

## CLIMATE LAW

### The European Union Climate Neutrality and Climate Migrants<sup>1</sup>

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#### Abstract

*Climate change, the European Union's goal of achieving climate neutrality by 2050 and climate migrants are some concepts discussed and detailed in this article, starting with the climate change facing the entire planet, continuing with European Union's urgent need to take steps to achieve climate neutrality by 2050 so that we can finally address the category of climate migrants, another daunting challenge in the fight to stabilize the situation of migrants worldwide. To achieve the proposed objective, the research mainly followed the legislative measures adopted at international level, emphasizing the measures proposed within the European Union, but also the specialized literature, using at the same time a series of statistical data to highlight the immediate and future effects of climate change, identifying the most diverse challenges and answer/solutions that should be provided in the near future. We are certain that climate policy has played and will keep on playing a particularly important role in the policy of the European Union, but also of each nation state, we appreciate that it is difficult to determine whether the European Union is heading toward 2050 slowly but surely, establishing measures suitable for attaining climate neutrality or, in contrast, we are witnessing a series of measures that support the fight against climate change but are not enough to ensure climate neutrality and are powerless against stopping the phenomenon of climate migration, which, in our opinion will become more and more visible.*

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## 1. Introduction

One of the greatest current threats to humanity is undoubtedly climate change, its effects being complex, influencing not only on the physical environment but also the social, economic and political environment one. Climate change refers to those "climate changes that are directly or indirectly attributed to human activity that alter the composition of the atmosphere globally and add to the natural variability of the climate observed over comparable periods"[1]. In the context of the fight to prevent climate change, pollution and its negative consequences, we believe that it is the obligation and right of every individual/citizen and of every state/organization to take a proactive stance, to take the necessary measures to ensure the right to health. As well as the right to a healthy environment, values that are universal.

Seen as a global challenge, climate change involves a responsible approach by all, but also concrete measures at the international, regional, national and, last but not least, local levels to identify the most appropriate solutions and measures needed to counter climate change and the establishment of climate neutrality.

Starting with citizens and civil society, which are constantly involved in and support climate action with positive effects on the environment, including changing human behaviour that becomes more climate-friendly, in the following exposition we will continue with the analysis of the EU approach to the legislative framework to protect and promote respect for the environment, supported by appropriate public policies.

The European Union (hereinafter the "EU"), as the main player on the international stage, is one of the pioneers in establishing a binding legal framework for achieving climate neutrality as a global goal. As the European Council states, "climate change is a global challenge that requires a global response"[2], and the European Union is certainly playing a leading role in tackling global climate change, given the urgency of theoretical and practical action. The EU's global reach was obvious, an intensification in this area starting since the early 21<sup>st</sup> century, and in the last decade, it was materialized in strategies and plans with bold objectives, which have taken shape in a legal framework with mandatory characteristics.

In this context, the European Parliament emphasizes that the EU as a world leader must draw "attention to the fact that a phase of globalization has begun" and that "the European Green Pact should be seen as an opportunity to address the major role " world trade plays regarding pollution." These are just a few reasons to "draw attention to the fact that these consequences contribute to political instability and economic difficulties that, in turn, can lead to refugee crises" and "stresses that these crises are destabilizing not only the affected

regions," but also the EU." Regarding the "lack of a universal definition of climate refugees," the European Parliament suggests that "the EU must reflect on this ambiguity and promote and back local and regional support operations for refugees affected by climate change"[3].

In the context of climate change and measures taken at EU level and beyond, there is an imminent risk of socio-economic disadvantages for many citizens and migrants, including disadvantages concerning the right to health and the right to a healthy environment, as fundamental rights. At the same time, a direct effect of climate change is represented by the emergence of the concept of "climate migrants," representing that category of people who migrate to avoid the effects produced in their country by climate change. Moreover, according to UN High Commissioner for Refugees (UNHCR) Filippo Grandi, these climate migrants will have to be considered full-fledged refugees, and states must prepare for a scenario in which there will be millions of possible migrants.

The effects of climate change are imminent and certainly are and will be extremely visible and will affect the entire globe, there are areas that will be devastated, especially in developing countries or areas where the climate will change for the worst, so it will have a negative impact on the practice of agriculture, by the appearance of the desertification phenomenon or, worse, some plots of land will be engulfed by waters. These areas will be considered vulnerable and mass migration can be expected.

## **2. The European Union climate action**

As part of the global response to the fight against climate change, joining the actions taken by the UN [4] the EU has managed to meet the targets set in the Kyoto Protocol for the period between 2008–2012, and then undertook to reduce its greenhouse gas emissions by 20% from 1990 levels by 2020.

