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ELVIN ALIYEV

Baku State University, Azerbaijan

TEMPORARY PROTECTION STATUS OF ENVIRONMENTAL REFUGEES: REFUGEE LAW AND EUROPEAN UNION REGULATIONS

Abstract:

Climate change and its consequences are one of the most frequently discussed problems in today's world and new solutions are constantly being sought. We can see the direct impact on human life most clearly in the extent of climate migrations in recent years. In almost every continent of the world, millions of people may be forced to leave the region or even the country they live in due to natural disasters or erosion that develops over a period. Moreover, apart from their legal status, these people generally do not have a chance to return to the region where they live. Because it is very difficult and sometimes impossible to eliminate the consequences of natural disasters.

In the article, a general review was made regarding the international legal status of environmental refugees, especially the possibilities of applying temporary protection status, and certain inferences were obtained both theoretically and practically in terms of definitions, legal interpretations and case studies. The migration legislation of the European Union constitutes one of the main focuses of the research. The lack of adequate legal regulation on the issue that affects the lives of millions of people around the world and the predictions made about the future of the problem should be alarming to states and international organizations. Therefore, in this article, statistical figures and predictions for both the recent past and the future are shown, and the necessity of legal regulation and provision of at least temporary protection status is emphasized.

Keywords:

climate refugee, temporary protection status, natural disaster, legal status, regulation, directive, case study

1 Introduction

Climate change and nature events are one of the crucial issues around the world. It is obvious that these processes work up forced migration, especially in today's global conditions. 32.6 million new internal displacements were triggered by disasters in 2022, which is the highest figure in a decade as well as 41 percent higher than the annual average of the 2010s (GRID 2023, p. 9). Floods and storms have the biggest share in these statistics (19,219,000 and 9,980,000 respectively) (ibid, p. 9). In addition, everyone knows the warnings that the size of natural disasters will increase over the years, and as a result, these numbers will increase significantly. On the other hand, it is an undeniable fact that migrations sometimes triggered climate change and natural events in history. For example, in the 19th century, European immigrants settled in the southern forest regions of Brazil, greatly changing the appearance of the region and reducing the forest area to less than 10 percent (Nodari and Xavier 2017, p. 41).

However, despite the size of these numbers, there are not sufficient tools to protect climate refugees under international migration law. Article 1 of the 1951 Geneva Convention Relating to the Status of Refugees, which defines the concept of refugee, essentially covers those who had to leave their place of residence and country of origin due to non-climatic factors (Refugee Convention 1951, p. 14). Although significant research has recently been conducted around this problem and some inferences have been obtained, it has not found a response in practice. In this article, I examine the possibility of providing temporary protection status to people who have to migrate across international borders due to climatic reasons and the procedures for this status. The theoretical basis of the research consists mainly of the works of Jodi L. Jacobson (Environmental Refugees: A Yardstick of Habitability, Diane C. Bates (Environmental Refugees? Classifying Human Migrations Caused by Environmental Change), El-Hinnawi (Environmental Refugees), Richard Black (Environmental Refugees: Myth or Reality?), who pioneered the definition and use of the concept of environmental refugee, Marco Armiero, Richard Tucker (Environmental History of Modern Migrations) and Giovanna Sciacaluga (International Law and the Protection of "Climate Refugees"), who discussed environmental migrations together with other factors.

In addition to academic articles, some international legislation, especially the migration legislation of the European Union, is included in the research scope of the article. Additionally, examining some court decisions on this issue plays an important role in reaching more comprehensive conclusions.

By undertaking this research, I aim to contribute to the ongoing efforts to ensure the protection, rights, and well-being of environmentally forced migrants under temporary protection status. Certainly, it is not possible to comprehensively explore a broad subject such as temporary protection status in a few-page article. First of all, after the necessary concepts are mentioned, the details regarding protecting people who have to migrate due to climatic reasons are examined.

