Publizierbarer Endbericht

Gilt für Studien aus der Programmlinie Forschung

A) Projektdaten

Allgemeines zum Projekt	
Kurztitel:	ClimMobil
Langtitel:	Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden
Zitiervorschlag:	Margit Ammer, Monika Mayrhofer and Matthew Scott (2022) ClimMobil – Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden, Final Report of the Research Project to the Austrian Climate and Energy Fund, Vienna.
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KoordinatorIn / ProjekteinreicherIn:	Ludwig Boltzmann Gesellschaft – Institut für Grund- und Menschenrechte
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Projekt- und KooperationspartnerIn (inkl. Bundesland):	Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Sweden Dr. Matthew Scott
Schlagwörter:	Climate change, Mobility, Displacement in the context of climate change and disasters, Europe, Austria, Sweden, Legal status, Protection gap
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B) Project Overview

1 Kurzfassung

Veränderungen in der Umwelt, vor allem jene, die durch den Klimawandel verursacht werden, stellen einen immer wichtigeren Faktor in Bezug auf Migration und Flucht dar. Obwohl die meisten betroffenen Personen in ihren Herkunftsregionen bleiben, suchen doch einige von ihnen auch in Europa Schutz. Jedoch ist der rechtliche Status dieser Menschen nur unzureichend geklärt und gewährleistet („normative protection gap"). Das Forschungsprojekt hatte zum Ziel, den momentanen und potentiellen Geltungsbereich des internationalen Schutzes sowie anderer Schutzformen (z.B. humanitärer Schutz) in der Europäischen Union, mit einem Fokus auf Österreich und Schweden, zu analysieren. Um einen Einblick in den Umgang mit diesem „normative protection gap" in Österreich und Schweden zu erhalten, wurde nicht nur der relevante nationale rechtliche und institutionelle Rahmen untersucht, sondern es wurden auch Gerichtsentscheidungen zum internationalen Schutz und zu humanitären Schutzformen (in der schwedischen Fallstudie auch Migrationskategorien und Visabestimmungen) analysiert, in denen Umwelt- und Klimafaktoren eine Rolle spielen.

Die Analyse ergab, dass bereits jetzt in Asylverfahren Umweltkatastrophen, die im Zusammenhang mit dem Klimawandel an Bedeutung gewinnen (z.B. Dürren, Überflutungen, Stürme), eine Rolle spielen. Das betraf vor allem Entscheidungen, die sich auf die Herkunftsländer Somalia und Afghanistan beziehen. Die Schilderungen der Antragsteller:innen in Bezug auf die Katastrophensituationen wiesen große Ähnlichkeiten auf. Die Umweltfaktoren wurden in Zusammenhang mit anderen Faktoren diskutiert und bewertet (z. B. im Kontext der allgemeinen Sicherheits- oder Wirtschaftslage oder hinsichtlich ihrer Auswirkungen auf die individuelle Situation) – dies unabhängig davon, ob Umweltfaktoren von den Kläger:innen selbst vorgebracht oder *proprio motu* vom Gericht aufgegriffen wurden. Nicht die Umweltkatastrophe als solche, sondern die Auswirkungen dieser, insbesondere auf die Versorgungslage, wurden vorgebracht oder vom Gericht berücksichtigt. Das Vorhandensein einer internen Fluchtalternative wurde in den Fällen, in denen Katastrophen von den österreichischen und schwedischen Gerichten geprüft wurden, häufig als Hindernis für die Gewährung eines Rechtsstatus genannt.

Zwischen den beiden Fallstudienländern gab es entscheidende Unterschiede, einerseits hinsichtlich der rechtlichen Rahmenbedingungen, aber andererseits auch in der Anwendung des Rechts. Insbesondere in Bezug auf die Art und Weise, wie Umweltkatastrophen bei der Prüfung des subsidiären Schutzes und der Rückkehrentscheidung beurteilt wurden, gab es unterschiedliche Herangehensweisen: Die Richter:innen österreichischer Gerichte (Bundesverwaltungsgericht – BVwG, Asylgerichtshof – AsylGH) setzten sich viel ausführlicher als ihre schwedischen Kolleginn:en mit der Frage auseinander, wie subsidiärer Schutz im Zusammen-

hang mit Umweltkatastrophen anzuwenden ist. Obwohl sich nur wenige österreichische Entscheidungen in diesem Zusammenhang aktiv mit der Frage des Flüchtlingsstatus befassten (und in der Regel zu dem Schluss kamen, dass umweltbedingte Gefahren keine Verfolgung darstellen), enthielten die österreichischen Fälle in Bezug auf die Gewährung von subsidiärem Schutz eine ausführliche juristische Argumentation und relevante Herkunftsländerinformationen betreffend den Umweltfaktor (insbesondere die Fälle, die Antragsteller aus Somalia betrafen). Die schwedischen Fälle enthielten keine Überlegungen zum Flüchtlingsstatus und nur ein Fall enthielt mehr als kursorische Ausführungen zum subsidiären Schutz.

Umweltrelevante Informationen über das Herkunftsland waren in den österreichischen Entscheidungen fast immer enthalten, insbesondere in Fällen aus Somalia. Im Gegensatz dazu wurde in den schwedischen Fällen nur selten auf spezifische Herkunftsländerinformationen Bezug genommen, und in den Entscheidungen wurde bestenfalls allgemein auf "die Länderinformationen" verwiesen.

Wie wird mit dem „normative protection gap" durch Anwendung des Rechts umgegangen? Aus der österreichischen Fallstudie geht hervor, dass die rechtliche Lücke im Asylverfahren nur auf der Ebene des subsidiären Schutzes geschlossen wird, nicht aber auf der Ebene des humanitären Schutzes oder des Flüchtlingsstatus. Im Zusammenhang mit dem subsidiären Schutz hat die Rechtsprechung des Verwaltungsgerichtshofs und des Verfassungsgerichtshofs klargestellt, dass Katastrophen, einschließlich Dürren, und relevante Herkunfsländerinformationen, bei der Durchführung einer Risikobewertung gemäß Artikel 3 EMRK hinsichtlich einer möglichen Rückkehrentscheidung berücksichtigt werden müssen. Diese Rechtsprechung hatte und hat Auswirkungen auf die Rechtsprechung des Berufungsgerichts (Bundesverwaltungsgerichts, Asylgericht). Vor allem bei Entscheidungen, die sich auf das Herkunftsland Somalia beziehen, wurden Katastrophen und relevante Herkunftsländerinformationen berücksichtigt. In Bezug auf andere Herkunftsländer gibt es noch Raum für Verbesserungen.

In Schweden gibt es keinen klaren Rechtsschutz für Menschen, die befürchten, in ihren Herkunftsländern katastrophenbedingten Gefahren ausgesetzt zu sein. Die Flüchtlingskonvention wurde in keinem der untersuchten Fälle in Betracht gezogen und subsidiärer Schutz wurde nur in einem Fall gewährt, der eindeutig mit der Bedrohung durch körperliche, geschlechtsspezifische Gewalt zusammenhing. Die nicht harmonisierte Bestimmung, die den Schutz auf Personen ausweitet, die im Zusammenhang mit einer "Umweltkatastrophe" nicht in ihr Heimatland zurückkehren können, wurde von den Antragsteller:innen routinemäßig angeführt, in den Gerichtsentscheidungen jedoch häufig ignoriert. Wenn diese Bestimmung in Betracht gezogen wurde, wurde aber in keinem Fall festgestellt, dass die Umstände des:r Antragstellers:in die entsprechenden Anforderungen erfüllten. Im Jahr 2021 wurde diese spezielle Bestimmung dann aufgehoben. Die Herkunftsländerinformationen wurden in den analysierten Fällen uneinheitlich und nur selten eingehend geprüft.

2 Executive Summary

There is growing evidence that environmental/climate change is becoming an increasingly important factor with regard to human mobility, including displacement of people. However, there is a broad agreement on the existence of a normative protection gap concerning cross-border movements. The legal status of persons arriving in Europe in the context of climate change is still inadequately addressed. The research project *ClimMobil – Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden* aimed at investigating the current and potential scope of international protection as well as humanitarian forms of protection for persons displaced in the context of climate change into the EU, in particular to Austria and Sweden.