The preparation of the EU's global response is also visible in 2014, when a 2030 climate and energy policy framework was established at EU level (in which one of the mandatory targets set by the EU was to reduce greenhouse gas emissions by 40% by 2030, compared to 1990), being followed by the EU's commitment to the UN Paris Conference on Climate Change (according to which global warming should not exceed 2° C) to reach a binding agreement for the signatory states and finally establishing the well-known Paris Agreement (on December 12, 2015 this agreement was opened for signature for a period of one year, from April 22, 2016; the main purpose of the Paris Agreement is to maintain a global increase in average temperature in this century well below 2 degrees Celsius and to stimulate efforts to limit the temperature rise further to 1.5 degrees Celsius above pre-industrial level) which will enter into force only after 55 states

Of the 197 member states of the United Nations have ratified it, these states being responsible for at least 55% of the total global emissions.

In 2016, the EU signs the Paris Agreement, and within the same year the EU ratifies the Agreement and submits its instruments of ratification to the UN, so that on November 4, 2016, the Paris Agreement enters into force. A sensitive aspect in the evolution of this Agreement is the US withdrawal from the Agreement but, nevertheless, EU Member States reaffirmed that "The Agreement remains a cornerstone of global efforts to effectively combat climate change and it can not be renegotiated".

This move also reaffirmed the EU's "commitment to the rapid and full implementation of the Paris Agreement on Climate Change, including its objectives for financing the fight against climate change, and to being at the forefront of the global transition to climate change (promoting)/and clean energy" [5]. Various meetings, conferences and activities on climate change have taken place since then and an important aspect to mention would be the setting of a goal in 2019 stating that the EU should become climate neutral by 2050. Taking this into consideration, "all relevant EU legislation and policies must be linked to and contribute to the goal of climate neutrality, while respecting a level playing field" [6].

Consequently, in March 2020, the Council adopted a long-term development strategy for the EU to achieve a low level of greenhouse gas emissions, and in October this year, a communication from the European Commission aimed at reducing emissions by at least 55% by 2030 was open for discussion. This objective implies the collective participation of EU Member States, while respecting their solidarity and equality concerning their rights.

These initiatives are complemented by the European Commission's adoption of a proposal for a European Climate Law, which is one of the initiatives announced in the Commission Communication on the European Green Pact, complemented by the Communication on the 2030 Climate Goal Plan. These measures are joined by the initiative of the European Parliament and the Council to adopt the "European Climate Law", which was discussed in October 2020, with the aim of introducing into EU legislation the EU's goal of achieving climate neutrality by 2050". To contribute to the implementation of the Paris Agreement on Climate Change, including its long-term goal of maintaining global warming well below 2° C above pre-industrial levels and continuing efforts to maintain this temperature below 1.5° C, but also "to contribute to the implementation of sustainable development objectives"[7]. The European Council "has established that one of the four main priorities is to build a green, fair, social and climate-neutral Europe"[8], in its "Strategic Agenda for 2019–2024 by supporting EU climate neutrality, in accordance with the objectives of the Paris Agreement.

The European Green Deal is a new legal and political framework for the EU representing the European Commission under Ursula von der Leyen, with multiple effects on the European economy. Simultaneously, The European Commission has also released several key elements under the European Green Deal - the European Green Deal Investment Plan; the Just Transition Mechanism; the European Climate Law; the European Climate Pact; the European Industrial Strategy; the Circular Economy Action Plan; the Farm to Fork Strategy; the EU Biodiversity Strategy for 2030, and the EU strategies for energy system integration and hydrogen[9].

The European Green Deal establishes "a more ambitious and cost-effective way to achieve climate neutrality by 2050"[10], to help reduce greenhouse gas emissions, to limit global warming to 1.5 ° C, and to determine the creation of "green" jobs.

At the judicial level, the case law of the EU, the Council of Europe (ECHR), but also that of national courts (on the protection of human rights affected by climate change) is not rich in this respect, the national courts of EU states do not have to judge cases related to resettlement and climate change at the moment, "but" Australian and New Zealand courts have dealt with several cases. However, the only case in which a New Zealand court granted the residence of a person who claimed to be unable to return due to climate change was decided on the basis of family ties in New Zealand and not on the basis of the applicant's country of origin. (Tuvalu). Finally, in a remarkable recent decision, the United Nations Human Rights Committee stated that inaction despite global warming can lead to human rights violations and trigger non-refoulement obligations" [11].