Definition of environmental or climate refugee

When the history of the concept of environmental refugees is examined, for example, this term was mentioned by Jacobson in 1988. In his opinion, the increase in the number of environmental refugees is a good measure of the changes in the physical conditions of the world, and in addition, the factor that most trigger migration among the forms of environmental degradation is about agricultural lands (Jacobson 1988, p. 257). The definition given by Essam El-Hinnawi in 1985 includes significant environmental disruption. By 'environmental disruption' in this definition is meant any physical, chemical, and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life (Bates 2002, p. 466). In 1996, Myers and Kent gave the following definition to climate refugees: persons

who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope (Black 2001, p. 1). The concept of climate migration is included in the dictionary published by the International Organization for Migration in 2019 and is defined as “movement of a person or group(s) of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave their places of habitual residence or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence.” (IOM 2019, p. 31) It is noteworthy that all these definitions include the detail that various environmental factors affect human life. However, is it absolutely necessary for migration to pose a high level of threat to human life? On the other hand, whether these effects occur in the long or short term may be decisive in terms of the status of environmental immigrants.

After these definitions, looking at the classification of environmental refugees, three main factors play a fundamental role in this division: voluntariness, obligation, and involuntaryness (Bates 2002, p. 468). Those who migrate involuntarily for climatic reasons are generally included in the environmental refugee category. The other category includes people who migrate voluntarily due to the deterioration of the nature of their environment in a relatively slow process (El-Hinnawi 1985, pp. 4-5). Compelled climatic factors force people to leave their places permanently, which constitutes another category (ibid, pp. 4-5).

European Refugee Law and environmentally displaced persons

When studying the legal status of people who have to migrate for environmental reasons, the European Union legislation can be examined first. The purpose of the EU Directive of 13 December 2011 is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and the content of the protection granted (Directive 2011/95/EU). The Directive reflects two types of international protection, namely refugee status and subsidiary protection status (ibid). When we look at Article 15, which regulates the secondary protection qualities, no factors related to climate and natural events are specified as the causes of serious damage. In addition, it can be said that the procedure for obtaining subsidiary protection status is almost the same as for refugee status (ibid).

In the Briefing document titled ‘The Concept of ‘Climate Refugee’ published by the European Parliament in 2021 and renewed in 2023, pure statistics on how climate events affect migration processes, especially in the 21st century, as well as the inadequacy of existing legislation are reflected. The number of environmental refugees is expected to rise to between 25 million and 1 billion by 2050, according to parliamentary estimates (EPRS 2023, p. 10). In order to raise awareness on this issue, 15 July was designated as EU Day for the victims of the global climate crisis by the European Parliament on 15 June 2023 (EU Resolution). The undoubted fact is that all these steps taken do not solve the legal status problem of climatic migrants; for this purpose, extensive administrative and legal regulations must be carried out both in the international agreement and at the national level.

Temporary protection status has a very important role in ensuring the legal rights of refugees and accelerating their adaptation to the destination country too. In other words, TPS is given to people who have not yet been granted refugee status or who cannot have such a status due to certain legislative restrictions, allowing them to continue their lives legally and safely in the country they are in, even if temporarily. There are various definitions for TPS, in terms of legislation, a definition as follows is included in paragraph a) of Article 2 of the EU Temporary Protection Status Directive dated 20 July 2001:

"temporary protection" means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse

effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (Directive 2001/55/EC).

The definition does not specify the reason why people had to migrate, so environmental factors can also be added to the broad interpretation of the article. However, in the definition of refugee specified in paragraph e) of the same article, reference is made to Article 1A of the Geneva Convention. Considering that environmental refugees were excluded in the mentioned agreement, it is a fact that the EU Directive is insufficient in providing rights to environmental refugees. However, can the definition given for displaced persons in the Directive be a ray of hope? In paragraph c) of Article 1, the expression "who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection" (Directive 2001/55/EC) is used. When this provision is interpreted broadly, environmental factors that force people to migrate can also be taken into account. In the case of recognizing natural disasters as one of the bases for refugee status in any international document, this provision can be a basis within the EU.

