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Constitutionalizing the right to water *

ABSTRACT

This presentation examines the right to water through the lens of jurisprudence and constitutional theory. Building on international and comparative jurisprudence, it argues that access to water transcends mere social policy and should be understood as a fundamental constitutional right. In particular, the presentation analyzes how the right to water functions as a precondition for the protection of human dignity and private and family life under the Greek Constitution, while also introducing the concept of “climate resilience of water” as a jurisprudential innovation. This concept captures the state’s responsibility to safeguard water resources not only for present but also for future generations, thus bridging individual rights with collective environmental obligations. The presentation situates this discussion within broader theoretical debates on the justification of constitutional rights, judicial review, and the interaction between domestic and international law. It ultimately argues that explicit constitutional recognition of the right to water could provide a stronger normative framework, clarifying both its ownership regime and principles of provision. In doing so, it contributes to the jurisprudential debate on how constitutions adapt to global challenges while redefining the scope of fundamental rights

KEYWORDS: Right to Water, Human Dignity, Climate Change, Constitutional Law, Environmental Rights, Climate Change Litigation, Intergenerational Justice.

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Introduction

This study examines the right to water and its relationship with climate change and the principle of human dignity. Water constitutes the most essential natural resource for the life of ecosystems¹. According to recent United Nations data², 2.2 billion people lack access to safely managed drinking-water services and, consequently, to the natural resource of water itself – amounting to 26% of the world’s population. A total of 3.6 billion people (46% of the global population) do not have full access to water intended for domestic use. At the same time, 44% of household water worldwide is not used sparingly, meaning that water is consumed without restraint. The same data make clear that 3 billion people do not have full access to safe and clean water, and 2.5 billion people live in countries classified as water-stressed.

I. The principle of human dignity and its connection with the right to water

I.1. The concept of human dignity in Greek constitutional theory

In Greek constitutional law, human dignity holds a foundational position. It is enshrined in Article 2 (1) of the Greek Constitution, which states that “respect and protection of the value of the human being constitute the primary obligation of the State”. Similar provisions appear in Article 1 of the Charter of Fundamental Rights of the European Union, while implicit references can also be found in Article 7 (2) of the Greek Constitution, which prohibits torture and inhuman treatment, and in Article 106 (2), which prohibits private economic initiative from developing at the expense of the general interest³.

I.2. Human dignity as a foundational principle under Article 2 (1) of the Greek Constitution

Human dignity functions as a general constitutional principle that guides the interpretation of all other constitutional and legislative provisions⁴. Its philosophical foundation can be traced to Immanuel Kant, who argued that the human being must never be treated merely as a means to an end, but always as an end in itself⁵. Within his framework, the individual’s inherent worth and moral autonomy form the cornerstone of constitutional democracy⁶.

In practical terms, human dignity implies the right to live under conditions that ensure a dignified existence. The increasing commercialization of water services raises important constitutional questions regarding human dignity, especially when access to this fundamental resource depends on market dynamics rather than basic human needs. As the Greek constitutional tradition suggests, human beings cannot be reduced to consumers, and the market cannot be permitted to exploit human necessity for profit⁷.

Dignity also embodies the unity of all fundamental freedoms: to respect the dignity of a person is to guarantee the free development of their personality. It therefore serves as both a constitutional foundation and a constitutional limit, balancing the exercise of other rights through the principle of practical concordance.

¹ Shiklomanov, Igor: *World fresh water resources*. In Gleick, Peter (eds.): *Water in Crisis: A guide to the World’s Freshwater Resources*. Oxford University Press, New York, 1993. p. 13.

² UN-Water: *Summary Progress Update, 2021 – SDG 6 - water and sanitation for all*. https://www.unwater.org/sites/default/files/app/uploads/2021/02/SDG-6-Summary-Progress-Update-2021_Version-2021-03-03.pdf (2025. December 15.)