In order to gain insight into how the protection gap is addressed in Austria and in Sweden not only the relevant national legal and institutional framework was reviewed but also judicial decisions on international and humanitarian forms of protection (in the Swedish case also migratory categories and visa provisions) containing disaster-related keywords were identified and analysed.

The analysis showed that there is a non-negligible number of people who seek protection in Europe for reasons related to disasters and climate change. The main countries of origins of the sample of decisions chosen for a detailed analysis in both countries were Somalia and Afghanistan. The narratives by claimants concerning the disaster situations were very similar. Disaster was typically brought forward by the claimant as well as discussed and assessed by the court as one among several factors (such as general security or economic situation or factors relating to the individual situation including family status and support, gender, age, profession, health, wealth, clan membership and several others). It was not the disaster as such but the impact of the disaster, in particular on the supply situation, which was brought forward by the claimant or considered by the judge. The existence of an internal relocation alternative was often identified as a barrier to the granting of a legal status in those cases where disasters were considered by the Austrian and Swedish courts.

The situation in the two case study countries differs concerning the legal frameworks assessed. Although both countries transposed the EU Qualification Directive and have provisions on international protection in their national laws, the following differences were relevant:

- Sweden had a non-harmonised category of international protection based on environmental disaster until 2021 in its law, which was however hardly applied in practice.
- Austria's transposition regarding subsidiary protection does not conform to the EU Qualification Directive. Austrian law does not require an actor of serious harm in the country of origin as demanded by the jurisprudence of the CJEU on Art. 15 Qualification Directive. In Austria, subsidiary protection is granted if a 'real risk' of a violation of Arts. 2 or 3 ECHR exists.

- The Swedish case study also considered migratory categories and visa provisions.

Important differences could also be discerned concerning the legal practice of addressing disasters in relation to subsidiary protection and non-refoulement: Judges of Austrian courts engaged in much greater detail than their Swedish counterparts with the question of how subsidiary protection applies in the context of disasters. Although only a few Austrian decisions actively addressed eligibility for refugee status (and then typically reached the conclusion that environmentally-related harm did not amount to persecution), the caseload contained rich legal reasoning and disaster-relevant country of origin information relating to eligibility for subsidiary protection, and protection from refoulement (in particular the caseload relating to claimants from Somalia). The Swedish caseload does not reflect any consideration of eligibility for refugee status, and only one case contained more than cursory consideration of eligibility for subsidiary protection.

Disaster-relevant country of origin information (COI) was almost always included in the Austrian decisions, in particular in Somali cases. In contrast, specific COI was rarely referred to in the Swedish caseload, with decisions at best making general reference to 'the country information'.

Is the Protection Gap addressed? From the Austrian case study, it appears that the protection gap is addressed in the asylum procedure only at the subsidiary protection level, but not at the level of humanitarian protection or refugee status. In the context of subsidiary protection, the jurisprudence of the Supreme Administrative Court and the Constitutional Court has clarified that disasters including droughts and relevant COI must be taken into account when conducting a risk assessment according to Article 3 ECHR upon return. This jurisprudence has and had an impact on the caselaw of the appellate court. It was mainly with regard to decisions relating to the country of origin Somalia where it appeared that disasters and relevant COI were carefully considered. There is still room for improvement in relation to other countries of origin.

In Sweden, there is no clear legal protection for people who fear being exposed to disaster-related harm in their countries of origin. The Refugee Convention was not considered in any of the cases reviewed, and subsidiary protection was only granted in one case that had clear connections to a threat of physical, gender-based violence. The non-harmonized provision that extended protection to people unable to return home in the context of an 'environmental disaster' was routinely invoked by claimants, but often ignored in judicial decisions. When the provision was considered, the claimant's circumstances were never found to satisfy the relevant requirements. The provision was repealed in 2021. COI was inconsistently considered in the cases reviewed, and rarely in depth.

3 Initial Situation and Objectives

The starting point for ClimMobil was the growing evidence that disasters and climate change is becoming an increasingly important factor with regard to human mobility. Climate change has an impact on economic, social and political drivers of mobility and leads to the increased displacement of people (IPCC). However, there is a **broad agreement on the existence of a normative protection gap** concerning **cross-border movements.** The legal status of persons arriving in Europe in the context of disaster and climate change is still inadequately addressed.

As long as this normative protection gap persists, **existing international law**, in particular international refugee law and international human rights law, **has to be implemented effectively**. In this context, it was necessary to clarify the scope of existing legal frameworks. There was **little knowledge what role environmental factors including the impacts of climate change play** – often in interrelation with inequalities – **in decisions granting international protection in Europe at national level**. There was also little knowledge if and how the legal assessment of environmental factors in asylum proceedings changed over the last years and **whether there are differences and/or similarities of assessing environmental factors at the national level of different EU Member States**. Apart from that, it was also analysed whether and to what extent environmental factors play a role in the granting of **humanitarian forms of protection**.

Therefore, **ClimMobil** aimed at investigating the **current and potential scope of international protection as well as humanitarian forms of protection** for persons displaced in the context of disasters and climate change in the EU, in particular in **Austria and Sweden** as examples of EU Member States. In a first step the status quo at the global level (Refugee Convention, principle of non-refoulement under international human rights law) was analysed. A focus was laid on a **regional European level**. In a second step, relevant EU law, in particular the EU Qualification Directive, was assessed. In analysing the scope of international protection, social factors, such as inequality and discrimination, that are important dimensions concerning the impact of climate change in general and in the context of climate change-related mobility in particular, were taken into account.

For the purpose of embedding the legal questions into a broader international policy framework, the **latest international institutional and policy developments** in the context of climate/environmental change-related mobility (e.g. Platform on Disaster Displacement, Task Force on Displacement) and their **relevance and implications for Austria and Europe** were analysed. The main research questions in this context were:

- What are the legal and policy challenges as well as solutions in the area of climate change-related mobility discussed in the context of recent international policy developments and what is the role of Austrian policy makers in this context? How do international policy-relevant stakeholders understand and assess

the issue of environmental factors in the context of forced migration/displacement, what role do they see for national policy-makers and how can Austrian policy-makers contribute to addressing the normative protection gap on national as well as international level?

As the **core part of the project**, **case studies on Austria and Sweden** as two EU Member States were conducted to explore and analyse the situation at national level. Here also alternative forms of protection were reviewed, in particular in relation to Art. 8 of the European Convention on Human Rights (ECHR) (e.g. humanitarian protection). National legal frameworks and jurisprudence were assessed in the light of international law and EU legal standards. The main research questions in the context of the case studies were:

- What role do environmental factors (such as weather conditions, droughts, etc.) play in decisions on international protection at national level? What role do other elements, in particular inequalities of persons, groups, play in this context? In which concepts of relevance to international refugee law (e.g. persecution, well-founded fear, nexus to persecution grounds) or complementary forms of protection (e.g. inhuman and degrading treatment, serious harm) do environmental factors come in and how?
- How does national jurisprudence relate to international law, in particular to the Geneva Refugee Convention and Article 3 ECHR, how does it relate to EU law, in particular the EU Qualification Directive? Is national jurisprudence going beyond international or EU law obligations?
- Which evidence, in particular which sources of country of origin information, is/are used in the procedure? What role do they play in the reasoning of the decision? Is information missing, if yes which?
- Are there other forms of national protection, in particular humanitarian stay options, that are relevant and which take environmental factors into account? Does jurisprudence in this context reflect an increasing awareness on the growing importance of the topic?
- How do different national stakeholders – legal stakeholders (e.g. judges and lawyers) as well as other policy-relevant and civil society stakeholders – understand and assess the issue of environmental factors/climate change in the context of forced migration/displacement? What are legal and policy solutions suggested in this regard?
- Are there differences relating to the questions above in the two selected case study countries (Austria and Sweden)?

Finally, the project **aimed at developing recommendations** as how to address this normative protection gaps for policy makers and other stakeholders at international, European and national levels.

