

CLIMATE REFUGEES AS A CHALLENGE FOR THE LEGAL SYSTEM AND POLICY OF THE EUROPEAN UNION

КЛІМАТИЧНІ БІЖЕНЦІ ЯК ВИКЛИК ДЛЯ ПРАВОВОЇ СИСТЕМИ ТА ПОЛІТИКИ ЄВРОПЕЙСЬКОГО СОЮЗУ

Maryna Medvedieva

Doctor of Law, Professor at the International Law Chair, the Educational and Scientific Institute of International Relations, Taras Shevchenko National University of Kyiv,

e-mail: medvedieva.maryna@gmail.com

ORCID ID: <https://orcid.org/0000-0003-4010-4659>

Olga Matiushyna

PhD student, International Law Chair, Educational and Scientific Institute of International Relations, Taras Shevchenko National University of Kyiv, e-mail: radiola112@hotmail.com

ORCID ID: <https://orcid.org/0009-0002-8462-8825>

Марина Медведєва

Доктор юридичних наук, професор, професор кафедри міжнародного права, Навчально-наукового інституту міжнародних відносин Київського національного університету імені Тараса Шевченка,

e-mail : medvedieva.maryna@gmail.com

ORCID ID: <https://orcid.org/0000-0003-4010-4659>

Ольга Матюшина

Аспірантка кафедри міжнародного права, Навчально-науковий інститут міжнародних відносин Київського національного університету імені Тараса Шевченка,

e-mail: radiola112@hotmail.com

ORCID ID: <https://orcid.org/0009-0002-8462-8825>

Abstract. *Climate change is a global problem with environmental, socio-economic and security dimensions and is increasingly affecting human mobility. Climate disasters and environmental degradation force millions of people to flee their homes, but current international legal mechanisms do not provide adequate protection for such persons. The authors of the study emphasize that the EU invests significant resources in regional adaptation measures and financing of climate projects, reflecting the desire to minimize the effects of climate risks through preventive and adaptation tools. At the same time, in this context, international law has enshrined a number of principles — no-harm, polluter pays and common but differentiated responsibilities and respective capabilities that impose increased legal and financial obligations on industrialized countries. The legal status of persons forced to leave their territories due to climatic factors remains unresolved. The 1951 Convention relating to the Status of Refugees does not cover cases of climate-based mobility, which creates a legal vacuum and at the same time exacerbates security challenges for the European region.*

Key words: *International Law, human rights, climate change, Paris Agreement, European Law, “Fit for 55”, climate neutrality, climate refugees*

Анотація. *Зміна клімату є глобальною проблемою, що має екологічний, соціально-економічний та безпековий виміри й дедалі сильніше впливає на людську мобільність. Кліматичні катастрофи та деградація довкілля змушують мільйони людей залишити свої домівки, однак чинні міжнародно-правові механізми не забезпечують належного захисту таких осіб. Автори дослідження наголошують, що ЄС інвестує значні ресурси у заходи регіональної адаптації та фінансування кліматичних проєктів, що відображає прагнення до мінімізації наслідків кліматичних ризиків через превентивні та адаптаційні інструменти. Разом з тим, у цьому контексті міжнародне право закріпило низку принципів — no-harm, polluter pays та common but differentiated responsibilities and respective capabilities, які покладають на індустріалізовані країни підвищені юридичні та фінансові зобов'язання. Вони*

відображають прагнення забезпечити більш справедливий розподіл відповідальності за наслідки зміни клімату. Проте, попри існування правових і фінансових механізмів, питання правового статусу осіб, змушених залишити свої території через кліматичні чинники, залишається невирішеним. Конвенція про статус біженців 1951 року не охоплює випадків кліматично зумовленої мобільності, що формує правовий вакуум і водночас загострює безпекові виклики для європейського регіону.

Ключові слова: міжнародне право, права людини, зміна клімату, Паризька угода, Європейське право, «Fit for 55», кліматична нейтральність, кліматичні біженці.

Introduction. Climate change has global nature, combining environmental, economic and security dimensions. Among the most significant impacts of climate change is the relocation of people caused by degrading environments and heightened weather extremes. At the same time, there is a significant asymmetry: Europe is the most rapidly heating region, but it is becoming the main direction of movement of climate refugees from other regions, while there are almost no internal large-scale climate migrations within Europe, while the countries of the Global South are facing a massive outflow of population. Historically, the EU has consolidated its ambitious leadership in the fight against climate change and proclaimed the strategic position to develop concepts to address the causes of climate migration by improving global climate policy within the framework of the Green Deal and regional development programs to reduce the impact of climate change on vulnerable regions and populations.

