

The Main Elements of Creating a Legal Mechanism for Regulating Environmental Migration

Yuri Grigoryevich Shpakovsky

Professor of the Department of Environmental and Natural
Resources Law

Moscow State Law University named after O.E. Kutafina

Doctor of jurisprudence

123995, Russia, Moscow, st. Sadovaya-Kudrinskaya, 9

Vladimir Ivanovich Evtushenko

Head of the Basic Department of the History of State
Building and Law in Russia and the Belgorod Region
NRU "Belgorod State National Research University",

Candidate of Juridical Sciences

308600, Russia, Belgorod, st. Pobedy, 83

Annotation — The analysis carried out in the article shows that the violation of the natural human right to a favorable environment in natural and man-caused emergency situations, areas of environmental disaster, the need to reduce social tensions, prevent both massive and individual acts of disobedience of government, and intensify extremist activities, anti-government and nationalist organizations in these territories shows the need for consolidation in the legislature non-level legal mechanisms of environmental migration management. This legal structural entity is a comprehensive legal institution that is governed by the legal norms of various branches of law - constitutional, international, environmental, administrative, civil, criminal, etc., but it is the constitutional law norms that are fundamental and prevailing in the legal regulation of this social phenomenon. This is due, first of all, to the fact that the created legal mechanism for regulating environmental migration must, first of all, protect the rights and freedoms of environmental migrants by determining their legal status and assisting them in arranging - temporarily or permanently - in their new place of residence. At the same time, the legal status of an environmental migrant as a special legal status is in addition to the legal status of a person and a citizen, and depending on what legal status is common for the legal status of an environmental migrant - the legal status of a citizen of the Russian Federation or the legal status of a foreign citizen and stateless person - It is possible to divide environmental migrants into two large groups.

Keywords — *natural and man-made emergency, ecological disaster zone, human right to a favorable environment, environmental migration, environmental migrant, legal status of environmental migrant, social tension.*

I. INTRODUCTION

The process of formation and improvement of the human and citizen's right to a favorable environment is associated with many factors:

- with an increasingly deteriorating environmental situation, progressive environmental pollution and the intensifying process of global warming in the world [1];

- with the increasing scale of man-made accidents and disasters associated with the ever-growing scale of production and mining facilities and the increasingly frequent use of

substances and materials dangerous to humans and the environment in production processes;

- with the emergence of environmental disaster zones, associated with the consequences of natural or other human activities, as a result of which environmental conditions have sharply worsened and a real threat to the life and health of residents of these territories has been created.

The legislative framework governing the legal status of natural and man-made emergency zones in the Russian Federation, headed by the Federal Law of the Russian Federation "On the Protection of the Population and Territories from Natural and Technogenic Emergencies", is quite extensive and fully regulates the actions of state bodies, municipal authorities and the population during environmental disasters of a natural and man-made nature. It also includes the Federal Constitutional Law of the Russian Federation "On the state of emergency", which defines, among other things, the legal mechanism for the elimination of major environmental disasters of a natural and man-made nature, which cover large territories ranging in size from several regions to the territory of the whole country.

At the same time, the problem of determining the legal status of ecological disaster zones and the question of the need to adopt an appropriate normative act giving to territories where, due to natural factors, unreasonable human activities, the environmental situation has sharply worsened, creating, inter alia, a legal mechanism for the implementation of the constitutional right to favorable the environment for residents of these territories has matured long ago [2]. The death of the Aral Sea is probably the most characteristic and saddest in terms of consequences example of prolonged irrational nature management.

The legislation of the Russian Federation refers to the concept of "environmental disaster." Thus, Article 57 of the Federal Law of the Russian Federation "On Environmental Protection" "The Procedure for Establishing Ecological Disaster Zones, Emergency Zones" stipulates that "... the procedure for declaring and establishing the regime of ecological disaster zones is established by the legislation on environmental disaster

zones". But at present, the legislation of the Russian Federation does not contain normative acts that would regulate the regime of zones with poor environmental conditions.

II. MATERIALS AND METHODS

Despite the different nature of the occurrence, common to both natural and man-made emergency zones and environmental disaster areas is, *inter alia*, a violation of the human and civil rights to a favorable environment enshrined in the Constitution of the Russian Federation.

An analysis of the practice of realizing the human and citizen's right to a favorable environment shows that this right, relatively recently introduced into the legislative framework of the Russian Federation and declared in the 1993 Constitution of Russia, is a complex subjective human right in its structure. In order for the right to a favorable environment to be fully realized, it includes a large number of human rights associated with it. In addition to the closest relationship with such fundamental human rights as the right to life, health protection, etc., two as well as the human right to a favorable environment, are enshrined in article 42 of the Constitution of the Russian Federation environmental human rights - the right to obtain reliable information about the state environment and the human right to compensation for damage caused to his health or property by an environmental offense - are an integral part of the human and citizen's right to a favorable circling environment.