4 Projektinhalt und Ergebnis(se)

4.1 Project structure and activities

ClimMobil consisted of the following five work packages:

Workpackage 1 "Desk research, explorative phase and international dimensions relevant for the research project" aimed at laying the theoretical, conceptual and methodological foundation for the project. The findings were summarised in an internal baseline report containing:

- An analysis of global trends of climate change-related mobility including trends with regard to migration and displacement towards Europe as well as migration within Europe.
- An overview and analysis of the main international political and legal developments concerning climate-change related mobility.
- An introduction on the social dimension of climate change-related impacts.
- An analysis of the "normative gap in international law" regarding cross-border displacement in the contest of climate change and disaster.

In addition, interviews with European and international stakeholders were carried out in order to shed light on the latest political and legal developments and on particular implications and challenges for Europe including Austria.

Workpackage 2 "Case Studies" constituted the core element of the project. The **case study countries Austria and Sweden were chosen for a number of reasons**: Besides the requirement of the ACRP call that the research should be of particular relevance for Austrian policy makers, which made the focus on Austria necessary, both countries were appropriate for the reason that both countries receive high number of asylum seekers including from those countries affected by climate change-related impacts such as droughts (for example, asylum seekers from Somalia, Eritrea, Afghanistan). Both countries are EU countries which means that EU asylum and human rights law is applicable. In addition, Sweden was of particular interest because at the time of applying for the grant, Sweden was one of the few countries to have adopted a legal provision extending complementary protection to persons unable to return to their home countries as a consequence of a natural disaster.

In preparation for the main research activity of this workpackage, **the identification, selection and analysis of national jurisprudence**, **pre-studies** were conducted in order to establish the background for both case studies. The pre-studies contain an overview of relevant applicable legal frameworks, an overview of the relevant national institutional framework and procedures with regard to the asylum process, a review of the academic literature and a summary of different national trends concerning mobility, including trends with regard to asylum applications and main countries of origin.

The main activity in this work package was the **identification, selection and analysis of national jurisprudence**. In both countries, keywords such as drought, flood, cyclone, hurricane, climate change, earthquake, sea level were selected and used for a search in the legal databases (Austria: "Rechtsinformationssystem des Bundes" (RIS) is a legal database of the Republic of Austria providing information on Austrian law and case law and contains decisions of the appellate court, that is the former AsylGH (until 2013) and the BVwG. Sweden: JPInfonet database containing decisions from the Swedish migration court). The search in the RIS resulted in 9,860 decisions containing a disaster-related keyword in some part of the decision between 1 January 2008 and 18 June 2020. Different strategies were used to narrow down the sample (see section 6). Finally, 646 decisions were selected for a more detailed analysis in the Austrian case study. Just under 800 cases were found in the Swedish database, 181 of which were chosen as a sample for the analysis.

The selected case law was uploaded into a QDA program (MAXQDA), coded according to a specific framework, and qualitatively analysed concerning their insights with regard to the research questions.

Semi-structured interviews with relevant stakeholders were carried out The interviews aimed at supplementing and validating the results of the case law analysis.

The results of the case studies were summaries in case study reports.

The results of the two cases studies were brought together in **Workpackage 3 "Bringing together the results of the case studies, drafting recommendations"**. The results were analysed and compared to **identify commonalities and differences between the two case study** countries in general and similarities and differences concerning the application of international and European law in particular. A synthesis report was drafted which aimed at comparatively analysing the case studies in relation to the normative protection gap and the ways of addressing this gap by effectively applying international and European law while taking into account similarities and differences concerning the institutional and legal frameworks of Austria and Sweden.

On the basis of the case studies and the synthesis report **recommendations for policy makers were developed** and a policy brief was drafted and published online and printed.

Workpackage 4 "Publications, Dissemination" was implemented throughout the project. A project website was set up. The research team submitted several articles to peer-reviewed journals and other publications and published the synthesis report and the policy brief. Furthermore, the results of the project were discussed with relevant stakeholders and experts during a panel discussion at the end of the project.

Workpackage 5 "Overall management of the project" included the monitoring of the work progress and making sure that the project objectives were met in accordance with the time schedule. It further contained the overall coordination and management of the work packages as well as the management of the budget and other organisational tasks.

4.2 Most important findings of the project

The **case studies of Austria and Sweden formed the basis** for answering the question **what role environmental factors play in decisions on international protection and humanitarian forms of protection and to what extent the implementation of existing laws serves to address the protection gap at national level**. The literature review showed that there is no previous in-depth academic engagement on the question of how Austrian and Swedish authorities deal with claims on international protection relating to cross-border displacement in the context of disaster and climate change.

Legal frameworks

The analysis of relevant national legal frameworks revealed that there are **some differences concerning the national legal framework**. While both countries transposed the EU Qualification Directive in their respective national laws, following differences exist in relation to the frameworks on international protection:

First, unlike Austria, **Sweden had a special provision on disaster displacement until 2021**, which was however hardly applied in practice.

Second, **Austria's transposition regarding subsidiary protection** in Sec. 8 Asylum Act **is not in line with the EU Qualification Directive**: In contrast to

Art. 15b Qualification Directive as interpreted by the CJEU,[1] the eligibility criteria in Sec. 8 Asylum Act do not mention a requirement of an actor of serious harm in the country of origin for granting subsidiary protection. This caused different interpretations by asylum authorities including the Federal Administrative Court (BVwG) and the Supreme Administrative Court (VwGH). In May 2019 the VwGH clarified that in Austria the granting of subsidiary protection based on Sec. 8 Asylum Act did not require the involvement of an actor and that the existence of a real risk of an Art. 3 ECHR violation was sufficient.[2] Also the Constitutional Court (VfGH) held that subsidiary protection status must be granted when a person would face a real risk of an Art. 3 ECHR violation in his or her country of origin – irrespective of whether this real risk is caused by an actor.[3]

Both countries are bound by international human rights treaties, international refugee law and EU law.

The **ECHR** is directly applicable constitutional law in Austria and can be relied on before any authority or court. In Austria, the ECHR rights play a prominent role in the jurisprudence of the VfGH and the VwGH in asylum and migration procedures. In Sweden, the ECHR has the status of law and features prominently in decisions of the Migration Court of Appeal.

In transposition of the EU Qualification Directive, the **Austrian Asylum Act** defines an application for international protection as an application for refugee or subsidiary protection status.[4] In contrast to Sweden, Austria does not have an international protection status for persons displaced by disasters.[5]

Until 2021, the **Swedish Aliens Act** provided **three categories of international protection**. The first two categories correspond to the categories 'refugee' and 'person in need of subsidiary protection' under the Qualification Directive. The third category applying to '**persons otherwise in need of protection'** includes people who, because of an armed conflict or severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses, or who are unable to return home in the context of an '**environmental disaster**.'[6] With this third category, Sweden is one of only three countries in the world

[1] *M'Bodj* (2014) C-542/13 (Court of Justice of the European Union); *M.P.* (2018) C-353/16 (Court of Justice of the European Union).

[2] VwGH 21 May 2019, *Ro 2019/19/0006.* See also VwGH 27 June 2019, *Ra 2019/14/0138*.

[3] VfGH 04 December 2019, *E1199/2019*; VfGH 12 December 2019, *E2746/2019*; VfGH 12 December 2019, *E1170/2019*; VfGH 10 March 2020, *E2570/2019* ua. By not granting the status of beneficiary of subsidiary protection contrary to Sec. 8 (1) Asylum Act – even though it found an imminent violation of Art. 3 ECHR - the Federal Administrative Court has violated the constitutionally guaranteed right to equal treatment of foreign nationals among themselves (Art. I(1) *BVG-Rassendiskriminierung*). This would also not be contradicted by the case law of the ECJ (ECJ 18 December 2014, Case C-542/13, *M'Bodj*) since the Member States are expressly granted the possibility of granting residence rights on other humanitarian grounds (VfGH 4.12.2019).

[4] Sec. 2(1) no. 13 Asylum Act.

[5] Maria-Alexandra Bassermann, 'Overview of National Protection Statuses in Austria' (European Migration Network, 2019), 21.