The purpose of the research is to highlight and critically analyse the policies of the European Union in responding to climate-induced displacement. Particular attention is paid to comparing the financial instruments aimed at regional adaptation and support for the countries most affected by climate change with the absence of legal recognition of the status of “climate refugee” in EU legislation and policy.

Recent literature review. To make thorough research of the stated problem, we used the papers of such foreign authors as Bonnie Docherty, Tyler Giannini, Frank Biermann, Ingrid Boas, Andrew Baldwin, Sujatha Byravan, Chella Rajan, Francesca Rosignoli, and Elijah Sritharan, as well as policy and analytical materials of the International Organization for Migration and the World Resources Institute; the Ukrainian scholarly context is represented by Maryna Medvedieva and Roman Yiedelev.

Main research results. In the fight against global warming, there are both moral and legal reasons for placing increased responsibility on the developed countries that have been most affected by climate change to mitigate the effects of industrialization. International human rights law, environmental law and climate conventions recognize that the states that have made the largest contribution to pollution must bear both legal and moral obligations, which obliges states to prevent cross-border harm and minimize the risk of damage to other countries. It was first applied in the *Trail Smelter Arbitration case (Trail Smelter Arbitration, 1941)* and subsequently confirmed by numerous decisions of international and regional courts and tribunals. In addition, the international community recognizes the principle of “polluter pays”, which imposes an obligation on industrialized countries to finance measures to stabilize the atmosphere and help the countries most affected by the consequences of climate change (*Rio Declaration, United Nations, 1992*). This aligns with the concept of “common but differentiated responsibilities and appropriate opportunities”, first enshrined in the 1992 UN Framework Convention on Climate Change (*United Nations Framework Convention on Climate Change, 1992*), and the concept of climate neutrality, which was clearly enshrined in the 2015 Paris Agreement (*Paris Agreement, 2015*), which became the basis of the modern architecture of international climate law. They are closely interrelated with the concept of climate justice, which increasingly goes beyond the purely scientific discourse and becomes a central element of political and social debates. At the same time, it was the Paris Agreement that for the first time gave international legal recognition to climate justice, thus transforming it from a scientific and social idea into a legal category (*Medvedieva & Yiedelev, 2024*).

In the European context, these principles are reflected in the European Climate Law (*Regulation (EU) 2021/1119, 2021*) and the “Fit for 55” package (*European Commission, 2021*),

which provide not only for achieving climate neutrality by 2050, but also for the creation of mechanisms for financial and social support for vulnerable groups. In particular, through the Just Transition Fund and other instruments, the EU is trying to ensure a balance between environmental obligations, economic interests and social stability. This approach demonstrates a commitment to integrating climate goals into the broader context of human rights, intergenerational responsibility and sustainable development.

The issue of climate justice is closely linked to the issue of climate refugees. According to a report by the International Organization for Migration, 281 million international migrants were recorded in 2020, a figure equivalent to 3.6 percent of the world's population, which is 128 million more than in 1990 and three times the estimated number of 1970 (*International Organization for Migration, 2023*). At the same time, as of today, between 3.3 billion and 3.6 billion people live in countries that are highly vulnerable to climate impacts, such as most of sub-Saharan Africa, South Asia, Central and South America, where poverty and weak institutional capacity of governments are subject to regional conflicts, and existing inequalities and development challenges increase sensitivity to climate hazards (*International Organization for Migration, 2023*). As the capacity of communities to adapt is limited, inadequate policies to mitigate climate change can provoke risks of increasing injustice, which is why the Intergovernmental Panel on Climate Change (IPCC) identifies a number of measures that should support a just transition to a climate-resilient and zero-emission future (*World Resources Institute, 2023*).

In the context of the growing scale of forced displacement caused by the deepening climate crisis and related extreme weather events, cross-border population movements are attracting increasing attention. In this regard, the terms "climate refugees" and "climate migrants" are spreading in scientific and political discourse.

Well-known scientists Frank Biermann and Ingmar Boas in their studies define the category of "climate refugees" as "persons who must leave their places of residence immediately or in the near future, due to sudden or gradual changes in their natural environment, which is associated with at least one of the three consequences of climate change: sea level rise, extreme weather events, drought and water scarcity" (*Biermann & Boas, 2010*). Scientists Bonnie Docherty and Tyler Giannini give a similar definition: they consider "climate refugees" to be persons who "are forced to leave their home and move temporarily or permanently across state borders as a result of sudden or gradual destruction of the environment due to climate change" (*Docherty & Giannini, 2009*).

