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Exploring the Intersection of Legal Regulations and Feminization of Migration: A Focus on Migrant Women Working in Domestic Services in Türkiye

Deniz Bade Akkoyun¹ and Zeynep Banu Dalaman²

Abstract

One of the trends that have come to the fore with globalization is the increased visibility of women in migration. As the rate of women's participation in the labor force through paid work has increased, their mobility from rural to urban areas or from one part of the world to another has also increased. In this process, also known as the feminization of migration, women have become geographically more mobile than ever before in history. With this process, women started to migrate independently from their family members across national borders to work in a variety of jobs, particularly domestic work and sex work. The diversion of domestic work (caring for the sick, children and elderly, cleaning, etc.) to women in poorer countries through the global division of labor has played an important role in this change. This division of labor, which arises from the combination of the gendered character of domestic work and cheap female labor, has necessitated the geographical mobility of poorer women from all over the world. As a result, women have also begun to engage in geographical mobility on a global scale. In addition to these reasons that push women to migrate, developments in destination countries that create demand for migrant women's labor are also important.

Today, almost every part of the world has become a destination point for women migrating for domestic work. Especially after the collapse of the Soviet Union, Türkiye has also become one of these target countries. However, migrant women have faced various problems in Türkiye, both due to deficiencies in existing regulations and political attitudes towards migrants. These women, most of whom work as domestic workers, have been at the center of problems arising from both the migration system and the specific conditions of domestic work.

In this study, the problems faced by female migrant domestic workers in Türkiye are discussed within the aforementioned framework. In particular, the main axis of the discussion is how domestic workers are affected by legal regulations in Türkiye. The study interrogates how women's migration to Türkiye has developed within the

¹ Res. Asst. Deniz Bade Akkoyun, Turkish-German University, Department of Labor and Social Security Law, Istanbul, Türkiye, ORCID: 0000-0002-1349-9811, E-mail: denizbade.akkoyun@tau.edu.tr

² Assoc. Prof. Dr. Zeynep Banu Dalaman, Istanbul Topkapi University, Department of Political Science and International Relations, Istanbul, Türkiye, ORCID: 0000-0002-6691-0782, E-mail: banudalaman@topkapi.edu.tr



existing migration system and examines the migration experience of migrant women working as domestic workers in Türkiye.

Keywords: Feminization of migration; migration regulations in Türkiye; women's migration to Türkiye; domestic migrant female workers; migrant caregivers

Introduction

Migration is a global phenomenon that has profound implications for individuals and societies. In Türkiye, a significant number of migrant women find employment in the domestic services sector. These women face a multitude of challenges and vulnerabilities, which are further compounded by the intersection of legal regulations and the feminization of migration. This refers to the increased visibility of women in migration, as the rate of women's participation in the labor force has risen. As a result, women have become more geographically mobile than ever before in history. They now migrate independently from their family members across national borders to work in various sectors, including domestic work and sex work. The feminization of migration is driven by the global division of labor, which assigns gendered domestic work such as caregiving, child-rearing, and cleaning to women in poorer countries. This, combined with the availability of cheap female labor, has led to the geographical mobility of women from all over the world, actively engaging them in global migration.

When examining the causes of immigration from the former Soviet Union countries to Türkiye, it becomes evident that the conventional "push-pull"³ framework falls short in providing a comprehensive explanation. Analyses solely relying on these principles fail to capture the complexities of the phenomenon, particularly in the context of citizens from economically struggling nations transitioning to a free-market economy. In light of this, a more nuanced understanding is required to elucidate the factors that drive individuals to seek refuge in Türkiye. In addition to the push factors that compel women to migrate, it is also important to consider the developments in destination countries that create demand for migrant women's labor.

Today, nearly every part of the world has become a destination for women migrating for domestic work. Türkiye, especially after the collapse of the Soviet Union, has also become one of these countries. While there is a visible population of migrant domestic workers in Türkiye, obtaining clear data on their numbers, particularly those who are portrayed negatively in the media, is challenging. The majority of these workers have traditionally worked informally for short durations, and some are in unauthorized positions, making it difficult to accurately calculate their population in Türkiye. Researchers have attempted to estimate this number by considering migrants who were apprehended while entering or after entering Türkiye without permission, as well as those who entered legally. However, these estimation methods are believed to be insufficient in capturing the true reality. As a result, this research does not provide estimates regarding the number of migrant domestic workers. However, migrant women in Türkiye face various challenges due to deficiencies in existing regulations

³ According to migration literature, the "push-pull" principle refers to the socio-economic conditions in receiving countries that attract migrants, while factors such as unemployment, poverty, or antidemocratic forms of governance in sending countries compel migrants to seek opportunities elsewhere (Massey et al., 1993).



and the political attitudes towards migrants (Demirdizen, 2013: 333). These women, who predominantly work as domestic workers, are at the center of problems arising from both the migration system and the specific conditions of domestic work.