Also, an integral part of this right is the right of a person and a citizen, enshrined in the Federal Law of the Russian Federation "On Environmental Protection," to "... participate both personally and as part of public organizations and political parties in initiating the environmental review process for various business projects, discussing and making decisions on all issues, problems and projects affecting environmental issues" [3].

Another element of the realization of the human and citizen's right to a favorable environment may be the legal mechanism of state regulation of the process of population migration from areas affected by industrial accidents or natural disasters in areas and zones of ecological disaster, in which the natural right of a person and citizen to a favorable environment is violated, as well as the organization of assistance in their arrangement temporarily or permanently at a new place of residence [4]. This process in the scientific literature and the media was called "environmental migration", and those who left their permanent places of residence for environmental reasons - "environmental migrants" [5].

III. RESULTS

For the first time, humanity was faced with a large-scale relocation of people in connection with an environmental disaster, when as a result of a man-made accident - the destruction of the fourth power unit of the Chernobyl nuclear power plant - more than ten areas of the former USSR lying on the path of the radiation cloud received significant radioactive contamination, six of them in Ukraine (Kiev, Zhytomyr, Chernihiv, Volyn and Rivne regions), three - in Belarus (Gomel,

Mogilev and Brest regions) and three - in Russia (Belgorodsk, Bryansk and Kaluga regions). Minor radioactive contamination received the entire remaining territory of Belarus, local radioactive fallout fell in a number of regions of Russia and Ukraine.

The total number of residents living in these territories is more than 24 million people. Due to the real danger of life and causing harm to the health of local residents, almost 300 thousand people were resettled temporarily or permanently from their homes in these regions of Ukraine and Belarus. In Russia, residents of 28 settlements left their homes. Even residents of even those areas where there was no real danger to its residents often left their place of permanent residence. The reason for this state of affairs was the lack of full and objective informing the population about the ecological man-made disaster that occurred, the extent and level of contamination of the areas adjacent to the epicentre of the radiation disaster, the route of the radiation cloud and the level of contamination left by it not only in the former USSR, but also in countries Eastern and Western Europe. In total, if we take the accident at the fourth power unit of the Chernobyl nuclear power plant, in total more than 100 million people in different countries became victims of radiation information immediately after the accident, although 99.9% of people voluntarily migrated due to the disaster in their places living there was no real harm from radiation.

It was the accident at the Chernobyl nuclear power plant that set not only the authorities of the USSR, but also the whole world community the need to recognize such a thing as "environmental migration" - migration due to environmental degradation or due to environmental disasters and the development of a legal mechanism for its state regulation.

Considering the situation with population migration after the accident at the Chernobyl nuclear power plant associated with the contamination of territories by radiation precipitation, it is customary to distinguish several stages:

- During 1986, for several days after the accident, residents of areas especially affected by radiation contamination were forcibly resettled, a kind of environmental migration - "forced". According to official statistics, more than 135 thousand people were resettled from places of permanent residence.

- the silence on the part of the USSR state authorities on the true scale of the man-made disaster, on the contrary, caused a massive spontaneous migration of people from areas and areas of the possible passage of a radiation cloud adjacent to the Chernobyl nuclear power plant, generated by a wide variety of rumors and gossip. Moreover, such migration processes were observed not only in the USSR, but even in Western Europe.

- Restructuring and the policy of publicity conducted at that time in the USSR led to the fact that after the publication in 1989 by the USSR State Committee for Hydrometeorology and Environmental Control of the USSR of the map of residual radiation contamination after the Chernobyl accidents, migration processes from these areas sharply intensified for environmental reasons.

IV. DISCUSSION

An analysis of the behavior of the population in areas where various kinds of events occurred, man-made and natural disasters shows that in this kind of social groups there is a tendency to increase various types of social tension [6]. Sociological studies conducted over the years show that the level of social tension in the areas affected by the earthquake persisted for several years, gradually decreasing. The greatest concern is for those who have lost close relatives and acquaintances and representatives of the so-called socially unprotected layers of society. As a rule, their suspicion, suspicion, suspiciousness, and wary attitude to the authorities increase, the number of complaints about actions or omissions of various state bodies increases due to often facts of silence on the part of state bodies of important information about the actual situation in the affected area, and the absence of or other reasons for timely assistance from the authorities at both the federal and regional and municipal levels, etc. [7]. Social tension is expressed in various forms, both at the level of socio-psychological and at the level of behavior patterns of individual subjects, which leads to both mass and individual acts of disobedience of state power, the intensification of the activities of extremist, anti-government and nationalist organizations.