Scientist Andrew Baldwin defines a "climate migrant" as "a person who is forced or voluntarily forced to leave their home as a result of the direct or indirect possibility of climate change" (*Baldwin, 2013*). Scientists Sujata Byravan and Siddharth Chandra Rajan specify the definition, in their opinion, "climate migrants" are "persons who are displaced due to the impact of climate change observed in Africa or Asia during droughts or severe floods" (*Byravan & Rajan, 2017*).

The right to leave the country of origin is enshrined in Article 13 of the Universal Declaration of Human Rights, which does not give rise to a corresponding obligation for states to receive such persons. At the same time, refugees and asylum seekers are recognized as having special protection under international humanitarian law, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The principle of non-refoulement of refugees is enshrined in Article 33(1) of the Convention relating to the Status of Refugees, according to which no Contracting State shall expel or return a refugee in any way to the borders of countries where there is a threat to his life or freedom because of race, religion, nationality, membership of a particular social group or political perversions, which, according to the famous researcher Francesca Rosignoli, should be complemented by "threats or consequences of climate change" (*Rosignoli, 2022*). Renowned scholar Elijah Samuel Sritharan also concludes that the 1951 Convention relating to the Status of Refugees is not adapted to today's challenges related to climate change (*Sritharan, 2023*). In his opinion, the lack of a legal framework for the protection of climate-displaced persons requires reforming approaches to determining refugee status through the inclusion of a human rights dimension and taking into account socio-economic vulnerability and discrimination. The researcher emphasizes that adapting the provisions of the Convention to new challenges can reduce political tension and social instability in recipient countries.

Following the Summit on Refugees and Migrants of September 19, 2016, organized by the UN General Assembly, the New York Declaration for Refugees and Migrants (Resolution 71/1) was

adopted, which, among other things, recognizes that the growing number of people fleeing wars, violence, human rights violations, natural disasters and the consequences of climate change requires global and long-term solutions (*United Nations General Assembly, 2016*). Annex II of the New York Declaration initiated a process of intergovernmental consultations and negotiations on the development of the Global Compact for Safe, Orderly and Regular Migration, which was approved in 2018 by the majority of UN Member States at an intergovernmental conference in Marrakech. This intergovernmental agreement is based, in particular, on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the UN Convention on Climate Change, the UN Convention to Combat Desertification, the Paris Agreement, as well as the 2030 Agenda for Sustainable Development and the Sendai Framework for Disaster Risk Reduction.

The European Union played an important role in the preparation of the Global Compact for Safe, Orderly and Regular Migration and has consistently positioned itself as a global player in the field of migration policy, but at the final stage before the adoption of the treaty, eleven EU member states abstained from supporting it. At the same time, in parallel, in accordance with the annual work program of the European Commission for 2017, the Directorate-General for International Cooperation and Development allocated EUR 1.7 million to support the process of this migration treaty (*European Parliament, 2017*).

By its nature, the Global Compact on Migration is not a binding document, it once again emphasizes and respects the sovereign right of states to determine who has the right to enter and remain in their territory, and demonstrates a commitment to international cooperation in the field of migration (*United Nations, 2018*). While among the proclaimed objectives is a call to “minimize the adverse factors and structural factors that force people to leave their country of origin”, for which, among other things, according to the text, it is proposed “to develop strategies for adaptation and resilience to natural disasters, adverse effects of climate change and environmental degradation, such as desertification, land degradation, drought and sea level rise, taking into account the potential consequences for migration, recognizing that adaptation in the country of origin is a priority” (*International Organization for Migration, n.d.*). An important aspect is that according to paragraph 4 of the preamble, a distinction is made between the application of legal mechanisms to migrants and refugees, since they are separate groups and only “refugees are entitled to specific international protection as defined by international refugee law”, however, according to the Compact, a new category of “climate migrants” has not been created.

Despite the fact that a significant number of developing countries have called on the European Union to grant climate migrants refugee status, individual EU member states did not support this idea (*European Parliament, 2021*).

In 2018, the European Commission put forward a proposal to address the underlying problems that underlie illegal migration, such as poor development, demography, lack of opportunities, climate change and inequality (*European Commission, 2018*). In line with this proposal, the Pact on Migration and Asylum, which is a set of ten pieces of legislation, was adopted in 2024 and will become effective in 2026, aimed at protecting refugee status and offering better integration of legal immigrants (*European Commission, 2020*). However, climate change has never been recognized as a cause of migration, nor has it been taken into account as a valid motive for seeking asylum.