It is known that both in Turkish society and in the rest of the world, those who perform domestic services are mostly women. Domestic services are not only limited to services purchased from outside, but is actually performed by many women in the household without any pay. It is also known that domestic workers face some difficulties due to their immigrant identity, gender and other factors. In this study, these difficulties will be addressed, while examining the concept of domestic service and its characteristics. On the other hand, obligations mutually undertaken by domestic service workers and employers will be indicated, taking into account relevant sensitive points where necessary. Lastly, the working and resting periods of domestic service workers and their social security status in Türkiye will be examined. In both Turkish society and global contexts, it is widely acknowledged that the majority of individuals engaged in domestic services are women. This phenomenon, commonly referred to as the "feminization of migration," underscores the disproportionate representation of women in the domestic labor market. Domestic services encompass not only externally procured tasks but also unpaid labor performed by women within their own households. Furthermore, it is recognized that domestic workers encounter various challenges arising from their immigrant status, gender, and other factors.

This study aims to explore these challenges while examining the concept of domestic service and its defining characteristics. Moreover, it will elucidate the reciprocal obligations assumed by domestic service workers and their employers, with due consideration given to relevant sensitive aspects. Additionally, the study will delve into the work and rest periods of domestic service workers, as well as their social security status within Türkiye. To understand the specific dynamics at play, this article seeks to address the following research question: How do legal regulations impact the experiences of migrant women working in domestic services in Türkiye? Furthermore, our hypothesis posits that migrant women working in domestic services in Türkiye face unique challenges and vulnerabilities due to the intersection of legal regulations and the feminization of migration.

By exploring the experiences of migrant women in domestic services, this research aims to contribute to a deeper understanding of legal dimensions of migration in Türkiye. Additionally, it seeks to inform policy and advocacy efforts aimed at improving the rights and well-being of migrant women in this sector.

The Feminization of Migration and Türkiye's Emergence as a Destination for Domestic Service

In all migration categories, including refugees, women make up approximately half of the migrant population (IOM, 2018). The proportion of women is also high in migrant labor. According to the International Labour Organization's Global Estimates on Migrant Workers report published in 2015, 32% of the world's 206.6 million migrant workers are women. The report states that out of the 67.1 million migrant domestic workers, 73.4% are women. These data are important for understanding the situation of migrant women in this sector, where human rights violations are prevalent (ILO, 2016). An increasing number of women are migrating alone rather than being dependent on or married to migrating men. This process accelerates the feminization of migration, adds a traumatic aspect to it, and contributes to

globalization. However, there is still limited information about the working conditions, responsibilities for childcare, places of residence, and legal statuses of migrant women, as well as their overall individual situations (Hurtz, 2010; Trouth et al., 2013; Castles & Miller, 1993). Although the figure of the refugee, who is the subject of forced migration, continues to be represented predominantly by "men" and migration statistics are mainly based on men, there are exceptions to this trend (Freedman, Kivilcim, & Baklacioğlu, 2017). The studies of historians Donato and Gabaccia show that the concept of "feminization of migration" is much older than suggested by recent studies on the subject. According to Donato and Gabaccia (2016), women have been part of global migration movements for over four centuries. According to the same authors, a significant number of women frequently migrated in the 19th and 20th centuries (Dalaman, 2022: 532). Since the 1960s, the share of women in migration has been quite close to that of men. The ratio of female immigrants to 70-80% among immigrants in Europe and North America has brought the concept of "feminization" of immigration to the agenda. The twentieth century constitutes a "turning point" in terms of the increasing female migration. Migration movements have increased, diversified and feminized in recent years. In the last 50 years, women have been migrating more and more. This is the crux of the "feminization of migration". It appears as a concept that facilitates the understanding and visibility of the problems encountered by women in the migration process upon being forced to migration specifically on grounds of wars, economic crises, and turmoil, etc. (Avcil, 2021: 195).