³ Chrysogonos, Kostas: *Individual and Social Rights*. Sakkoulas Publications, Athens-Thessaloniki, 2023. p. 157.

⁴ Manitakis, Antonis: *Rule of Law and Judicial Review of Constitutionality*. Sakkoulas Publications, Athens-Thessaloniki, 1994. p.410.

⁵ Stratilatis, Kostas: *Kant the Political Thinker Today*. Nisides, Thessaloniki, 2011. pp. 73-74.

⁶ Chrysogonos, Kostas: op. cit. 1 p.

⁷ Chrysogonos, Kostas: op. cit. 1 p.

From a broader constitutional perspective, dignity encapsulates the symbolic essence of the democratic order itself - it is not only a legal concept but also an ideological one, reflecting the humanistic and egalitarian ethos of the polity. A characteristic example is Judgment No. 40/1998 of the Greek Supreme Civil and Criminal Court, which examined whether the legislative provision providing for the extinction of civil sanctions relating to violations of human dignity committed through the press was compatible with Article 2 (1) of the Constitution⁸.

In European human rights law, the European Court of Human Rights (ECHR) has repeatedly held that human dignity constitutes an implicit core value of the European Convention on Human Rights, permeating the interpretation of several of its articles (e.g. *Pretty v. United Kingdom*)⁹.

In the context of the right to water, human dignity acquires a crucial role: it provides constitutional legitimacy to rights that are not explicitly enumerated but derive from the very notion of a life worthy of a human being. For example, in this direction moves the judgment of the Greek Supreme Civil and Criminal Court (*Areios Pagos*) No. 13/1999¹⁰. While the Greek Constitution refers to environmental protection in Article 24, it does not explicitly recognize a right to water. It is therefore through Article 2(1)-as a principle of human dignity-that the protection of access to water can be constitutionally grounded.

I.3. The international recognition of the right to water and its connection with human dignity

The international protection of the right to water merits close examination. Article 11 of the International Covenant on Economic, Social and Cultural Rights refers to the right of individuals to an adequate standard of living, including adequate food, clothing and housing. Ensuring such a standard of living, as well as the enjoyment of the right to food, clearly presupposes access to safe and potable water. Article 12 of the same Covenant enshrines the right of everyone to the highest attainable standard of physical and mental health, a goal supported-according to the Covenant-by general environmental hygiene; the right to water therefore operates as an implicit normative requirement. Article 23 further specifies the obligation of States to take all necessary measures for the effective implementation of these rights.

In the same spirit, Article 25 of the Universal Declaration of Human Rights establishes the right to an adequate standard of living and to health, listing among its component's food, social services (which necessarily include water), and security, which the absence of disease is implied. Comparable protections appear in Article 24 (2) of the Convention on the Rights of the Child. To ensure the highest attainable standard of health for children, States undertake the obligation to provide safe and potable water (subparagraph c), a requirement that constitutes a precondition for combating malnutrition and disease. Similarly, Article 28 (2) of the Convention on the Rights of Persons with Disabilities imposes an obligation on States to ensure accessible and adequately equipped water services for persons with disabilities and their families.

Article 14 (2) (h) of the Convention on the Elimination of All Forms of Discrimination against Women guarantees women to the right to an adequate standard of living with respect to hygiene and water supply systems. The provision of water and sanitation services thus constitutes a measure for combating discrimination against women. Additional significance arises from the protection of water in the Geneva Convention relative to the Treatment of Prisoners of War, where Articles 85,89 and 127 refer to the right to adequate water, sanitation facilities and personal hygiene. Moreover, the First Additional Protocol concerning international armed conflicts prohibits the destruction of water installations – clear indication that, even in wartime, water constitutes a minimum threshold of human dignity that must not be eliminated.

At the European level, the European Water Charter recognizes water as a common heritage, while the European Charter for Water Resources establishes each citizen's entitlement to adequate water for the satisfaction of basic daily needs. At the African level, analogous provisions appear in Article 11(1) of the Additional Protocol to the Pan-American Convention on Human Rights and in Article 14 (2) (c) of the African Charter on the Rights and Welfare of the Child.