Case study

While examining the international status of environmental refugees in terms of cases, it is necessary to first look at the *Teitiota v. New Zealand* case. Due to the effects of climate change and sea level rise, Iona Teitiota from the island of Tarawa in Kiribati requested asylum in New Zealand, but the Immigration and Protection Court gave a negative decision regarding her asylum request. However, the Court did not rule out the possibility that environmental degradation "could open pathways to Refugee Convention or protected person jurisdiction." The Court of Appeal and the Supreme Court also rejected the claimant's subsequent appeals on the same issue (*Teitiota v. New Zealand* 2020, p. 2). The UN Human Rights Committee has taken note of the Immigration and Protection Court's observation that harm caused by climate change can occur through sudden-onset events and slow-onset processes. It also noted that reports indicate that sudden-onset events are isolated events that have an immediate and significant impact over hours or days, while slow-onset processes can have a gradual, negative impact on livelihoods and resources over months or years (*ibid*, p. 3).

In the light of these findings, the Committee is of the opinion that the courts of the State party have provided the applicant with an individualized assessment of his need for protection and have considered all the elements provided by the applicant in assessing the risk he faces when the State party eliminates the applicant's need for protection. Current conditions in Kiribati, including the anticipated risks to the author and other residents of the islands, the time remaining for the Kiribati authorities and the international community to intervene, and the efforts already underway to resolve the problem, led him to Kiribati in 2015 (*ibid*, p. 12). Although the applicant disagrees with the concrete conclusions reached by the State Party, the Committee is of the opinion that the information available to it does not indicate that the judicial proceedings in the applicant's case were manifestly arbitrary or constitute a clear error or denial of a violation (*ibid*, p. 15).

Case law of the European Court of Human Rights is an important reference point for understanding the issues connected with the possible application of the principle of non-refoulement to forced climate migrants. In the context of the European Convention on Human Rights, the principle of non-refoulement generally comes into play in cases of violation of Articles 2 and 3. The principle of non-refoulement is a rule that plays a key role in refugee law and, in a way, guarantees the provision of fundamental rights of refugees. Articles 2 and 3 of the ECHR guarantee respectively the right to life and the prohibition of torture and inhuman or degrading treatment (ECHR 1950, p. 6). These two provisions often act together; because a holistic reading of the right to life assumes that, to respect it, an individual cannot be subjected to inhuman or degrading treatment that would undermine his or her inherent dignity as a human being. Any non-refoulement request has not been accepted solely on the basis of Articles 2 and 16, but always in

conjunction with Article 3, and this is due to the need to take into account possible violations of rights when a violation of the latter is established (Sciaccaluga 2020, p. 164).

In general, the court has stated its comments on the principle of non-refoulement in the context of the right to life in various decisions. However, it should not be forgotten that the court's jurisdiction is regionally restricted only to the countries that are members of the Council of Europe and have ratified the Convention.

Conclusion

To sum up, it has been accepted as a fact by both theorists and legal practitioners that climatic factors trigger migration processes. It should also be said that among large international organizations, the EU is more sensitive in this area, but still does not take sufficient steps for operational results. First of all, when the concepts are examined, whether it is a natural disaster or an environmental erosion spread over time, the impact of these factors on human life, making it impossible to live in that region, constitutes the basic condition for migrating people to be called climate refugees or environmentally forced migrants. The biggest problem in terms of the legal status of environmental refugees is that their names are not mentioned in any international agreements or EU legislation, and that natural events are not even considered as a reason for migration. Although the provisions of the definitions section of the EU Directive on Temporary Protection Status are suitable for broad interpretation and therefore include environmental refugees, it is a fact that this does not have a significant meaning.

As stated, since the concept of environmental refugees has never been mentioned in written legislation at any level, it may be thought that it would be pointless to conduct a case study in this area. However, as seen in the Teitiota case given as an example in the article, international organizations never ignore the environmental factors that affect a person's right to life when discussing the internal procedures of countries. In addition, in various decisions of the ECHR, no restrictions are imposed on situations that are truly life-threatening for the applicant, based on the right to life and humane treatment standards. In the next period, the main task of states and international organizations is to ensure that environmental disasters and their consequences, of which new migration flows are the most important, are quickly included in legal texts, legislation and conventions. Many institutions and organizations, especially the UN, are publishing information texts about the acceleration of climate change and its serious consequences in the near future. In my opinion, the main condition for taking action in this field is that the states whose citizens have/will migrate or have been/will be exposed to migration flows from outside due to environmental reasons in the recent past or in the future, lead the process.

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