The increase in irregular migration in Türkiye began in the late 1980s, coinciding with the process of the dissolution of the Soviet Union. Therefore, this period has been a significant turning point in the development of women's migration to Türkiye. From the early 2000s onwards, international women's migration to Türkiye started to be examined from a gender perspective (Gülçür & İlkaracan, 2002; Erder & Kaşka, 2003; Kaşka, 2007; Kaşka, 2009; Akalın, 2007). This way, more detailed information about the reasons, consequences, and characteristics of women's migration to Türkiye has emerged. Kaşka (2007) explains the increase in women's migration movements, especially after the dissolution of the Soviet Union, with the deepening poverty and unemployment affecting women the most. The fact that women in the Soviet period were more involved in sectors such as agriculture, clerical work, light industry, social services, and education, and that these sectors were more affected by the transition to a market economy played a role in this situation (Erder, 2011). Furthermore, it has been stated that the relatively equal position of women in the labor market and education during the socialist regime also influenced their participation in individual migration processes (Gal & Kligman, cited in Erder, 2007; Erder, 2011). The geographical proximity and easier visa procedures compared to European countries have influenced women's migration to Türkiye (Gülçür & İlkaracan, 2002). During this period, some migrant women have also started engaging in sex work alongside suitcase trading (Kaşka, 2007). The prevalence of sex work is attributed to the employment of women from Russia, Ukraine, Moldova, and Romania in the entertainment sector in major cities and tourist resorts (İçduygu, 2004). As the intentions of migrants coming to Türkiye diversified over time, they started working in new fields such as sales, translation, modeling, and mannequin work (Erder, 2011). It has been determined that migrant women in Türkiye are more concentrated in the entertainment sector and domestic work (Kaşka, 2009; Toksöz & Ünlütürk-Ulutaş, 2011; Erder, 2011; Etiler & Lordoğlu, 2010).



When looking at the sectors in which migrant women work and the countries they come from, some important results are obtained. Firstly, there is a gender-based division in terms of the sectors they work in. Women work in domestic work, textile, and sex sectors, and this division has reinforced gendered division of labor. Especially, the sharing of reproductive work traditionally responsible for women among women has reinforced gendered division of labor. Therefore, migrant women in the labor market have concentrated in more precarious, low-paid, and unskilled jobs. As a result, women are doubly marginalized due to their gender and migrant status, and their disadvantaged position in the labor market continues. When considering the sectors in which migrant women work in Türkiye, it should be noted that being in an undocumented status does not create better living conditions. In this context, it is not possible to say that migrants working in any sector are in better conditions than others. In response to the increasing population of undocumented migrants, Türkiye has made some regulations in recent years. Important steps have been taken to integrate migrant domestic workers into regular migration. The specific conditions and legal status of domestic work have a significant impact on the experiences of migrant women in Türkiye.

The Terms “Domestic Services” and “Domestic Worker” in General

The term domestic services includes “laundry, dishes, childcare” and different services required for the course of a day-to-day life (Süzek, 2022: 224; Demircioğlu et al., 2021: 60; Eyrenci et al., 2020: 57; Sümer, 2021: 79; Ekmekçi & Yiğit, 2022: 9; Supreme Court, 2022), but is not limited to these. At this point, there is a principle decision of the Supreme Court. With its decision “The dispute between the employee working in domestic services such as cook, butler, cleaner, and the landlord employer should be resolved not in a labor court, but in a competent court of civil law. (...) It should be accepted that the driver who takes the unemployed family members from the house, takes them for shopping, sightseeing in the city, and spends his spare time in the house and its annexes, performs domestic service too and is not within the scope of labor law (Supreme Court, 2008)”, the Supreme Court made a broad statement regarding the scope of domestic services.

As per the provision numbered 1.3. and titled “Definitions” of the Communiqué (Official Gazette, 2015) the definition of domestic service is as “Daily chores such as cleaning, cooking, laundry, ironing, shopping, gardening that can be done by family members living in the household, and care work for children, the elderly or those in need of special care, done by persons who are not family members.” As it can be understood from this definition, the Communiqué did not count the daily housework performed in the household without pay as domestic service. Legally, it would be appropriate to evaluate the explanations to be made within the scope of this work, especially on the axis of the situation of women, with this information as a whole.

Lastly, a distinction must be made among other similar terminology. Home care services, unlike domestic work, require a fundamental expertise and is subject to Turkish Labor Law (TLL) (Tırıtıoğlu Ersoy, 2023: 228). The home care service worker undertakes the care of sick, elderly or child individuals. For instance, the nurse who takes care of the patient in the house is not a domestic worker (Supreme Court, 2009). A child educator is not a domestic worker either (Supreme Court, 2021). The scope of this includes tasks such as helping the person in need of toilet, taking measures to prevent home accidents, providing medicines, having them get their examinations (Gökçeoğlu Balcı, 2017: 56, 57; Karahan & Güven, 2002: 157). On the

other hand, *Tunçomağ/Centel* include those who perform work that provide “higher quality services than others” in the scope of domestic workers as well; such as private secretary, tutor, nurse, babysitter, where mental work and qualities such as management, and supervision have a stronger influence (Tunçomağ & Centel, 2022: 42, for an opposing opinion, see: Senyen-Kaplan, 2020: 77). It should be noted that sometimes these two areas of work (domestic services and homecare services) can be intertwined. In such a case, there is an opinion suggesting that the worker should be directly subject to TLL (Mollamahmutoğlu et al., 2022: 299, 300; Hüseyinli & Kırmızı, 2020: 204). Authors oppose the idea of basing on the “outweighing” work. The opposite view argues that in this case, the dominant type of work (or the out-weighting work) should be determined and the law to which the worker will be subject should be determined accordingly (Süzek, 2022: 224, 225; Narmanlıoğlu, 2014: 85, 86; Tunçomağ & Centel, 2022: 42; Tiritioğlu Ersoy, 2023: 132). The Supreme Court has adopted the latter (Supreme Court, 2008a). In our opinion too, this view is more accurate since it is more righteous and fair to determine what the predominant job is and to act accordingly.