⁸ Greek Supreme Civil and Criminal Court (*Areios Pagos*), No. 40/1998

⁹ European Court of Human Rights, *Pretty v. United Kingdom*, 29.4.2002

¹⁰ Greek Supreme Civil and Criminal Court (*Areios Pagos*), No. 13/1999

These instruments collectively demonstrate that water operates as an implicit interpretative basis for a wide spectrum of human rights – a right that remained largely self-evident until the emergence of climate change. It is also evident that, historically, the right to water was primarily associated with vulnerable groups (women, children, persons with disabilities) facing water-related challenges, whereas for the average European citizen access to water was regarded as an unquestioned aspect of everyday life.

Primarily the connection between human dignity and the right to water is recognized by the United Nations itself. The connection between the right to water and the principle of human dignity is confirmed by the fact that the right to water was recognized as a human right by the United Nations General Assembly in 2010. In that truly historic resolution, the General Assembly emphasized that 884 million people die each year due to lack of water, 2.6 billion people do not have the required access to sanitation, and 1.5 million children under the age of five die from diseases attributed to contaminated water. The resolution links the right to water with life and human dignity, recognizing water as an essential element for the enjoyment of all other rights. In other words, according to the resolution, water constitutes a human right indispensable for the full enjoyment of life and all human rights. It is therefore regarded as a foundational, prerequisite right¹¹.

General Comment no. 15 of the CESCR on the right to water systematically develops the inherent connection between these two concepts¹². The Committee, which deals with economic, social and cultural rights, sought in this Comment to elaborate the main aspects and extensions of the right to water through articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, to which reference has already been made. The Committee notes that the right to water is intrinsically linked to life and human dignity and constitutes a fundamental human right. According to the Committee, safe and clean water enables individuals to live and to avoid diseases that originate from, or are associated with, bacteria that may develop in this natural resource.

The Committee also refers to the Convention on the Elimination of All Forms of Discrimination against Women, which (Art. 14 par. 2) obliges States Parties to take measures ensuring that women enjoy adequate living conditions with respect to water supply systems. It likewise cites Article 24 par. 2 of the Convention on the Rights of the Child, which establishes the obligation of States to combat malnutrition by providing safe drinking water. Ensuring access to food, employment, and participation in cultural life presupposes conditions of dignified living, and a prerequisite for all of these elements of rights is the right to water – at least with regard to its individual uses.

In view of the close connection between the right to water and human dignity and life, the right must be interpreted with considerable breadth and leniency. This is interpretative approach befitting a right possessing primarily social and cultural characteristics.

A fundamental level of protection of the right involves the prohibition of discrimination in this provision of this natural resource. Any discrimination in access to water on the basis of characteristics of individuals would necessarily amount to a violation of human dignity. States therefore assume an obligation to avoid or eliminate de facto discrimination in this field. The Committee places particular emphasis on vulnerable groups (women, children, refugees, nomadic populations, detainees, the elderly, persons with disabilities, victims of natural disasters, and populations in water-scarce regions), as these groups are inherently more exposed to living conditions incompatible with human dignity, a fact that is also confirmed by the case law of the ECHR. Consequently, States are required to ensure the existence – and continuous improvement – of adequate and high-standard sanitation facilities

II. Jurisprudential Approaches to Human Dignity and the Right to Water

II.1. ECHR case law and the vulnerability approach

The jurisprudence of the European Court of Human Rights (ECHR) provides a concrete illustration of how the right to water can be derived from the broader principle of human dignity. Although the European Convention contains no explicit provision on access to water, the Court has

¹¹ UN: General Assembly 64/292. <https://docs.un.org/en/A/RES/64/92> (2025. Decemeber 15.)