Concerning the measures that the European Union, through its institutions, can take on tackling climate change, the legislative framework and the phenomenon of migration caused by climate change, many such proposals have been brought to the public's attention [12] on the one hand following the promoting by the European Parliament of the collection of evidence in cooperation with the third countries and regions facing mobility problems in the context of climate change and environmental degradation and also by providing a platform for the exchange of information on migration and resettlement to the EU. Consequently, the European Parliament should promote the integration of mobility aspects into EU policies, in its external relations, and public policies in the context of climate change; natural disasters strategies should not only aim at preventing the movement of people, but also at creating access ways that people can migrate safely and legally as an alternative to meet the challenges posed by climate change.

### 3. Climatic migrants

As migration has multiple causes, in this research we will focus mainly on one of these environmental causes, climate change and its effects on migration and the respect for human rights. Because "climate change is expected to exacerbate extreme weather phenomena, which could cause more people to move"[13], we will see an increase in the migratory activities of a new category of migrants, namely, "climate migrants".

"According to the International Organization for Migration (IOM), migrants for environmental reasons are those who, due to sudden or progressive changes in the environment that affect their lives or living conditions, are forced to leave their homes temporarily or permanently, and who move within their country or abroad" [14].

Although it is difficult to estimate a total number of migrants for environmental reasons worldwide, it is said "the estimates range from 25 million to 1 billion per year until 2050," and in terms of migration in general in EU, "on January 1, 2019, the number of people residing in an EU country with third-country nationality was 21.8 million, representing 4.9% of the EU-27 population. In addition, 13.3 million people residing in an EU-27 country on January 1, 2019 were citizens of another EU country"[15].

According to other statistics, we will have "200 million climate migrants by 2050"[16], which does not sound encouraging at all as it would mean that "by 2050 one in 45 people in the world will be displaced due to climate change.

It has also been shown in the speciality literature [17] that there is a clear link between migration and climate change, there is a link between the weather and number of asylum applications, so it has been emphasized that "moderate temperatures around 20° C minimize asylum applications. Both colder and warmer temperatures increase migration flows. Extrapolating these results, it is estimated that an increase in temperatures in the source countries will increase asylum applications in the EU as well. It is mentioned that "climate change, especially growing temperatures will become a threat multiplier that causes people to seek refuge abroad. The impact of the weather in low-income source countries will not be limited to those countries or regions, but will probably spread to developed countries through increased refugee flows".

The Convention relating to the Status of Refugees, signed in Geneva on July 28, 1951, does not in any way reflect the climate change as the basis for granting refugee status"[18]. We make this point because millions of people have been displaced every year due to climate disasters, but nevertheless, climate migrants are not considered refugees and do not receive any specific protection as granted for refugees. There are several perspectives related to these findings; on the one

hand, the perspective of those who want to have a regulated status despite a migration caused by climate change (refugee, climate migrant with independent status) and, on the other hand, of those who do not want to enter such a category or a similar one, but, in contrast, that want the public climate measures and policies to act effectively and their results to be visible as soon as possible so that they can remain in the same area or, at most, to temporarily migrate and then return later to their previous living space.

The inclusion of these persons in the category of "climate refugees" has produced extensive discussions in the literature, given the legal consequences of such a status (ensuring specific protection from the state of refuge) and possibly that of a new status entirely, that of "climate migrant" creating other rights and obligations for both parties, although there are rumours that this status would have negative connotations that would significantly reduce the responsibility of the international community to ensure their well-being[19]. Other studies have used "mostly the forced term "climate migrant" knowing that it is not a universally accepted term, but in the hope that it conveys an accurate impression of the growing phenomenon of involuntary population displacement, probably as an effect of increasing climate change" [20].

As for migration and its connection to climate change, the European Green Deal states that "the global climate and environmental challenges are a significant threat multiplier and a source of instability. The ecological transition will reshape geopolitics, including global economic, trade and security interests. This will create challenges for many states and societies. The EU will work with all partners to increase climate and environmental resilience to prevent these challenges from becoming sources of conflict, food insecurity, population displacement and forced migration, and support a just transition globally"[21].

It is true that climate change influences mobility, but just as well it can determine the immobility of people, the negative effects being present in both situations.

It is appreciated that "the successful integration of migrants is essential for the well-being, prosperity, and future cohesion of European societies. Although the responsibility for integration lies mainly with the Member States, the EU supports national and local authorities, helping them to coordinate their policies and exchange knowledge and providing them with financial resources"[22].