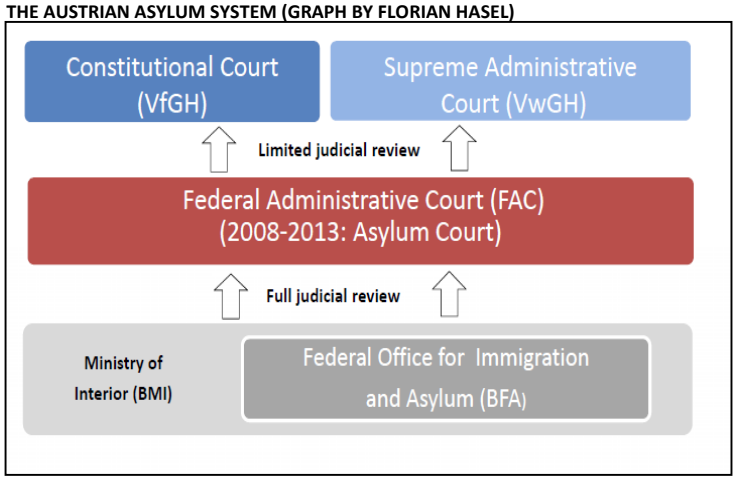
[6] There are further qualifications which specify that state as well as non-state actors can be the responsible parties for the enumerated persecution. Additionally, even if the alien's state of origin is capable of offering protection, international protection can still be claimed if the origin state's protection is not of an "effective and permanent nature" (Chapter 4, § 1, pg.11,

with a legal provision that specifically extends international protection to persons displaced across borders in the context of disasters.[7] The Swedish provision was **suspended in 2016 and repealed in 2021.**

Both countries have legislation providing for a legal status on humanitarian or compassionate grounds, an option for cases that do not qualify for international protection.

Relevant National Institutional Frameworks and Procedures

THE AUSTRIAN ASYLUM SYSTEM (GRAPH BY FLORIAN HASEL)



In the **Austrian asylum procedure** administrative law applies. The first instance is the Federal Office of Immigration and Asylum (BFA), which is a public authority subordinated to the Federal Ministry of Interior (BMI). Asylum seekers who are admitted to the regular procedure must be questioned in detail about the reasons for fleeing their country by a BFA officer. Further, the authorities are obliged to investigate ex officio all relevant country of origin information (COI) if this is necessary for the assessment of the need for international protection.[8] In case the BFA dismisses the application, the asylum seeker has the right to lodge a complaint before the BVwG which is independent from the BFA as well as the BMI.[9] Appeals against first-instance rulings are decided by a single judge. In contrast to BFA case workers, all BVwG judges have a legal background.

After arrival in Sweden, the applicant officially makes his or her case known to the Migration Agency.[10] The Migration Agency then provides the applicant with a caseworker, and where needed, interpreters and/or legal counsel. The applicant can appeal against the first instance decision from the Migration Agency before

2005:716). This clause regarding the "effective and permanent nature" of protection in an alien's state of origin is repeated again in two further forms of protection; "subsidiary protection" and persons "otherwise" in need of protection.

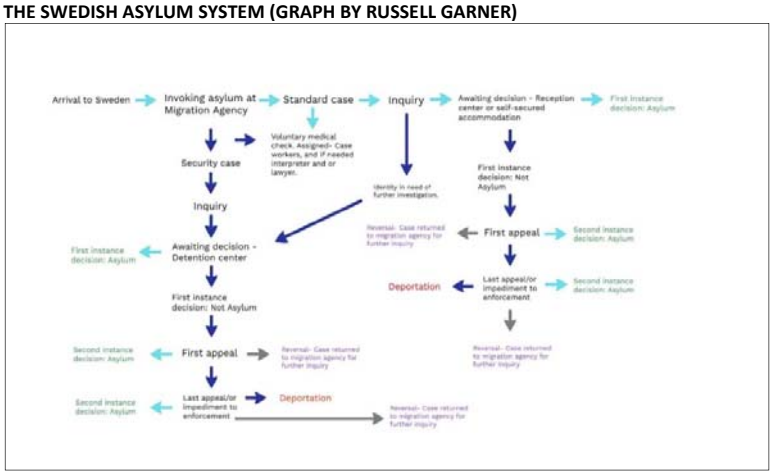
[7] Finland and Italy are identified as the only two other EU Member States with such provisions, and Finland removed its provision in 2016. See A. Kraler, C. Katsiaficas, and M. Wagner, Climate Change and Migration: Legal and Policy Challenges and Responses to Environmentally Induced Migration (European Parliament, 2020).

[8] Sec. 18 (1) Asylum Act. In this context the VwGH has clarified that asylum seekers do not have a general right which would oblige the asylum authorities or the competent Court to conduct or arrange research in the country of origin. An asylum seeker has such a right only when this is 'necessary' and it is up to the competent authority or Court to determine when this is the case (see VwGH 19.06.2019, Ra 2018/01/0379).

[9] The BVwG has replaced the Asylum Court in 2014 as the court of appeal against first instance asylum decisions.

[10] Swedish Migration Agency, *Asylum-from application to decision* Available at: https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Asylum---from-application-to-decision.html (Accessed 29 April 2022).

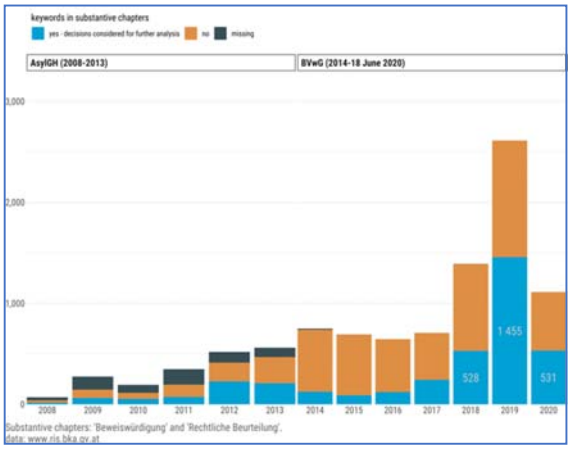
THE SWEDISH ASYLUM SYSTEM (GRAPH BY RUSSELL GARNER)



the Migration Court (second instance). The composition of a Migration Court includes both legally qualified judges and lay judges, usually with one legally qualified judge and three law judges. In contrast to Austria, in Sweden there is no jurisprudence of the Supreme Court on the topic of environment-related migration. However, there is primary law requiring judges to carefully examine cases and provide reasons for the decisions they take.[11]

Observations concerning the sample selected for the qualitative analysis

OVERVIEW OF KEYWORDS IN SUBSTANTIVE CHAPTERS (GRAPH BY ROLAND SCHMIDT)

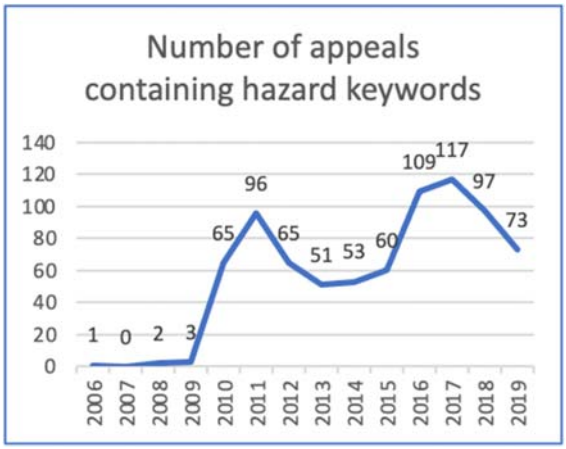


In the **Austrian case study**, only decisions of the appellate court rendered in Austrian procedures, i.e. decisions on international protection and humanitarian forms of protection, were assessed. Other immigration decisions were not analysed. The search of the RIS database revealed that **disasters/environmental factors are increasingly mentioned in cases before the Austrian appellate court**. Between January 2008 and June 2020, out of the 9,860 cases containing disaster-related keywords, in 3,722 decisions these keywords can be found in substantive parts of the decision. In particular decisions from Somalia, Afghanistan, Pakistan, Nepal and India were relevant for the purpose of the study. In total, **646 decisions were selected for a more detailed analysis**. The sample contains 346 decisions referring to claimants from Somalia, 200 Afghanistan claimants, 81 Pakistani claimants, 5 from India and 14 from Nepal

In **36.5%** of the sample, **environmental issues were brought forward by the claimant or their legal representative** as a factor for either leaving the country or for not wanting or not being able to return. Disasters brought forward were drought, flooding, 'natural' disasters in general, famine, earthquakes, rainfalls, cyclone and locust plague.