At the same time, the EU proclaims a strategic position to develop concepts to eliminate the causes of climate migration by improving global climate policy within the framework of the Green Deal and regional development programs to reduce the impact of climate change on vulnerable regions and populations. In particular, the Green Deal Communication stipulates that the EU will cooperate with international partners to strengthen climate and environmental resilience in order to avoid the challenges associated with these issues turning into drivers of conflict, food shortages, displacement and forced migration, while also promoting a fair global transition (*European Commission, 2019*). Climate has been acknowledged several times by both the European Commission and the European Parliament as a catalyst for migration (*European Parliament, 2021*). Nevertheless, the so-called Asylum Procedures Directive (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for

persons eligible for subsidiary protection, and for the content of the protection granted) do not cover environmental degradation in general and climate change in particular as a basis for refugee status.

Although the current Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof doesn't contain climate change as the reason for granting refugee status, some authors give their own interpretation of its provisions. The Directive defines "displaced persons" as third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights. There is no room for climate change or environmental disasters. Nevertheless, Mustafa T. Karayigit and Av. Merve Kilic are of the opinion that “in light of Article 2 (ii) of the Temporary Protection Directive, displacement occurred by climate change-induced disasters can be considered as a serious risk or systematic or generalised violations of human rights” (*Karayigit & Kılıç, 2021*).

While the legal status of “climate refugees” remains an issue, a more holistic approach to climate change mitigation, which includes, among other things, the restoration of biodiversity, according to the EU's declared doctrine, may, over time, offer a more effective means of confronting the root causes of climate displacement. The European Commission has proposed the Nature Restoration Act, which “sets specific, legally binding goals and obligations for nature restoration in each of the listed ecosystems – from terrestrial to marine, freshwater and urban” (*European Council, 2024*).

These principles underpin the financial architecture of global climate governance. The contributions of EU Member States to international commitments totaling USD 100 billion as of early 2022 demonstrate that they not only reduce their own emissions but also provide financial support to other countries in addressing the impacts of climate change.

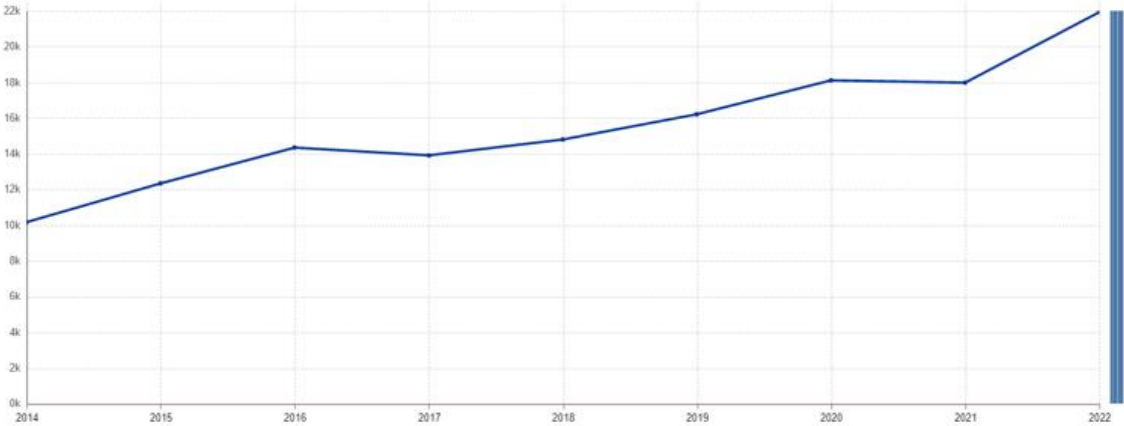


Image 1.

Contributions to international commitments in the amount of USD 100 billion for climate-related expenditures by EU countries in total at the beginning of 2022 (Source: data.europa.eu)

Conclusions. For the first time, the Paris Agreement provided international legal recognition of climate justice, introducing, in particular, related principles — the principle of justice and the principle of common but differentiated responsibilities and related opportunities, as well as providing for financial support. The issue of climate justice is closely linked to the issue of climate refugees. Since the 1951 Convention relating to the Status of Refugees does not cover cases of climate-based mobility, the EU has invested diplomatic efforts and financial resources in the preparation of the Global Compact for Safe, Orderly and Regular Migration in order to form agreed rules at the global

level, consolidate responsibility-sharing mechanisms and promote a European balance between manageability of migration flows and human rights standards. At the same time, by its legal nature, the Global Compact on Migration is not a binding document, according to it, the sovereign right of states to determine who has the right to enter and remain in their territory is respected. According to the Treaty, a new category of “climate migrants” was not generated. Although the legal status of “climate refugees” remains unresolved, the EU proclaims a strategic course to address the causes of climate migration by improving climate policies under the Green Deal and adaptation programs for vulnerable regions. The Union expresses solidarity and participates in the financing of such measures, which, according to the proclaimed concepts, can ultimately contribute more effectively to addressing the root causes of climate migration.

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