Further, a person working from home can work outside a place determined by the employer, and this place does not have to be the person’s home. The person working in domestic services differs from those working at home in that they exhibit works specific to the continuation of the vital activities of their employer and the home (Tiritioğlu Ersoy, 2023: 124). “Working at home” is a working style that can often come to the fore in part-time jobs and is subject to TLL, domestic workers (Senyen-Kaplan, 2020: 125 ff.). The work relationship of the pieceworker is closer to the contract of work and differs considerably from the work of domestic workers in terms of giving a commitment to the result (Senyen-Kaplan, 2020: 126). Apart from this, the independent (“freelance”) work of a person at home will not be considered within the scope of TLL nor TCO (Turkish Code of Obligations), since the worker lacks the classical dependency element in such a case (Süzek, 2022: 239-242; Çelik et al., 2022: 168-175).

Domestic services performed in one’s most private area, in one’s home, necessitate the existence of a close relationship of trust between the housekeeper and the employee in this respect (Tiritioğlu Ersoy, 2023: 50). The situation of domestic workers can be problematic in various aspects such as the lack of the concept of overtime wages (being at the disposal of their employer 24/7, so to speak), and unregistered work (Kılıç, 2018: 92, 93). Additionally, it is known that incidents such as harassment due to physical closeness in the home also occur from time to time (Tiritioğlu Ersoy, 2023: 53). Conversely, the ethical connection and intimacy that frequently arises from working in the employer’s private domain can lead to encounters with employers who offer more tailored and exceptional support, in contrast to a “conventional” employer. This may include assisting the domestic worker’s relatives in securing employment, personally shouldering their health issues, and providing diverse forms of aid to their children (Tiritioğlu Ersoy, 2023: 51).

The Terms “Domestic Services” and “Domestic Worker” for Women

The term “domestic service” encompasses various services such as chauffeuring, gardening, and watchkeeping, which are traditionally perceived as men’s work by society (Eyrenci, 2020: 57; Supreme Court, 2008a). However, on a global scale, it has been acknowledged that women spend significantly more time on domestic work compared to men, ranging from two to ten times more (Ferrant et al., 2014: 1, 2). Detailed graphs and data can be found in the referenced



report. Quantitatively speaking, if women were to cease their domestic work responsibilities resulting from gender roles, it would have a substantial impact on the family economy. Recently, the monthly value of this work has been estimated to be approximately 32,000 Turkish Liras (equivalent to 1,704.66652 USD and 1,621.40251 Euro as of January 6th, 2023) (Bugün Kıbrıs, 2023). Deputy Doğuş Derya of the Northern Cyprus Republican Turkish Party highlighted that the one-month cost of tasks considered to be women's duties, such as patient care, cleaning, and food preparation, amounts to 32,000 Turkish Liras (Bugün Kıbrıs, 2023). According to OXFAM data, the unpaid work hours globally sum up to 12.5 billion, with an estimated value of at least 10.8 dollars (calculated based on minimum wage value), which is three times the size of the global tech industry (OXFAM, n.d.). Furthermore, United Nations Women shared data revealing that unpaid care and domestic service contribute between ten and thirty-nine percent of the gross domestic product and can potentially exceed the contributions of the manufacturing, trade, or transportation sectors. The economic contribution of women in filling gaps in services has been largely overlooked (UN Women, n.d.). Prior to the coronavirus pandemic, women were found to perform three times more unpaid housework than men. This disparity was further exacerbated during the pandemic, with women taking on an additional 512 billion hours of unpaid housework (UN Women, 2022). An illustrative example highlighting the contribution of women's housework to the family economy can be seen in a Supreme Court decision, where the wage of a deceased woman who was not employed but worked in the household was equated to the minimum wage for the purpose of compensation granted to her surviving relatives (Supreme Court, 2019). However, it is important to consider that the minimum wage, as referred to in the decision, is evaluated not as a reward for a job, but rather as compensation for performing essential activities with economic value. Despite these findings, domestic services are still predominantly considered "women's work" and women are rarely compensated monetarily for their contributions (Çavuş, 2016: 546). While there have been some changes in the distribution of housework within families, particularly with the increasing responsibilities and empowerment of women in the workforce, an ideal order has yet to be established in Turkey or globally (Cohen, 1998: 219; Hodgkins Berardo et al., 1987: 381).

