup>39</sup> [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-69891%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-69891%22]).

<sup>40</sup> Application no. 25960/13.

<sup>41</sup> Handbook of Case Law of the Convention for the Protection of Human Rights and Fundamental Freedoms. (2019). <https://www.echr.com.ua/wp-content/uploads/2020/02/immigratsia-posibnik-espl.pdf>.

difficult to protect migrants' rights to pay, social security, moral compensation and others in court without documentary evidence. The administrative way of protecting the rights of migrants also has its significant shortcomings. After all, the best guarantees of protection are those migrants who have a special legal status, such as refugee status.<sup>42</sup>

Unsurprisingly, neither Ukraine nor Canada has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), which in Article 83 obliges its participants to ensure that any person whose rights or freedoms recognised in this document have been violated has an effective remedy, even in cases where the violation has been committed by persons acting as officials. This convention is based on basic UN human rights and International Labour Organization laws on the rights of migrant workers. It is a fairly comprehensive UN instrument on this issue. Ways of alternative dispute resolution, with mediation occupying a special place can be potentially effective remedies to protect the rights of migrants and their families,<sup>43</sup> However, they are very rarely used, as the migrants and their families are unaware of them and distrustful of them.<sup>44</sup> At the same time, authors believe that the use of alternative dispute resolution in general and mediation in particular will protect the rights of migrant workers and their families in the course of their work, outside their country of citizenship, including protection from any manifestations of discrimination, ill-treatment or forced labour.

## V IMPACT OF RUSSO-UKRAINIAN WAR ON MIGRATION IN UKRAINE AND CANADA

In the framework of this study, in connection with the recent events in Ukraine, namely the beginning of a full-scale war in Ukraine, it is important to study the status of migrant workers and the rights of their family members in other countries. It should be stated that since the beginning of February 24, mass emigration from Ukraine increased and immigration to immigration decreased.

Most Ukrainians have received shelter in Poland, where they have been provided with a range of services and assistance, namely access to educational and medical services, material support, housing, and the right to employment. Thus, on March 12, 2022, the Polish authorities adopted the Law on Assistance to the Citizens of Ukraine at the Link with a Harmful Conflict (2022). According to this

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<sup>42</sup> Immigration and Refugee Protection Act. (2001). <https://laws.justice.gc.ca/eng/acts/i-2.5/>

<sup>43</sup> Law of Ukraine No. 1875-IX "On mediation". (2021). <https://zakon.rada.gov.ua/laws/show/1875-20#Text> ; du Québec, B. (2018). *La justice participative*. <https://www.avocat.qc.ca/public/ijjusticeparticipative.htm>

<sup>44</sup> D. Pely, and G. Luzon, 'Hybrid dispute resolution model for migrant-host communities' (2019) 30(5)s. *International Journal of Conflict Management* 615.

law: citizens of Ukraine who come to Poland on February 24, 2022 enjoy special decisions in front of everyone. The rules also regulate further access to the labour market for Ukrainian citizens who were in Poland legally before the outbreak of the conflict and intend to remain so.” With regard to employment in Poland, there are simplified procedures. Thus, citizens of Ukraine who legally reside in Poland require only one formal action – within 14 days from the start of work to notify the labour Office of the fact of employment. It also mentions the possibility of employment without a permit, and the employer, in turn, is only obliged to report these facts.

Canada has also adopted a number of legislative changes to bring people from Ukraine and secure their future employment. As Canadian Immigration Minister S. Fraser noted on the migration programme: “We are repealing most of the requirements that exist for our regular visas. To meet the criteria of this programme, those interested will need to fill out a simple application and provide biometric data for security clearance.”<sup>45</sup> Anyone coming to Canada on a new migration programme will be able to obtain a work or study permit that will allow them to work in the future. Workers' family members, who will be able to stay in Canada for three years, also receive a residence permit. In many countries around the world, certain restrictions on entry and employment have been lifted for Ukrainians, and various employment funds and sites are being set up. The rights of family members of a migrant worker are also ensured and guaranteed, namely the right to family support, housing, educational and medical services, etc. After the start of the war, the practice of moving migrant family members to the country of employment became established. However, with development and access to the labour market after February 24, the risks for Ukrainian citizens also increased, since the majority of internally displaced persons and those who left the territory of Ukraine after February 24 are women with children and elderly people who lack time and opportunities or skills and relevant knowledge. As a result, human rights may be violated and the level of exploitation may increase.

## VI CONCLUSIONS

An analysis and study of the legal status of migrant workers and their family members was conducted. The term "migrant worker" should be understood as persons who move outside the country of their citizenship to another country for the purpose of legal employment. Thus, labour migration is the movement of people to another country to find work and employment. Within the framework of this study, normative legal acts were mentioned, which are used to regulate the legal status of migrant workers and their family members, migration policy and labour

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<sup>45</sup> Canada has created two new programs for Ukrainian refugees. (2022). <https://cutt.ly/eH8MOwL>

and family sphere. Labour migration is divided into two main types: internal and external. Thus, within the study, the authors described external migration. External labour migration should be understood as moving from one country to another in search of work. In Ukraine, labour migration and the legal status of migrant workers and their families are mostly regulated by the Law of Ukraine No. 761-VIII "On External Labor Migration", the Law of Ukraine No. 3773-VI "On the Legal Status of Foreigners and Stateless Persons", labour and family law.

The specific features of regulating the legal status of migrant workers and their family members are established, including the right to family support in Ukraine and Canada is analysed. The specific features of migration policy on the issue of labour migration in Canada are analysed and the phenomenon of "migration point-based system" is characterised. The legal status of the family members of a migrant worker in Canada was determined. The authors also believe that the most effective ways to protect the rights of migrant workers and their families are non-jurisdictional methods of protection, the use of which avoids the problems caused by the presence of a foreign element in such legal relations.

Thus, within the framework of this study, the authors identified the main causes of labour migration in Ukraine and the world, features of regulating the legal status of migrant workers and their families, and described the right to family support of migrant workers. It examines not only the status and rights of migrant workers and the specific features of their stay in a particular country, but also the members of their family who accompany and live with them, and the protection of their rights.