Unfortunately, "just over half (51%) of countries do not have strategies to address migratory movements caused by environmental degradation and the negative effects of climate change"[23]. Thus, "18% have such a strategy, while 31% have a strategy, but it has not been updated in the last decade." Regarding the possible planning of the inflow or outflow of people, "more than three of four countries have widely planned population movements in times of crisis (49%

have an emergency plan in place and 27% have an outdated one, which means it has not been updated in the last decade). Almost a quarter (24%) of countries do not have plans in place. Some countries have contingency plans only for certain populations, such as the flow of refugees, but not for internal displacement". E.g., "at the national level, only Sweden and Finland ensure the protection of people affected by environmental change and natural disasters," but nevertheless, in the period 2015–2016 (the peak period of migration, known as "migration crisis")" the two countries have suspended their national provisions due to the large number of migrant arrivals"[24].

Climate change will impact migration factors, although existing estimates of the number of "climate migrants" raise multiple questions due to "difficulties in establishing causation, the often unclear nature of the estimates (referring to migrant flows or possibly migrants themselves, and the period of time it covers is also unclear)," but also due to the absence of a transparent methodology. A new interpretation for the phenomenon of migration would be the answer, because "rather than a simple reaction to climate change or disasters per se, migration should also be understood as an adaptation strategy, a way of dealing with the impact on life and livelihoods. Migration must therefore be part of the solution for both domestic and cross-border situations, for example by facilitating [...] and making it an option for a larger group of people through planned relocation to internal situations, or by considering environmental factors in context. Of relocation, among others"[25].

In support of public climate policies that integrate migration is the ILO recommendation devised in accordance with the provisions of the Paris Agreement of 2015, and with the legal framework provided for disaster risk reduction for 2015–2030, but also with the provisions of the 2030 Agenda for Sustainable Development, this recommendation being addressed to the European Council for the latter to take "capacity-building initiatives for better cross-sectoral policy coherence so that progress in one area does not undermine progress in another" and to support interventions that "avoid, minimize and addresses travel related to the negative impact of climate change; (ii) assist and protect such displaced populations; and (iii) create favourable conditions for migration and its consequences to support climate action in both partner countries and Europe"[26].

We agree with the opinion that "given that migration and asylum claims in the EU may in the nearer future more frequently also address reasons of environmental degradation due to climate change and natural disasters, the EU and its MSs, however, are well advised to pro-actively address the existing gap of available solutions"[27]. One of the solutions is expressed in the following statement: "The Pact on Migration and Asylum may offer an opportunity to put the migration in the context of climate change and natural disasters on the

political agenda for the coming five years. Given the long list of priorities in the field of migration and asylum, it is however unlikely that a 'relatively new' topic without evidence on its significance and urgency will be given much attention. Thus, while climate change and migration are both - separately - important issues on the European agenda, the nexus of the two stands is further strengthened" [28].

If the EU and other organisations manage to implement the measures which will lead to a substantial reduction by 2050 in greenhouse gas emissions, and will achieve the UN Sustainable Development Goals, and finally, enforce the measures mentioned in The Global Pact for Ensuring Legal Migration seeing that they are conducted safely and orderly in itself can help prevent the increase in involuntary migration. In contrast, if we are to see an increase in greenhouse gas emissions and an insufficient implementation of the UN Sustainable Development Goals and non-compliance with the Global Compact for Ensuring Legal Migration, which is conducted in conditions of uncertainty and more likely with a relatively limited adaptation to the challenges of climate change, to insufficient implementation of effective public policies in this field will eventually lead to an increasing amount of widespread (and not only) climate mobility.

#### 4. Conclusions

We are sceptical about the emission reduction results that the EU expects because of all these measures which may be or not be sufficient, and despite efforts to speed up this process there is a chance that the EU will fail to achieve its goal of climate neutrality by 2050. We believe that migration can also contribute to this acceleration, as an accelerator of sustainable development, given that climate migrants can play an important role in those sectors of economy that will be influenced by the achievement of the new climate goals (energy, agriculture, fishing, production, construction etc.). Participating in the implementation of specific measures to ensure a neutral climate by 2050 would also demonstrate that the EU is working for all citizens/individuals, that it leaves no one behind, adopting effective public policies in this regard.

We appreciate that no one knows the risks entailed by climate change, but no positive evolution is possible without taking measures to combat climate change, or effectively neutralize negative developments. Given that climate change can have a direct and indirect impact on human mobility, we cannot offer an estimate of the flows of people that will migrate taking into consideration the present and future actions that the EU and world will initiate, which will influence demographic, social, economic, but also environmental factors, especially in the migration areas.

Climate change affects migration, affects human mobility and has created a new category of migrants - "climate migrants," which is why it may be necessary to include this category in the category of refugees with the granting of all rights arising from having this status, or from the regulation of a new legal status specific to the climate migrant.

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