A study conducted in Turkey in 1999 on the reasons why children do not attend school revealed that one out of every ten girls in urban areas and seven out of every ten girls in rural areas did not attend school due to their involvement in household chores (Şahabettinoğlu et al., 2002; cited in Kaya Bahçe; Memiş, 2021: 145). Social studies textbooks for primary school children in Turkey during the 1950s and subsequent years often depicted young girls joyfully engaged in household chores such as laundry and ironing (Ötügen, 1966: 83; cited in Gümüšoğlu, 2016: 76). The influence of such encouragement at an early age should not be overlooked (Gümüšoğlu, 2016: 75). Conversely, the role of males in these textbooks was typically defined as one of control, decision-making, and approval (Gümüšoğlu, 2016: 80). These examples have shaped children's perceptions and expectations of gender roles from an early age (Gümüšoğlu, 2016: 76, 77).

In summary, due to social norms and traditional expectations, the distribution of household duties between boys and girls is still largely based on gender. This cycle perpetuates as individuals transmit these teachings and habits from one generation to the next. However, in today's world, this gender-based distinction holds little value. Both men and women are capable of performing tasks that society labels as either "women's work" or "men's work." It

is worth noting that this situation is not unique to Turkey and affects many families in developed, developing, and underdeveloped countries alike. This situation is critical because women not only do not receive any compensation for their household labor but also find themselves confined and unable to fully express their productive potential outside the home. Although society labels housework as "women's work," some argue that the absence of men's involvement in these chores reveals the true nature of gender roles and male-female behavior (Beer, 1983: 70, 89). However, we believe that explaining this situation solely based on the male-female nature would be incomplete and erroneous. Women, to a large extent, internalize societal expectations of femininity and fulfill them, which in turn perpetuates the cycle by raising their own daughters with similar expectations (Günindi Ersöz, 1999: 29).

On the other hand, with the increase in women's participation in the external workforce in developing countries, there has been a shift towards outsourcing domestic services (Tiritioğlu Ersoy, 2023: 37; Karaman, 2020: 214). It is worth noting that over 90% of domestic workers are women (Erdoğan & Toksöz, 2013: 14). Global data on paid employment in domestic services reveals that women's domestic work contributes to 7.5% of the world's economy, while men's contribution is only 1%. When examining regional differences, the employment rate of female domestic workers in the developing Arab States and Latin America is 32% and 27%, respectively, while it drops to 1% in industrialized countries (ILO, 2016a: 5). Furthermore, domestic services account for 24% of all cases of forced labor. According to the International Labour Organization (ILO), nearly 11.5 million out of the 67 million domestic workers worldwide are migrant domestic workers, and approximately three-quarters of them are women (ILO, 2022). In 2020, the value of domestic work performed by women globally reached 10.9 trillion dollars, surpassing the combined turnovers of the world's top 50 companies, highlighting the substantial contribution of women's unpaid work (NYT, 2020). Similarly, OXFAM's data reveals that 42% of women are unable to join the external workforce due to their responsibilities in household services (OXFAM, n.d.). It is important to bear in mind that studies consistently show that the integration of individuals, regardless of gender, into the workforce is beneficial for the overall economy (ILO, 2023).of their gender, is good for the economy as a whole (ILO, 2023).

Prohibition of Forced Labor and Immigrant Status

Patriarchal supervision over women's labor causes the use of immigrants in the procurement of domestic services from outside (outsourcing) as well (Akalin, 2010: 214, 215). In fact, the fulfillment of domestic services by immigrants is an event encountered with in many countries around the world (International Labour Office, 2012: 1). Those who must live at the same place where they work are also mostly immigrant domestic workers (Tiritioğlu Ersoy, 2023: 250), which, in various ways, might potentially place them in a more sensitive position compared to other domestic workers, in other words those who do not have to live at the same place as their employers.

In a case involving the exploitation and manipulation of a young girl who was coerced into performing various chores for a foreign family without receiving any form of remuneration, the European Court of Human Rights determined that slavery, in the form of "domestic slavery," continues to persist despite its official abolition. This form of exploitation affects numerous individuals (ECHR, 2005). In this particular case, the applicant was deceived into believing that her involvement would be temporary and that her school registration would be



taken care of concurrently. Due to her vulnerable status as a young foreign immigrant, she was compelled to work tirelessly and against her will, enduring inhumane conditions and deprivation of compensation, which was clearly unlawful. A summary of the court's decision, as published by Cornell Law School, highlights the court's emphasis on the applicant's vulnerability and the fact that the work was performed without remuneration and against her will. This case sheds light on the issue of domestic slavery, with a report from the Committee on Equal Opportunities for Women and Men revealing that 95% of the cases of domestic slavery addressed by the Committee against Modern Slavery since 1994 involved women. It also underscores the specific threat that domestic slavery poses to women and the alarming statistic that over 4 million women worldwide are subjected to domestic slavery each year (Cornell, 2005). The term "domestic slavery" is used in this decision, although it has been previously mentioned in other contexts, such as Parliamentary Assembly Recommendation 1663 (2004).