¹² Committee on Economic, Social and Cultural Rights: *General Comment no. 15: The right to water*. https://www2.ohchr.org/english/issues/water/docs/cescr_gc_15.pdf (2025. December 15.)

consistently linked inadequate access to water and sanitation to violations of Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to private and family life), both of which are grounded in the notion of human dignity.

In *Eugen Gabriel Radu v. Romania* (2009)¹³ ¹⁴and *Marian Stoicescu v. Romania*¹⁵, the Court found that the lack of access to drinking water and basic hygiene facilities in detention centers constituted degrading treatment contrary to Article 3 of the European Convention on Human Rights. In both cases, the Court emphasized that the denial of access to water undermines the inherent dignity of the individual, as it subjects human beings to conditions incompatible with respect for their physical and moral integrity.

Similarly, in *M.S.S. v. Belgium and Greece* (2011), the Grand Chamber held that the living conditions of an asylum seeker in Greece - marked by homelessness, lack of sanitation, and lack of access to clean water-violated Article 3 of the Convention. Lack of sanitation deprives a person of the minimal conditions required for a life with dignity¹⁶.

In *Peers v. Greece* (2011), the Court again found a violation of Article 3, stressing that the applicant's detention in overcrowded and unsanitary conditions-where access to clean water and hygiene was severely restricted-was incompatible with the respect due to human dignity¹⁷.

Collectively, these judgments articulate a consistent principle: denial of access to water constitutes a denial of human dignity. Even though the Court has examined these situations within the context of detention, the reasoning has broader implications. It demonstrates that access to water is not merely a social necessity but a precondition of human dignity, and therefore of the effective enjoyment of all other rights protected by the Convention.

In this sense, the ECHR jurisprudence provides a solid interpretative basis for understanding Article 2(1) of the Greek Constitution as encompassing the right to water. Where human dignity is at stake, the State's obligation extends beyond abstention-it includes the positive duty to ensure that individuals are not deprived of the basic material conditions for a dignified existence¹⁸.

II.2. National courts confronting water scarcity and pollution

At the national level, there is value in examining court decisions from countries facing genuine water scarcity challenges. The following decisions are of exceptional theoretical interest. The first is the Constitutional Court of South Africa, *Mazibuko v. City of Johannesburg and Others*¹⁹, which is considered a landmark case for the constitutional protection of the right to water in South Africa. In Phiri, a poor area originally settled during the Apartheid era, the existing water system did not reflect actual water consumption, and numerous leaks were recorded. A new system was therefore introduced, offering three options:

- a communal standpipe located within 200 meters of each household,
- a yard connection with a limited flow of 6 kiloliters per month,
- a household connection equipped with a pre-paid meter.

Most residents opted for options (b) and (c). For households that did not choose any option, water supply was discontinued after a seven-day notice.

The Court applied the principles of proportionality and reasonableness in order to assess whether the measures were compatible with section 27 of the South African Constitution, which enshrines the right to water and its progressive realization through measures adopted by the state within its available resources. Interpreting Section 27(1), the Court linked the right to water with human dignity, freedom, equality and more broadly, with social security, expressly invoking General Comment No. 3 of the UN

¹³ European Court of Human Rights, *Eugen Gabriel Radu v. Romania*, 13.10.2009

¹⁴ De Albuquerque, Catarina et al.: *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law*. WaterLex and WASH United, Geneva, 2014. p. 242

¹⁵ European Court of Human Rights, *Marian Stoicescu v. Romania*, 16.7.2009

¹⁶ European Court of Human Rights, *M.S.S. v. Belgium and Greece*, 21.1.2011

¹⁷ European Court of Human Rights, *Peers v. Greece*, 19.4.2001

¹⁸ Darellis, Dimitris: *Human Dignity*. In: Spyridon Vlachopoulos (ed.): *Fundamental Rights*. Sakkoulas Publications, Athens-Thessaloniki, 2017. p. 33 {36}

¹⁹ Constitutional Court of South Africa, *Mazibuko v. City of Johannesburg and Others*, CCT 39/09, 8.10.2009

Committee on Economic, Social and Cultural Rights regarding the obligation to secure the minimum core content of all rights.

