A Comparative Study of the Right to Water for Prisoners and Detainees in Light of the Jurisprudence of the European and Inter-American Courts of Human Rights

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Abstract

Water rights, as one of the fundamental human rights, are considered essential to survival, health, and human dignity. This right not only addresses a basic need for life but also has profound impacts on various aspects of human existence, including economic, social, and cultural rights. This right emerged implicitly in international documents from the mid-20th century and was later explicitly recognized, culminating in its identification as an independent right through United Nations General Assembly Resolution 64/292 on July 28, 2010. Nevertheless, the primary challenge remains in recognizing this right as independent or derived from other rights (such as the right to life, the right to human dignity, or the right to an adequate standard of living under Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). The present article focuses on the specific situation of prisoners and detainees, as this group, due to their deprivation of liberty, is entirely dependent on state authorities for the provision of basic needs such as safe and sanitary water. This dependency underscores the necessity of preserving human dignity and preventing inhuman or degrading treatment. The central research question is: How has the right to water in relation to persons deprived of liberty been articulated and guaranteed in the jurisprudence of the European and Inter-American Courts of Human Rights? The article's objective is to conduct a comparative examination of the approaches of these two courts, identify legal and practical gaps, and propose solutions for the effective guarantee of this fundamental right. This study is based on an analysis of the jurisprudence of these two courts and international documents such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, emphasizing that the lack of explicit recognition of this right in the European and American Conventions has led to its interpretation as an instance of human dignity.

This research has been conducted using a descriptive-analytical method. In the descriptive section, key concepts such as the right to water, human dignity, and state obligations are described based on international documents (such as the United Nations Standard Minimum Rules for the Treatment of Prisoners) and the jurisprudence of the European and Inter-American Courts of Human Rights. In the analytical section,

through a comparative analysis of the approach of the European Court of Human Rights (based on the European Convention on Human Rights) and the Inter-American Court of Human Rights (based on the American Convention on Human Rights), the gaps and strengths of each system are examined. The data collection method is library-based, and the analysis is grounded in a dynamic and expansive interpretation of fundamental human rights concepts, with a focus on the linkage of the right to water to other rights and practical challenges in prisons. This approach allows for a comprehensive examination of the differences in regional systems for guaranteeing this right, including the relativist approach of the European Court and the more proactive approach of the Inter-American Court of Human Rights.

The European and Inter-American Courts of Human Rights have not explicitly recognized the right to water as an independent right but rather view it as an instance of human dignity and a prerequisite for other rights. In fact, the absence of a binding international instrument for the independent recognition of this right has resulted in its dependency on human dignity, making independent claims thereof difficult. Accordingly, in the European Court of Human Rights, this right is not addressed as a standalone and independent entitlement but is inferred from Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman treatment), with violations established only when the suffering endured in prison conditions exceeds the unavoidable hardship of detention. For instance, in the case of "Vitkovskiy v. Ukraine," the Court identified the denial of access to water, alongside other detention conditions, as a violation of human dignity; however, in cases such as "Valašinas v. Lithuania" and "Story and Others v. Malta," the failure to find a violation of Article 3 led to ineffective guarantees of the right to water for prisoners and detainees. This relativist approach in the European Court of Human Rights creates normative gaps and relieves states of responsibility for violations of the right to water. In contrast, the Inter-American Court of Human Rights, relying on paragraph 2 of Article 5 of the American Convention on Human Rights (respect for the human dignity of persons deprived of liberty) and Article 26 thereof (economic, social, and cultural rights), adopts a more proactive stance. In the case of "Bisson and Others v. Trinidad and Tobago" and the Inter-American Court's 2022 Advisory Opinion, the Court has explicitly supported the water right, emphasizing that the intensity of suffering imposed on the prisoner during detention is not the criterion; rather, any shortage of water constitutes a violation of human dignity and is incompatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. In essence, the Inter-American Court of Human Rights utilizes the Nelson Mandela Rules as a benchmark and provides more comprehensive protection against violations of the right to water for prisoners and detainees.

Given the lack of explicit recognition of the right to water in the European and Inter-American Conventions on Human Rights, both courts regard this right as an instance of human dignity and consider its violation a breach of state obligations. However, the European Court of Human Rights, in certain cases, due to its relativist approach (based on assessing the intensity of suffering endured in detention conditions), has resulted in normative and interpretive gaps, appearing incapable of effectively guaranteeing this right for prisoners and detainees, and requires a more expansive interpretation. In

contrast, the Inter-American Court of Human Rights, with a progressive approach, provides stronger protection. Ultimately, the overall conclusion is that to fully guarantee the water right, particularly for prisoners and detainees, it must be recognized as an independent right, and judicial mechanisms must be strengthened to address existing gaps in prisoner protections. These findings emphasize the necessity of developing a binding international instrument on the water right and recommend that states amend their national laws to independently recognize this right.

Keywords: Right to Water, Prisoners, Human Dignity, European Court of Human Rights, Inter-American Court of Human Rights

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