Slavery is explicitly prohibited in Türkiye, as stated in Article 18 of the national Constitution. This constitutional provision guarantees that no one can be compelled to work against their will. Furthermore, Article 48 of the Constitution affirms the freedom of individuals to engage in any field of work and to enter into contracts of their choosing. Work is regarded as both a right and a duty for everyone, irrespective of their gender. However, the societal definition of women based on their relationships with men and the subsequent assignment of various roles hinder their participation in education and the workforce. This restriction makes it challenging for women to exercise their freedom to realize their own potential, pursue education, and contribute to productive activities. The limited access to education for girls further prevents their inclusion in the labor market later in life. The analogy drawn by American anarchist Voltairine de Cleyre between wives who serve their husbands, rely on their economic power, and are subordinated to their instructions, and chained slaves bound to their masters, underscores the significance of this issue (Kissack, 2008: 21). This comparison becomes even more meaningful when considering women who are part of the external labor force, i.e., working women. These women dedicate almost all their energy and time to work, except for the time they spend sleeping. However, it is unrealistic to expect individuals to devote all their waking hours to work. Such a situation resembles forced labor, as individuals are compelled to fulfill obligations against their will. Forced labor contradicts personal rights and inflicts torment upon the affected individuals (Gözlügöl, 2002: 172). In fact, the state of being enslaved is akin to being treated as someone's property, like a commodity (Gölcüklü; Gözübüyük, 2002: 215). Recommendation 1523 of the Parliamentary Assembly of the Council of Europe in 2001 played a significant role by defining domestic services as a form of slavery and condemning countries that do not criminalize domestic slavery in their legal frameworks (PACE, 2011).

To summarize, women (and immigrants) constitute the majority of domestic service workers (Usta, 2021: 138). Their vulnerable characteristics, especially as immigrants or young individuals, make them susceptible to forced labor. For example, migrants may lack trusted relatives or may already be victims of human trafficking. Language barriers and fear of deportation may discourage them from seeking assistance from law enforcement. These factors contribute to the vulnerable position of immigrants (For detailed information, see: Usta, 2021: 138-141, under the heading "Displays of Modern Slavery"). Immigrant domestic workers, who often live with their employers, may face long working hours and be expected

to be available at all times (ILO, 2011: 1). Psychological and sexual harassment, food deprivation, and imprisonment are common forms of maltreatment experienced by domestic workers at the hands of their employers (Tiritoglu Ersoy, 2023: 186, 187; International Labour Office, 2012: 41; Usta, 2021: 138, 139). Additionally, it is not uncommon for domestic workers to have their passports confiscated by their employers. Preventing this situation in the long run could contribute to the eradication of forced labor.

Duties and Protections in Domestic Service Work: Confidentiality, Payment, and Equal Treatment

It is noteworthy that domestic service workers are bound by the duty of confidentiality, which is an integral part of their duty of loyalty. This duty of loyalty encompasses the obligation to report any shortcomings and refrain from engaging in behaviors contrary to the employer's interests (TCO Art. 444-447; Ekmekçi & Yiğit, 2022: 396 ff.). Despite the rise of remote work in the modern era, domestic workers have limited access to production and career-related secrets. Hence, it is more precise to refer to their duty as safeguarding the employee's private life secrets rather than career secrets. It is imperative to underscore that the utilization of such confidential information is prohibited, even if it remains undisclosed to the public. Moreover, this duty extends to information that the employer desires to keep confidential and possesses the nature of being kept undisclosed (Ekmekçi & Yiğit, 2022: 399). The duty to protect these confidential matters persists beyond the termination of the employment contract, provided that the employer has a "real benefit worth protecting" (Narmanlıoğlu, 2014: 276). For instance, the disclosure of family secrets of a renowned artist, which could detrimentally impact their career, serves as an illustrative example (Tiritoglu Ersoy, 2023: 164).

It is essential to note that agreements contradicting the constitutional "working freedom of the employee" (Article 48 of the Constitution titled "Freedom of work and contract") are considered legally invalid. To determine the prohibition of competition, specific criteria concerning the nature of the employee and the work are required, and such agreements must encompass scope, limits, and conditions (Ekmekçi & Yiğit, 2022: 400-409). Generally, domestic service workers do not have the opportunity to acquire the production and business secrets of their employers. Furthermore, although employees inevitably acquire information about the employer's business, this does not imply that a standard non-compete agreement can be established with every employee. Such agreements can solely be concluded with employees possessing knowledge of customer circles, confidential information, and business practices that could potentially harm the employer if employed elsewhere (Ekmekçi & Yiğit, 2022: 400-409).