[11] See Ulrik Von Essen, Förvaltningsprocesslagen m.m.: En Kommentar, 7th edn. (Wolters Kluwer, 2017), p. 376.

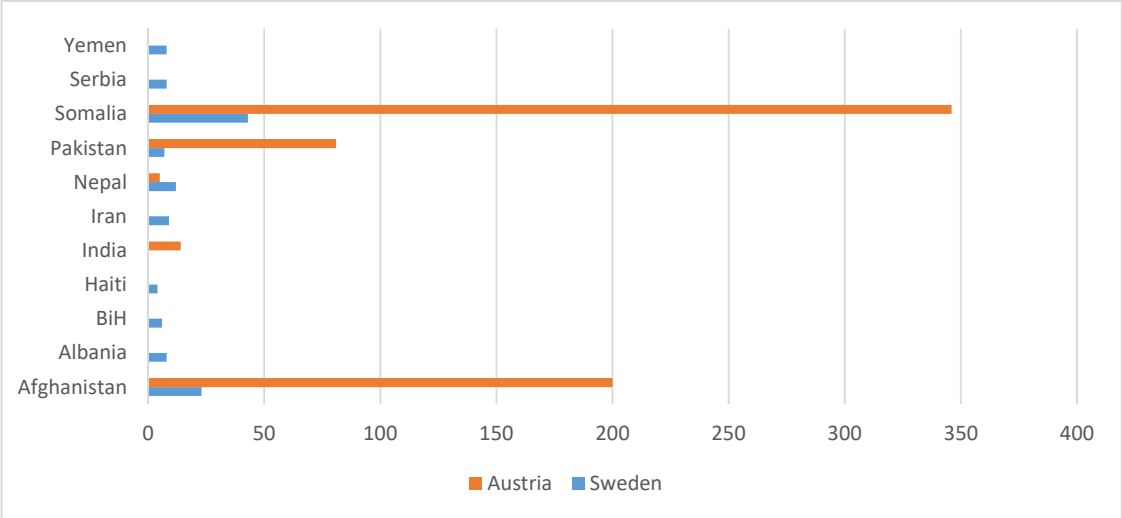
TIMELINE OF APPEALS WITH KEYWORDS (GRAPH BY RUSSELL GARNER)



Between 2006 and 2019, 792 **Swedish** judicial decisions contained a hazard keyword somewhere in the text. **Just under 200 cases were directly relevant to the claim**, of which 181 were cases where an individual relied expressly on the disaster to support an application to enter or remain in Sweden. 140 of these cases were framed as claims for international protection and the remaining 41 cases turned on questions of immigration law, such as visitor or student visa extensions or family migration cases. In seven other cases, disaster was only addressed as part of an assessment of whether an internal relocation alternative was available in Afghanistan.

The five main countries of origin for people seeking international protection were Somalia (38), Afghanistan (16), Nepal (12), Serbia (8) and Albania (8). People relying on immigration law categories came from a wide range of countries in Asia, Africa, Europe and Latin America.

Overview of Countries of origin of claimants



Overview of outcome of decisions in Austria and Sweden

	Austria	Sweden
Appeal/case dismissed	343 (53.1%)	165 (91%)
Subsidiary protection granted	268 (41.5%)	7 (3.9%)
Refugee status granted	2 (<1%)	3 (1.7%)
Case remitted to a lower instance	15 (2.3%)	3 (1.7%)
Other	18 (2.8%	3 (1.7%)

Summary of results from the qualitative analysis in each case study:

With regard to the **Austrian case study, country of origin information** was included in almost all reviewed decisions. The most detailed and extensive coverage of disasters and environmental impacts in COI could be found in cases concerning Somali claimants. In almost all Somalia decisions, the Court used comprehensive COI containing information on droughts, rainfalls and floods, a cyclone and locust plagues and their impact on many areas, in particular on the supply situation. A broad variety of sources in relation to the food insecurity due to the drought was used. In several Afghanistan decisions COI stated that Afghanistan was regularly affected by recurring droughts, but also floods, extreme cold spells or earthquakes leading to challenges in the daily basic supply situation. In some decisions, COI pointed out the connection between climate change, natural hazards and poverty. In decisions relating to Pakistan, COI related to different floods and their impacts. In several decisions concerning claimaints from Somalia and Afghanistan, COI comprehensively elaborated on the interrelation between violent conflict and disaster

Environmental factors or disasters played only **a marginal role in the assessment relating to refugee status**. When disaster situations were considered, they were framed as economic issues, which the court regarded as being not relevant for granting asylum: The court usually argued that the harm would not qualify as persecution since a general situation such as a 'desolate economic and social situation' in the context of a disaster could only lead to the granting of refugee status if it deprived of any livelihood. In addition, the court argued that it would lack a connection to a persecution ground (as stipulated by the Refugee Convention).

In Austrian decisions, **disasters and other environmental factors were mainly addressed when the court assessed whether the claimant was eligible for a subsidiary protection status**. In this context, they were considered when the court reviewed whether there was a 'real risk' of inhuman or degrading treatment upon return to the country of origin (Article 3 ECHR, Sec. 8 Asylum Act). Disasters and environmental factors were also considered in the assessment of the availability and reasonableness of an internal protection alternative (IPA) where it is examined whether the claimant can reasonably be expected

to relocate to another part of the country of origin. Disaster was an important factor in the real risk assessment concerning many Somali cases and in a few Nepali cases. In cases relating to Afghanistan, Pakistan and India, disasters only played a minor role and almost exclusively when discussing the general supply and economic situation in the country.

From the **Swedish case study** it can be concluded, that judicial decision makers tended to either not consider the relevance of environmental factors at all (48%), or to conduct only a cursory assessment (41%), notwithstanding the duty, until 2016, to consider eligibility under a non-harmonized category of international protection for persons unable to return home in the context of an environmental disaster. Detailed assessments were conducted in only ten of the 181 cases where claimants expressly relied on environmental factors in support of their claims to enter and/or remain in Sweden. Three of these cases combined international protection and domestic immigration law elements, whilst the remaining seven were exclusively concerned with international protection. One case resulted in recognition of eligibility for subsidiary protection, and a second case recognised eligibility for the grant of a residence permit as the parent of a child living in Sweden. The remaining eight cases were dismissed. Of the 181 claims that relied directly on environmental factors, 91 per cent were dismissed on appeal.

For the remaining nine percent of the Swedish cases (16 cases), three resulted in recognition of refugee status (but not for reasons related to the disaster), seven resulted in the grant of subsidiary protection (but only one for reasons expressly related to the disaster), one resulted in the claimant being recognized as a stateless person, one resulted in the grant of a residence permit on 'compelling and compassionate reasons' grounds (not related to disaster), one resulted in the grant of a residence permit as the parent of a child established in Sweden, and three were remitted.

Key insights from each case study:

In summary, the following key insights could be drawn from the **Austrian** case study:

- In the Austrian asylum procedure, the impact of disasters, on particularly the supply situation, was considered mainly in relation to the assessment of subsidiary protection (real risk assessment and/or assessment of internal protection alternative). In some decisions relating to Somalia, the impact of disasters constituted even an important factor in the legal reasoning. Decisions indicated that different forms of inequality (for instance gender, wealth, family situation, age) were particularly important with regard to experiencing the consequences of disasters.

- In Austria, subsidiary protection is granted when the non-refoulement principle, in particular under Article 3 ECHR, would be violated upon return. No 'human actor' of serious harm in the country of origin is necessary as required by the jurisprudence of the CJEU.
- The country of origin information (COI) used showed considerable differences with regard to disaster-related information depending on the respective country of origin. While COI in relation to Somalia was usually very detailed with a huge variety of sources, COI in relation to other countries affected by similar disasters was less detailed. In particular in decisions on Somalia, often detailed COI was integrated in the legal reasoning.