Ultimately, the Court held that the pre-paid meter system did not violate Section 27 of the Constitution, since the Constitution does not prescribe a specific minimum core of the right to water, such a minimum necessarily depends on the availability of resources, the state's financial capacity, and the reliability of payments by consumers.

Another significant judgment is that of the Supreme Court of Bangladesh in *Rabia Bhuiyan MP v. Ministry of Local Government and Rural Development et al.* (2007)²⁰. In this case, an application was brought against the Government and various public authorities concerning the widespread contamination of groundwater with arsenic. This contamination had resulted, first, in the systematic breach of environmental legislation – namely the Environment Conservation Act 1995, the National Policy for Arsenic Mitigation, and the Environment Conservation Rules 1997 – and second, in the poisoning of a large number of people. According to the applicants, these failures amounted to violations of Articles 15 (basic needs of citizens), 18 (public health), and 31 (right to life) of the Constitution of Bangladesh.

The Court relied on Article 12 of the International Covenant on Economic, Social and Cultural Rights, which – according to General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights – is intrinsically linked to human dignity. At the same time, the Court referred to General Comment No. 14 on the right to health and emphasized the State's positive obligation to adopt effective measures to limit arsenic contamination of water sources. Failure to do so would amount to a violation of the aforementioned constitutional provisions.

Crucially, the Court held that the constitutional right to life includes the right of every individual to live in a healthy environment within which life can be fully enjoyed – that is, a life lived with dignity. Accordingly, the Court ordered the Government to implement the relevant environmental legislation and required periodic progress reports to be submitted, as well as public information campaigns through national media regarding arsenic pollution.

In Colombia, two noteworthy judicial decisions address the relationship between the right to water and human dignity. In the first case the Constitutional Court of Colombia held that the disconnection of water services (and electricity) constitutes a violation of the right to life under conditions of dignity²¹. Such a disconnection was found to breach the Colombian Constitution as well as the International Covenant on Economic, Social and Cultural Rights (Articles 11 and 12), whose connection with human dignity has already been analysed at a theoretical level.

In this context, particular attention should be paid, first, to Article 366 of the Colombian Constitution, which provides that social well-being and the improvement of quality of life constitute fundamental social objectives of the State, and that the means for achieving these objectives include access to drinking water; and, second, to Article 365 of the Constitution, which refers more generally to public services. This primarily individual dimension of the right gives rise to a corresponding obligation on the State to adopt appropriate public services. In other words, the improvement of quality of life with the right to water.

In the present case, the applicant suffered from chronic renal failure, and medical evidence confirmed that access to water directly affected her life, daily handwashing and catheter cleaning were required. Without access to water, neither proper medical preparation nor adequate recovery was possible – conditions incompatible with human dignity.

The Court also relied on General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights, which recognizes water as a prerequisite for a life in dignity and as an essential condition for the exercise of other human rights. Furthermore, the Court referred to Articles 11 and 13 of the Colombian Constitution, namely the right to life and the principle of equality. It developed the reasoning that water constitutes an indispensable element for life and, consequently, for the dignity of the person. Article 11 of the Constitution is central in this respect, while Article 13 emphasizes equality and freedom, as well as the obligation to prevent discrimination, particularly against vulnerable groups – an obligation that likewise finds its theoretical foundation in human dignity.

²⁰ Supreme Court of Bangladesh, *Rabia Bhuiyan MP v. Ministry of Local Government and Rural Development et al.*, 27.8.2007

²¹ Constitutional Court of Colombia, *Flor Enid Jimenez de Correa v. Empresas Publicas de Medellin*, 17.4.2007

The Court additionally invoked Article 93 of the Colombian Constitution, which provides that international treaties recognizing human rights prevail within the domestic legal order, thereby affirming the recognition of water as a human right. Consequently, the disconnection of water services was found to place the applicant's human dignity at risk. Ultimately, the Court ordered the immediate reconnection of the water supply.