The primary duty of the worker is to perform their work, while the employer's responsibility is to provide wages. As a rule, wage payments in domestic service work become due at the end of each month. However, issues related to wages often arise, such as delayed or irregular payments and remuneration below the legally mandated minimum wage (International Labour Office, 2012: 73, 76; Tiritoglu Ersoy, 2023: 172, 173). The employer is also obligated to fulfill other duties, including ensuring the protection and equal treatment of the worker. The duty to protect the worker encompasses safeguarding against harassment, particularly psychological and sexual harassment, which represents one of the crucial obligations outlined in Turkish law (Article 417/1 TCO, Article 4/1-(g) Human Rights and Equality Institution of Türkiye Law No. 6701; Çelik et al., 2022: 357, 358; Süzek, 2022: 415, 416). Various secondary



legislative regulations, such as Circular No. 2011/2 on the Prevention of Psychological Harassment in the Workplace and Information Guide on Psychological Harassment at Workplaces (Mobbing), further reinforce this duty (Ekmekçi & Yiğit, 2022: 338-361). Specifically pertaining to domestic workers, Article 5 of Convention No. 189 explicitly recommends that State parties implement necessary measures to effectively protect domestic workers against abuse, harassment, and violence. Additionally, the employer's duty of protection encompasses providing accommodation and meals (Article 418/1 TCO). To fulfill this obligation, examples may include providing a private room if the household conditions permit, offering a comfortable living space even if a private room is not feasible, and serving meals similar to those provided to family members (although this should not be interpreted as "absolute" equality). Furthermore, it is crucial to allow domestic workers to leave the premises during rest periods and provide access to communication tools such as wireless internet and telephone (Tiritoğlu Ersoy, 2023: 193-199).

It is necessary to ascertain whether the aforementioned duty of equal treatment is applicable to domestic workers. If this duty is understood as discrimination between workers, then employers typically have no obligation concerning domestic workers, as there is typically only one domestic worker in a household. However, this duty of the employer must be applied when there is more than one domestic worker within a household (e.g., multiple cleaners, drivers, cooks). In any case, even if the domestic worker is the sole employee, the employer must not isolate the worker from their family members to the extent deemed appropriate, at least in terms of basic rights.

Issues in Working and Resting Periods

The issue of the working period of domestic workers is a complex and challenging one (Tiritoğlu Ersoy, 2023: 207). The close relationship between domestic workers and the family members they serve, along with the unpredictability of the family's needs, makes it difficult to establish clear boundaries (Sedacca, 2019: 303, 304). The perception that domestic work is inherently linked to women's nature and unpaid labor further complicates the regulation of working hours (Sedacca, 2019: 299, 300). However, considering the health and well-being of domestic workers, the need to prevent exploitation, and the importance of work-life balance, it is necessary to define limits on working hours (Ekmekçi & Yiğit, 2022: 493; ILO, 2012: 49). Long working hours not only lead to sleep deprivation and poor quality of rest but also impact the worker's ability to have a private life (Tiritoğlu Ersoy, 2023: 211).

Although the Turkish Labor Code (TLC) does not specifically address working hours for domestic workers, it is generally understood that the provisions of the Labor Law (LL) regarding working hours apply (Tiritoğlu Ersoy, 2023: 214). Internationally, the International Labour Organization's Convention No. 189 and Recommendation No. 201 emphasize the need for equal treatment of domestic workers in terms of working hours and compensation for overtime (ILO, 2012: 49). The fact that domestic workers are always on call and ready to work affects the determination of actual working hours (ILL Art. 66) (Tiritoğlu Ersoy, 2023: 224). However, the rest period during the night, which is generally considered a period of rest, should not be interrupted and must be given uninterrupted to the worker (Demircioğlu et al., 2021: 139).

The issue of overtime work for domestic workers is subject to different interpretations. Some argue that any work exceeding the agreed-upon hours should be considered overtime, while

others suggest that only work exceeding the weekly 45-hour limit should be considered as such (Tiritoğlu Ersoy, 2023: 237). The approach taken in defining overtime work has implications for the rights and entitlements of domestic workers (Ekmekçi & Yiğit, 2022: 445, 446). The application of the LL provisions would require considering not only weekly but also daily, nightly, and annual overtime work (Tiritoğlu Ersoy, 2023: 237). The Supreme Court has established that work exceeding certain hours per day, per night, and per year qualifies as overtime work, with corresponding overtime wages (Supreme Court, 2015).

Considering the absence of specific provisions on working time in the Turkish Code of Obligations (TCO), it is reasonable to consider the LL as a basis for determining the periods deemed to be worked by domestic workers (Art. 66) (Tiritoğlu Ersoy, 2023: 214). However, the unique nature of domestic services and the private aspects involved should be taken into account when applying the LL provisions (Tiritoğlu Ersoy, 2023: 238). Alternatively, TCO 408 could be used as a solution when the employer refuses to acknowledge the worker's readiness to work (TCO 106) (Tiritoğlu Ersoy, 2023: 237).