The following key insights were drawn from **the Swedish case study**:

- Executive and judicial decision-makers overwhelmingly failed to carefully consider claims for international protection relating to disasters. Decisions reflected a lack of engagement with emerging international jurisprudence and very limited use of country of origin information.
- The non-harmonized provision extending international protection to people unable to return home as a result of an 'environmental disaster' was often not applied in cases where a fear of disaster-related harm was expressly articulated by the applicant. When the provision was applied, its interpretation was narrow and decisions rarely reflected individualised assessment against specific country of origin information.
- People seek to enter and remain in Sweden using existing immigration law categories, but decision-makers rarely exercise discretion in recognition of the adversity engendered by the disaster. The kinds of effective practises identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change do not appear to have been integrated into the Swedish legal and policy framework.

5 Conclusions and Recommendations

The research project **ClimMobil – Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden** set out to **investigate the current and potential scope of international protection** as well as **humanitarian forms of protection for persons displaced in the context of climate change** into the EU, in particular to **Austria** and **Sweden** as examples of EU Member States.

The research showed that there is already **a non-negligible number of people seek to enter and/or remain in European countries where disaster plays a role**. In Austria, 9,860 decisions on international and humanitarian forms of protection decided before the appellate court between 1 January 2008 and 18 June 2020 contain disaster related keywords. In 3,722 of these cases, these keywords were mentioned in substantive parts of the decision (consideration of evidence, legal reasoning). In Sweden, 792 immigration and asylum cases contained disaster keywords in some parts of the decision between 1 January 2006 and 31 December 2019.

Against this backdrop the question **whether and how European countries address the so-called protection gap is gaining in importance**. In order to gain insight on how the protection gap is addressed in the two case study countries Austria and in Sweden, not only the relevant national legal framework was reviewed but also judicial decisions concerning application for international and humanitarian forms of protection containing disaster-related keywords were identified and analysed.

The analysis showed that **European countries do not have a harmonised approach to determining claims for international protection in the context of disasters and climate change**. The **situation in the two case study countries is very different**, even potentially reflecting two extremes on a spectrum. The Austrian cases reflected a far deeper engagement by the judiciary with the potential relevance of disasters to claims for international protection than the Swedish cases, notwithstanding the fact that Sweden had introduced a non-harmonized category of international protection based on environmental disasters.

The **differences relate to the distinctive features of the national legal frameworks**, but also to how the legal frameworks are interpreted and applied as well the level of **judicial engagement proprio motu**, the **use of COI** and the **outcome of the juridical process**.

Distinctive features of the national legal frameworks

Although both countries transposed the EU Qualification Directive and have provisions on international protection in their national laws, the following differences were relevant:

- Sweden had introduced a non-harmonised category of international protection based on environmental disaster until 2021, which was however hardly applied in practice.
- Austria's transposition regarding subsidiary protection does not conform to the EU Qualification Directive. In Austria, there is no actor of whom serious harm emanates necessary as would be required by the jurisprudence of the CJEU on Art. 15 Qualification Directive. Subsidiary protection is granted if a 'real risk' of a violation of Arts. 2 or 3 ECHR exists.
- The Swedish case study also considered migratory categories and visa provisions, e. g. family reunification, student visa, humanitarian forms of protection.

Interpretation and application of legal frameworks

Important differences could also be discerned concerning the legal practice of addressing disaster in relation to subsidiary protection and non-refoulement:

- Judges in Austrian courts engaged – at least in relation to certain countries of origin – far more closely than their Swedish counterparts with the question of how subsidiary protection applies in claims for international protection in the context of disasters.
- Although few Austrian decisions actively address eligibility for refugee status (and then typically reached the conclusion that environmentally-related harm did not amount to persecution), the caseload contains – at least in relation to the country of origin Somalia – rich legal reasoning and disaster-relevant country of origin information relating to eligibility for subsidiary protection, and protection from refoulement.
- In contrast to this rich level of engagement, the Swedish caseload does not reflect any consideration of eligibility for refugee status, and only one case contained more than cursory consideration of eligibility for subsidiary protection.

Level of judicial engagement proprio motu

Austrian judges proactively considered the relevance of environmental pressures in individual cases, at times recognizing a procedural obligation to do so. Consequently, proprio motu consideration of environmental pressures represented 73 per cent of the Austrian case load, with only 37 per cent of cases involving disaster-related claims expressly articulated by the applicant. In contrast, only a handful of the Swedish cases involved judges examining environmental factors on their own initiative.

The vast majority of relevant claims within the Swedish caseload involved applicants expressly relying on disasters or other environmental pressures as part of their application to enter and/or remain in Sweden.

Use of country of origin information (COI)

COI was almost always included in the Austrian decisions. In particular, in many Somalian cases, long and comprehensive text modules addressed the impact of the disaster on the humanitarian situation, health situation, and parts of the population in situations of particular vulnerability. In many cases concerning claims from Somalia, judges provided an often detailed summary of COI material in the section on legal reasoning before addressing specifically how the applicant might be affected by the environmental factors/disaster. In contrast, specific COI was rarely referred to in the Swedish caseload, with decisions at best making general reference to 'the country information'.

Outcomes

In Austria, subsidiary protection was granted in 42 per cent of the cases when disaster was explicitly mentioned by the applicant, even though protection was not necessarily granted because of the disaster claim. In Sweden, of the 140 international protection claims expressly relying on disaster, only 7 claims (5 per cent) were granted subsidiary protection, and only one of these decisions was based specifically on post-disaster conditions, with the remainder firmly grounded in an assessment of conflict-related risks.

Overall, 91 per cent of all 181 Swedish appeals were dismissed. In Austria, 53 per cent of the 646 Austrian appeals were dismissed.

Similarities between the two case study countries

As indicated above, the analysis showed that there is already a number of people who seek protection in Europe where disasters play a role. The main countries of origins of the sample of decisions chosen for a detailed analysis in both countries were Somalia and Afghanistan. The narratives by claimants concerning the disaster situations were very similar. Disaster was typically brought forward by the claimant as well as discussed and assessed by the court as one among several factors (such as general security or economic situation or factors relating to the individual situation including family status and support, gender, age, profession, health, wealth, clan membership and several others). It is not the disaster as such but the impact of the disaster, in particular on the supply situation, which was brought forward by the claimant or considered by the judge. Internal relocation was often identified as a barrier to protection in those cases where disaster was considered by the Austrian and Swedish courts.

Is the Protection Gap Addressed?

From the Austrian case study, it appears that the protection gap is addressed in the asylum procedure only at the subsidiary protection level, but not at the level of humanitarian protection or refugee status. In the context of subsidiary protection, the jurisprudence of the Supreme Administrative Court and the Constitutional Court has clarified that disasters including droughts and relevant COI must be taken into account when conducting a risk assessment according to Article 3 ECHR upon return. This jurisprudence has and had an impact on the case law of

the appellate court. Still, it was mainly with regard to decisions of the appellate court relating to the country of origin Somalia where it appeared that disasters and relevant COI were carefully considered. There is still room for improvement in relation to other countries of origin.

In Sweden, there is no clear legal protection for people who fear being exposed to disaster-related harm in their countries of origin. The Refugee Convention was not considered in any of the cases reviewed, and subsidiary protection was only granted in one case that had clear connections to a threat of physical, gender-based violence. The non-harmonized provision that extended protection to people unable to return home in the context of an 'environmental disaster' was routinely invoked by claimants, but often ignored in judicial decisions. When the provision was considered, the claimant's circumstances were never found to satisfy the relevant requirements. The provision was repealed in 2021, having been suspended since 2016. Country of origin information was inconsistently considered in the cases reviewed, and rarely in depth.