Similar conclusions can be drawn when considering the largest catastrophe of the beginning of the 21st century - the March 2011 earthquake in Japan and the subsequent tsunami that led to similar consequences - the disaster at the Fukushima-1 nuclear power plant, which was sequentially assigned the third, fifth and finally the maximum - The seventh level on the international scale of nuclear events - the same one that was given to the worst nuclear disaster in history at the Chernobyl nuclear power plant in 1986. This is due to the fact that an increased background radiation was observed throughout the Fukushima prefecture, and as a result of a significant discharge of radioactive water from the cooling systems of the reactors into the ocean - in waters distant from Japan over considerable distances.

Despite the fact that Japanese society is considered more democratic, more open, immediately after the accident and in the process of its liquidation, especially in its first phase, there was also a tendency to conceal information, both from government officials and company representatives "Tepco" - the operator and owner of the Fukushima-1 NPP - no matter how it was subsequently motivated - to reduce the size of the environmental disaster, which often led to the opposite result. For example, this led to the flight of people even from those areas of Japan that were not threatened by the spread of radioactive contamination. Moreover, the general opinion expressed by both foreigners and local residents goes something like this: "... we have no idea what is happening at the Fukushima-1 nuclear power plant, so we decided to leave just in case" [8].

What can we say about Russian citizens, since the time of Chernobyl, accustomed to not trust their own government. Reports of the accident at the Japanese Fukushima-1 nuclear power plant, despite numerous reassuring statements by various

Russian officials that increased radiation does not threaten the Far Eastern regions of the Russian Federation, nevertheless, led to an increased outflow of the population of the region, and those who couldn't leave, they called the so-called "iodine hysteria" when residents rushed to buy all iodine-containing medicines in pharmacies [9].

The problems associated with the creation of a legal mechanism for regulating environmental migration and the protection of the rights and freedoms of environmental migrants remain unresolved. After all, even with involuntary resettlement, people who left the zone of ecological disaster can face the most unexpected problems. Even in Japan, despite the prudence and thoroughness of the measures undertaken by the Japanese authorities, the internally displaced persons who left the 30-kilometer exclusion zone around the Fukushima-1 emergency nuclear power plant faced an unexpected problem at their new place of residence - temporary shelters, hastily prepared to receive the compelled environmental migrants, as well as hospitals, refused to accept those who left the ecological disaster area for fear that they might spread radiation. They began to demand a certificate stating that they were not exposed to radiation. In the process of solving this problem, the state should face a two-fold task. Measures of legal and social protection, social support directed to internally displaced persons should be directed, including to those who also really need this help - environmental migrants.

V. CONCLUSION

Consideration of the consequences of major technological accidents and natural disasters, analysis of the escalation of social tension after them, consideration of the legal status of an environmental migrant, the degree of its consolidation in Russian legislation at the present stage, allows us to come to the following conclusions:

1. The deterioration of the environmental situation after environmental disasters of a natural or man-made nature leads to people searching for new, more environmentally friendly, places of residence. In addition, it must be borne in mind that, as a rule, the environmental reasons that prompt a person to look for a new place of residence are superimposed on economic and other reasons - the lack of jobs in the area associated with a general reduction in the really functioning production facilities; decrease in the general standard of living; worsening sanitary and epidemiological situation, etc. [4]. An important role is played by the general trend, and the mood prevailing in the area, associated with the fact that, as a rule, people migrate to their permanent place of residence in groups related by family or friendships.

2. The process of relocation (relocation) of victims of natural and man-made emergencies in case of violation of their natural human and citizen's right to a favorable environment (ecological migration) and the protection of the rights and freedoms of environmental migrants is regulated by the norms of various branches of law - constitutional, environmental, administrative, civil, criminal, etc., but it is the norms of constitutional law that are fundamental and prevailing in legal

regulation given a social phenomenon. This is due, first of all, to the fact that the created legal mechanism for regulating environmental migration must, first of all, protect the rights and freedoms of environmental migrants by determining their legal status and assisting them in arranging - temporarily or permanently - in their new place of residence.

3. In the event that environmental migration is associated with the resettlement (relocation) of residents to a new place of residence in another state, the development and adoption of relevant agreements at the international level, fixing the international legal mechanism for regulating interstate environmental migration and fixing legal environmental migrant status.