The issue of working hours for domestic workers can also be examined in light of the case law of the Supreme Court General Assembly, which sets a maximum limit of 14 hours per day for employees in workplaces operating 24 hours a day (Supreme Court General Assembly, 2006; Supreme Court General Assembly, 2007). This approach could be applied analogously to regulate the working hours of domestic workers, ensuring fairness and preventing excessive work hours (Tiritoğlu Ersoy, 2023: 248).

Regarding rest periods, the TCO stipulates that workers are entitled to one full day of weekly leave, usually on Sundays (TCO 421). However, issues of abuse and uncertainty may arise for domestic workers who reside with their employers, as they may be expected to work during holidays or vacations (Tiritoğlu Ersoy, 2023: 248). It is crucial to address these concerns and establish separate regulations that consider the unique circumstances of domestic workers. Moreover, the period spent by domestic workers with their own families or accompanying the families they work for on vacations should not be considered part of their annual paid leave (ILO, 2012: 64).

In conclusion, while the TLC does not specifically address working hours for domestic workers, the LL provisions can be applied by analogy. It is important to consider the health and well-being of domestic workers, establish clear limits on working hours, and ensure their right to rest and work-life.

Conclusion

The phenomenon, the phenomenon of migration has far-reaching effects on individuals and societies worldwide. In Türkiye, the domestic services sector has become a significant source of employment for migrant women. These women face numerous challenges and vulnerabilities, which are compounded by the intersection of legal regulations and the feminization of migration. The increased visibility of women in migration, coupled with the rise in women's participation in the labor force, has led to greater geographical mobility and independent migration of women across national borders. This trend is driven by the global division of labor, which assigns gendered domestic work to women in poorer countries. As a result, women from various parts of the world engage in global migration, working in sectors such as domestic work and sex work.



Türkiye has become a destination for women migrating for domestic work, particularly after the collapse of the Soviet Union. However, obtaining accurate data on the number of migrant domestic workers, especially those portrayed negatively in the media, is challenging. Many of these workers operate informally or in unauthorized positions, making it difficult to accurately estimate their population in Türkiye. Despite the lack of precise figures, it is evident that migrant women in Türkiye face various challenges due to deficiencies in existing regulations and the attitudes towards migrants. These challenges are shaped by both the migration system and the specific conditions of domestic work.

Due to being subject to TCO, domestic workers are deprived of certain rights and protective provisions of TLL. Also, women members of the home who are usually the ones to perform domestic works without pay, cannot be insured. In any case, to create a legal bond similar to that of an employer and their employees between women and their male members of the home would be against the nature of their relationships and give rise to other major problems; socially, culturally and more.

In addition, it has been observed that the number of domestic workers employed in the home can lead to different opinions, such as whether a strike can be applied or not, or in the evaluation of the scope of the obligation of equal treatment. Cases in which domestic workers may remain within the scope of confidentiality obligation have been evaluated. The issue of overwork, which is perhaps one of the most problematic issues concerning domestic workers, has also been presented within the framework of different opinions, and it has been concluded that even if the TCO is taken as a basis, it is necessary to look at the Labor Law in overtime work, and that a distinction should be made on the point of whether overwork is on the agenda or not, on a case-by-case basis. At this point, a jurisprudence of the Supreme Court, which is the principle of “limit of overwork”, has also been a guide in reaching a solution.

Further, domestic work should be differentiated from other similar terms. For instance, work from home is independent from the type of work but focuses on the place where the work is being performed. Contrary to these, domestic work usually refers to the typical and regular chores of the home. It should be noted that workers who perform care services in the house (professionals; such as a nurse) are not considered domestic workers.

With the ever-developing age, outsourcing domestic services has increased, parallel to the rising employment of women outside. It is known that especially immigrant domestic workers who have no choice but to stay with the family can be at a higher risk in terms of private life and protection against harassment, freedom of movement, forced labor and more. To mitigate such problems, it is necessary to make relevant protective regulations. For instance, since it will be seriously controversial in some cases whether the domestic worker who spends their rest periods with the family it works with, can actually benefit from the rest during the said period, this must acquire its own legal arrangement in order to ensure that this right can reach its purpose. Türkiye is not a party to Convention No. 189 of the ILO, but this and other similar documents can be of great importance in terms of their guidance in the matter.

In conclusion, the experiences of migrant women working in domestic services in Türkiye are influenced by legal regulations and the feminization of migration. By exploring these experiences, this research aims to contribute to a deeper understanding of the legal dimensions of migration in Türkiye and inform policy and advocacy efforts focused on improving the rights and well-being of migrant women in the domestic services sector.

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