Policy recommendations

Based on these findings, the following recommendations were developed:

National level

Decision-makers

- Develop guidance outlining legal doctrine relating to recognition of refugee status and subsidiary protection in the context of disasters and climate change, identifying relevant sources of country of origin information to assist decision-makers
- Pay attention to quality and comprehensiveness of COI on disasters (concerning in particular evidence of differential exposure, vulnerability and impacts) also in relation to countries of origin where it has not been taken into consideration so far.
- Review relevant law and policy to determine how better to integrate the effective practices identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change and raise awareness among those applying the law
- As disasters have different impacts on people depending on different forms of inequality regarding gender, age, wealth, health, profession, ethnicity and others, increase awareness concerning the relationship between inequalities and consequences of disasters among legal and other relevant stakeholders.

National governments

- Review relevant law and policy to determine how better to integrate the effective practices identified in the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change

- Consider forming an alliance of countries to develop and implement effective practices relating to cross-border displacement in the context of disasters and climate change
- Raise the issue at EU level, for instance in the context of Home Affairs and Climate Change Adaptation policy discussions

Legal representatives

- Carefully explore individual risk profiles in all cases where individuals seek to enter or reside in a European host country in part owing to a fear of being exposed to disaster- or climate change-related harm in their country of origin and, where appropriate, develop legal arguments grounded in emerging jurisprudence and supported by the best available country of origin information; do not exclude possibility of refugee protection if environmental factors are at stake
- Actively ask for COI concerning the impact of disasters and climate change on the lives of persons

Regional level

The European Parliament and the Parliamentary Assembly of the Council of Europe

- Promote a European dialogue focusing on identifying and developing effective practices for addressing cross-border human mobility into Europe in the context of disasters and climate change

The European Commission

- Acknowledge that environment- and disaster-related issues already play a role with regard to human movement towards Europe and there is a need to develop and adopt effective practices for addressing the phenomenon

Platform on Disaster Displacement

- Explore opportunities to include activities focusing on Europe in the post 2022 work plan

COI services

- Compile relevant COI sources concerning the impacts of disasters and climate change on the lives of persons

Academia and research funding bodies

- Promote and conduct further research into the phenomenon of cross-border human mobility into Europe in the context of disasters and climate change
- Promote and conduct comprehensive further research into legal and policy responses to the phenomenon, taking into account the full range of immigration, humanitarian, and international protection responses

C) Project Details

6 Methods

ClimMobil applied a combination of different methods:

Workpackage 1 "Desk Research, Explorative Phase and international dimensions relevant for the research project", was dedicated to an explorative phase where conceptual work laid the theoretical, conceptual and methodological foundation for the project.

The main method used was the review and analysis of **academic literature as well as reports and documents** published by international and other relevant organisations and bodies. Furthermore, **international norms (on a global as well as regional European level) and related jurisprudence** was identified, studied and analysed. This included in particular the Geneva Refugee Convention with its Protocol, international human rights law with a focus on the ECHR and relevant EU law, in particular the EU Qualification Directive. The task also included a **mapping of institutions and stakeholders** and the **identification of interview partners**.

Interview guidelines were prepared and **semi-structured interviews with European and international stakeholders** were carried out in order to shed light on the latest political and legal developments and on particular implications and challenges for Europe including Austria. The interview partners were sampled purposively, which means that they were selected according to the potential insights they could provide concerning the purpose of the research. The interviews were recorded (only with the consent of interview partners), transcribed, structured and analysed according to guidelines prepared by the team.

The methodology of **Workpackage 2 "Case Studies"** was based on a **qualitative-interpretive design** as the main objective was to understand the role and meaning of environment/climate change-related aspects in the jurisprudence and procedures relating to international protection and other forms of protection based on humanitarian and compassionate grounds.

- **Pre-studies** to establish the background for the case study were based on the review and analysis of academic literature, reports by international bodies and other stakeholders, legal and policy instruments and documents. The research team developed a common structure for the drafting of the pre-studies including detailed specifications for the content of each pre-study section.
- The key parts of the case studies comprise the **identification, selection, cataloguing and analysing of national jurisprudence** and the **conducting of interviews** with selected stakeholders (e.g. judges, lawyers and other legal practitioners). Thus, the data collected and analysed during this stage was already existing data (in particular legal texts and their interpretation in

jurisprudence) as well as data produced during the research process (interviews). The legal texts and interview partners were **sampled purposively**, on the basis of being particularly relevant and informative concerning the topic of interest.

- The methodological approach chosen for analysis of case law was a **qualitative content analysis**, preceded by a purposive sampling of relevant and available Austrian and Swedish case law concerning international protection and humanitarian forms of protection. For this purpose**, keywords related to disasters as well as climate change were inserted for a search in national caselaw databases** (Austria: "Rechtsinformationssystem des Bundes" (RIS) is a legal database of the Republic of Austria providing information on Austrian law and case law and contains decisions of the appellate court, that is the former AsylGH (until 2013) and the BVwG. Sweden: JPInfonet database containing decisions from the Swedish migration courts).

  The **German keywords** used for the search were 'Dürre' (drought), 'Katastrophe' and 'Disaster' (disaster), 'Hunger' (hunger/famine), 'Flut', 'Überflutung', 'Überschwemmung' and 'Hochwasser' (flood/flooding), 'Erdbeben' (earth quake), 'Hurrikan', 'Wirbelsturm' and 'Orkan' (hurricane, typhoon and cyclone), Klimawandel and Erderwärmung (climate change and global warming), Erdrutsch (land slide), 'Anstieg des Meeresspiegels' (sea-level rise), 'Waldbrand' and 'Buschfeuer' (forest fire and wildfire).

  The **Swedish terms** were: klimatförändring (climate change), cyklon (cyclone), torka (drought), jordbävning (earthquake), svält/hungersnöd (famine), översvämning (flood), orkan (hurricane), jordskred/jordras (landslide), havsnivå (sea level), tsunami.

  The **search revealed for Austria** that out of 9,860 decisions in the period between 1 January 2008 and 18 June 2020, which contained such keywords, 3,722 decisions contained disaster-related keywords in substantive parts of the decision (consideration of evidence, legal reasoning). This cases were extracted with the support of a data scientist. A first perusal of these 3,722 cases revealed that cases concerning complainants from Afghanistan, Somalia, Pakistan, India, Nepal were relevant for the purpose of the case study. As the number of cases differed considerably with regard to the country of origin, different strategies were adopted to narrow down the number of relevant case load. Concerning cases from Afghanistan – the country with 1,249 cases – a total of 200 second instance decisions were selected according to criteria temporal distribution, gender, different judges as well as cases where the complainants and/or their legal representative brought forward the disaster. A first screening of more than 1,000 cases referring to complainants from Pakistan showed that mainly cases with the keyword 'flood' were relevant for the purpose of the case study. 81 cases were selected for further analysis. A first review of the 346 Somalian decisions revealed that environmental factors played an important role in most decisions. Thus, all Somalian decisions were

selected for further analysis. Due to the small number, all decisions from India (5, all 'flood') and Nepal (14, all 'earthquake') were considered for the qualitative analysis. In total, the Austrian caseload consisted of 346 Somalian cases, 200 Afghanistan cases, 81 Pakistan cases, 14 Nepal cases and 5 Indian cases, in total 646 decisions.

The **Swedish search revealed** that between 1 January 2006 and 31 December 2019 792 immigration and asylum cases contained hazard keywords in some part of the decision. In some of these cases, the hazard keyword only appeared in the appended decision letter from the Swedish Migration Agency, rather than in the judicial decision itself. In the vast majority of cases, closer analysis revealed a claim that did not in any way relate to a fear of being exposed to environmentally-related harm in the claimant's country of origin. For instance, in some cases the claimant is recorded as having referenced an earthquake that took place decades ago. Others make reference to hunger or famine, but the conditions referred to relate either to generalized poverty, or the consequences of armed conflict, with no connection to a particular hazard event such as drought. Just under 200 cases were directly relevant to the claim, of which 181 were cases where an individual relied expressly on the disaster to support an application to enter or remain in Sweden. 140 of these cases were framed as claims for international protection and the remaining 41 cases turned on questions of immigration law, such as student visa extension or family migration cases. In seven other cases, disaster was only addressed as part of an assessment of whether an internal relocation alternative was available in Afghanistan.