4. Legal structural education "Legal regulation of resettlement (displacement) of the population from areas where the human and citizen's right to a favorable environment (ecological migration) is violated" is a comprehensive legal institution that is regulated by legal norms from various legal sources and which does not yet have its own head normative act both in the legislation of the Russian Federation and in international law. At the same time, an increase in the number of ecologically unfavorable regions on the territory of our country and in the world and an increase in the number of natural and man-made emergencies puts on the agenda the need to adopt a basic law defining the legal mechanism for regulating the relocation (displacement) of the population from areas where human rights are violated and citizen on a favorable environment (environmental migration). Only the adoption of a single codified normative act, which would regulate the general direction of legal regulation of the status of environmental migrants, will create a truly effective legal mechanism for the protection of environmental migrants. In international law, such a normative act could be developed under the auspices of the UN, which has recently paid quite close attention to the problems of international legal regulation of environmental migration and the protection of the rights of environmental migrants as one of the representatives of forced migrants, an international convention developed on the basis of the fundamental model for all forced migrants the 1951 UN Convention on the Legal Status of Refugees.

5. The legal status of an environmental migrant is a legally fixed state of a person who, due to a sharp deterioration in the environmental situation and a violation of his natural right to a favorable environment in an environmental disaster zone, has left his permanent place of residence and who has left his new place of residence until it is fully equipped or normal environmental the situation in the place of his permanent place of residence is legally enshrined in rights peculiar only to environmental migrants and duties, additional benefits are provided.

6. The legal status of an environmental migrant as a special legal status is a complement to the legal status of a person and

citizen. At the same time, depending on what legal status is common for the legal status of an environmental migrant, environmental migrants can be divided into two large groups.

For the first group - persons internally displaced for environmental reasons - the legal status of a citizen of the Russian Federation, as well as the general legal status of a foreign citizen and stateless person permanently residing in the territory of the Russian Federation, is common to the special legal status of an environmental migrant.

For the second group - environmental refugees - the legal status of a foreign citizen or stateless person temporarily residing in the Russian Federation is common to a special legal status.

References

- [1] V. Mueller, G. Sheriff, X. Dou, C. Gray, "Temporary migration and climate variation in eastern Africa", *World Development*, vol. 126, 104704, 2020.
- [2] Koko Warner, "Global environmental change and migration: Governance challenges", *Global Environmental Change*, vol. 20, Issue 3, pp. 402-413, 2010.
- [3] V. I. Evtushenko, Yu. G. Shpakovsky, "Legal regulation of the exercise of citizens' right to a favorable environment violated as a result of natural and man-made emergencies", *Socio-political sciences*, No. 2, pp. 187-196, 2018.
- [4] P. Bohra-Mishra, M. Oppenheimer, S. Hsiang, "Nonlinear permanent migration response to climatic variations but minimal response to disasters", *Proceedings of the National Academy of Sciences*, vol. 111, no. 27, p. 9780, 2014.
- [5] Elena Ambrosetti, Enza Roberta Petrillo, "Environmental disasters, migration and displacement. Insights and developments from L'Aquila's case", *Environmental Science & Policy*, vol. 56, pp. 80-88, 2016.
- [6] "Social vulnerability and environmental migration: The case of Miyagi Prefecture after the Great East Japan Earthquake", *International Journal of Disaster Risk Reduction*, vol. 25, pp. 212-226, 2017.
- [7] M. Kleemans, J. Magruder, "Labor market changes in response to immigration: Evidence from internal migration driven by weather shocks", *Economic Journal*, vol. 128, Issue 613, pp. 2032-2065, 2018.
- [8] Radiation for export. Retrieved from: http://rus.ru/rv.ru/tag_47312111/page_40.html
- [9] The fear of radiation brought to allergies. Retrieved from: <https://news.rambler.ru/weather/9348009-strah-pered-radiatsiey-dovel-do-allergii>
- [10] R. Cai, S. Feng, M. Oppenheimer, M. Pytlikova, "Climate variability and international migration: The importance of the agricultural linkage", *Journal of Environmental Economics and Management*, vol. 79, pp. 135-151, 2016.
- [11] R. Black, S. R. G. Bennett, S. M. Thomas, J. Beddington, "Migration as adaptation", *Nature*, vol. 478, pp. 447-449, 2011.
- [12] Y. Shpakovsky, V. Yevtushenko, "The main directions of development of the international legal mechanism for regulating environmental migration", *SHS Web of Conferences*, vol. 69, 00036, 2019.
- [13] Mohammad Abdul Munim Joarder, Paul W. Miller, "Factors affecting whether environmental migration is temporary or permanent: Evidence from Bangladesh", *Global Environmental Change*, vol. 23, Issue 6, pp. 1511-1524, 2013.