In order to ensure a systematic assessment and analysis of the vast amount of data, the research team decided to use the QDA software MAXQDA to support the qualitative analysis of the selected decisions. The selected case law was uploaded into MAXQDA, coded according to a specific framework, which was developed during a pilot phase and refined for the main analysis, and qualitatively analysed concerning their insights with regard to the research questions. MAXQDA was used as it not only allowed to code case law and prepare the material for the qualitative analysis but also to collect some quantitative data such as the outcome of the decision, the gender or family status, the type of procedure, bringing forward of the disaster by C/LR, in which part of the decision the disaster was mentioned or whether it was the only factor or one amongst other factors relevant for the decision.

- Concerning the data to be produced during the research process, the research team used **semi-structured interviews** as they allow to be 'sufficiently structured to address specific topics related to the phenomenon of the study,

while leaving space for participants to offer new meanings to the study focus'.[12] This format allowed for questions aiming at specific topics that are relevant in order to grasp the various aspects posed by the research questions and at the same time for putting the main focus on the account and interpretation of the persons involved and on how they make sense of their lived experiences. Thus, the conceptualisation of the questionnaires for the semi-structured interviews, the guidelines for the analysis and interpretation of the data (jurisprudence, interview texts) were structured according to specific aspects spelled out by and derived from the research questions of the project. The interviews aimed at supplementing and validating the results of the case law analysis. Semi-structured interview guidelines were developed containing questions on what role environmental factors play in the work of the interviewee and how they address them in the legal procedures. The interview partners were selected purposefully.

- The results of the interviews were **transcribed verbatim and uploaded in MAXQDA**, coded according to a specific coding framework and analysed.

In **Workpackage 3 "Bringing together the results of the case studies, drafting recommendations"** the results of the two case studies were **analysed and compared to identify commonalities and differences between the two case study countries in general and similarities and differences concerning the application of international and European law in particular**. A **synthesis report was drafted** which aimed at comparatively analysing the case studies in relation to the normative protection gap and the ways of addressing this gap by effectively applying international and European law while taking into account similarities and differences concerning the institutional and legal frameworks of Austria and Sweden.

Workpackage 4 "Publications, Dissemination" was implemented during the whole project and aimed at disseminating the project results to different target groups.

[12] Galletta A. (2013) *Mastering Semi-Structured Interview and Beyond: From Research Design to Analysis and Publication*, New York University Press.

7 Work and Time Schedule

Project duration: 1 October 2019-31 May 2022

WP	Title and Work	Duration
1	**Desk research, explorative phase and international dimensions relevant for the project** • Identifying main international political and legal developments concerning climate change-related mobility with a specific focus on new processes and their relevance for Austria • Establishing the status quo and state of the art concerning the normative protection gap regarding external displacement, clarifying the scope of existing legal frameworks and analysing the role of international and EU law, in particular refugee law, human rights law and other relevant legal frameworks, in addressing the protection gap • Reviewing and analysing the latest developments and academic literature, scrutinising the 'social dimension' of climate change-related mobility, in particular the issues of inequality and discrimination • Providing an overview of current global trends of climate change-related mobility and the challenges for European and Austrian policy makers in this context	Months 1-20
2	**Case Studies** • Pre-Study to establish the legal and policy context of study countries Austria and Sweden; map potential interview partners in these countries • Development of methodology to analyse jurisprudence and to conduct interviews • Identifying, selecting, cataloguing and analysing relevant national jurisprudence • Conducting interviews with stakeholders • Analysis and assessment of the findings and data and drafting of case study reports	Months 6-24
3	**Bringing together the results of the case studies, Drafting recommendations** • Comparative analysis of case studies • Drafting of synthesis report • Development of recommendations for policy makers	Months 16-28
4	**Publications, Dissemination** • Project webpage at Project leader's webpage • Publication of Case Study Reports (either as a working paper or journal article) • Publication of Policy Brief • Publication Synthesis Report • Panel discussion with policy makers and experts in order to present recommendations to a wider public • 2-3 Journal articles to be submitted for publication in peer-reviewed journals • Participation in international academic conferences	Months 1-32
5	**Overall management of the project**	Months 1-32

8 Publications and Dissemination Activities

Publications

Articles published in peer reviewed journals	Matthew Scott, Russell Garner (2022) *Nordic Norms, Natural Disasters, and International Protection: Swedish and Finnish Practice in European Perspective*, Nordic Journal of International Law, 91(1), 101-123, doi: https://doi.org/10.1163/15718107-91010005
Articles in books and other journals (peer reviewed)	Forthcoming: Margit Ammer, Monika Mayrhofer, Florian Hasel (2022) Human Mobility in the Context of Climate Change: Addressing the Normative Protection Gap in Austria, in: Bauböck R./Josipovic I./Karabegović D./Shinozaki K./Sievers W. (eds.): Migrationsforschung und Migrationsgesellschaft: Aktuelle Herausforderungen und neue Perspektiven, Jahrbuch Migrationsforschung 6, Austrian Academy of Science Press/Wien.
Other publications	Margit Ammer, Monika Mayrhofer, Matthew Scott (2022) Disaster-related displacement into Europe: Judicial practice in Austria and Sweden, Policy Brief of the ClimMobil project. Also available at website of RWI; also available in print
	Margit Ammer, Monika Mayrhofer, Matthew Scott (2022) Synthesis Report: ClimMobil - Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden
	Margit Ammer, Monika Mayrhofer and Matthew Scott (2022) Contribution to Special Rapporteur on the human rights of migrants call for inputs. The Impact of climate change and the protection of the human rights of migrants, 15 May 2022, available at https://www.ohchr.org/sites/default/files/2022-05/ludwig-boltzmann-institute-raoul-wallenberg-institute-of-HR-and-HL.docx
	Margit Ammer, Monika Mayrhofer (2020): Mobilität im Kontext des Klimawandels und der „Protection Gap". In: STIMME #116/2020 Klimaschutz mit allen für alle
For further publications see: https://gmr.lbg.ac.at/de/projekt/laufende-projekte-projekte-asyl-anti-diskriminierung-diversitaet/climmobil-mobilitaet-kontext-des-klimawandels-rechtliche-politische-dimensionen-massnahmen-europaeischen-union-schwerpunkt-oesterreich-schweden	

Dissemination Activities

4 September 2020	Poster presentation: "ClimMobil – Judicial and policy responses to climate change-related mobility in the European Union with a focus on Austria and Sweden" by Margit Ammer at the ACRP-Qualitätssicherung 2020 (Online)

17 September 2020	ÖAW *6th Biennial Conference on Migration and Integration Research in Austria der ÖAW in Salzburg* (16-18 September 2020), presentation of Paper „Human mobility in the context of climate change: Addressing the Normative Protection Gap in Austria", presentation of preliminary ClimMobil results
19 November 2020	Öresund Migration Law Initiative roundtable meeting, presentation of preliminary results of Sweden case study
11 June 2021	Refugee Law Initiative Conference, Fifth annual conference, 9-11 June 2021 https://rli.sas.ac.uk/annual-conference/fifth-annual-conference – presentation of preliminary results of ClimMobil Austrian Case Study, Session 6A The Refugee Convention in a Changing Climate
18-19 March 2022	Symposium 'In Dialogue: Symposium on the Displacement of Peoples Between Africa and Europe' organised by Indiana University/Center for the Study of Global Change in Berlin, presentation of Austrian Case Study / Somalia
25 March 2022	Conference 'Environmental Displacement and Migration: Drivers, Impacts, Solutions' at ‚The Centre for the Study of Global Human Movement' of University of Cambridge, presentation of Austrian case study.
21 April 2022	Online ClimMobil event: presentation of ClimMobil results and policy brief
27 May 2022	Annual Conference of Austrian Commission of Jurists (ÖJK), presentation on climate-related displacement and short presentation of Austrian results of ClimMobil
30 May 2022	Online international conference „ENVIRONMENTAL MIGRATION UNDER THE SPOTLIGHT. Legal and policy responses, individual and collective dimensions of a global phenomenon", DIRPOLIS Institute – Sant' Anna School of Advanced Studies, Pisa; presentation of ClimMobil results

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