In the second case, the Constitutional Court of Colombia ruled that the failure to connect a property to the water supply network and the failure to provide the user with a minimum quantity of water constitute a violation of the right to water under the Colombian Constitution, which, as already noted, recognizes this right as a human right²². In the present case, the water utility company refused to connect the property to the water supply network on the ground that the property was not located in close proximity to the existing network and that such connection would therefore require an extension of the network, entailing additional costs.

As a result, the families were forced to obtain water from neighbouring households or to collect rainwater. The Court applied General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights, which, as previously analysed, identifies water as an essential element of a dignified standard of living. It further relied on Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, which guarantee the right to an adequate standard of living (Article 11) and the right to the highest attainable standard of physical and mental health (Article 12).

With regard to domestic constitutional law, the Court applied Articles 79 (right to a healthy environment), 356 (public water services), and 366 (water as a prerequisite for quality of life and human development) of the Colombian Constitution. The Court held that water has a fundamental character insofar as it is intrinsically linked to life, human dignity, and health. Water thus constitutes a guarantee of physical survival and human dignity, as well as a core component for ensuring humane living conditions for vulnerable groups (such as women).

To the extent that water is recognized as an element of human dignity, it must necessarily be available at a minimum level corresponding to the basic needs of the individual. Accordingly, the refusal to connect a property to the water supply network constitutes a violation of the right to water and of the human dignity of the individual and his or her family. For these reasons, the Court granted the water utility companies a period of one month to connect the property to the water supply network in order to prevent further violations of the applicant's dignity and private and family life.

At the European level, the Constitutional Court of Slovenia held that a dwelling disconnected from the water supply system does not meet the conditions necessary to ensure human dignity²³. According to the Court, the fact that one quarter of the residents of an apartment building had failed to pay their water bills did not constitute a legitimate ground for the disconnection of water services, as such a measure violated the principle of proportionality and the right to property.

The Court applied Articles 15 (protection of human rights and fundamental freedoms) and 33 (right to property and inheritance) of the Slovenian Constitution, since at the time Slovenia had not yet constitutionally enshrined the right to water. This contrasts with the current constitutional framework, under which water is expressly recognized as a constitutional right pursuant to Article 70a of the Slovenian Constitution.

The Court emphasizes the fundamental importance of water for human life and dignity. The principle of proportionality was found to have been violated insofar as all residents were deprived of access to water, despite the fact that only a minority had failed to meet their payment obligations.

On the basis of this reasoning, the Court ordered the reconnection of the water supply to the apartment building in question.

²² Constitutional Court of Colombia, *Hernan Galeano Diaz v. Empresas Publicas de Medellin ESP and Marco Gomez Otero and Others v. HidroPasifico SA ESP and Others*, 5.8.2010

²³ Constitutional Court of Slovenia, *Up 156/1998, Ustanvo Sodisce*, 11.2.1999

II.3. Comparative insights: convergence between European and non-European courts

In conclusion, it is evident that national courts-across Europe, Africa, and Latin America-consistently recognize the close relationship between the right to water and human dignity. Nevertheless, a form of contextualism emerges, varying according to the continent in question.

In the European context, the right to water is primarily linked to human dignity in cases involving vulnerable groups and minorities, such as prisoners, detainees, and refugees. By contrast, in Latin America and Africa, the right to water and its connection with human dignity extend to all citizens in their everyday lives.

However, in light of climate change, this distinction is likely to diminish. In the coming years, water-related disputes grounded in human dignity are expected to concern the population at large at the European level as well, rather than being confined to particularly vulnerable groups.

III. Climate Change and the Transformation of the Right to Water

IV.1. Climate Change as a Factor Redefining the Right to Water

Climate change profoundly reshapes the conditions under which the right to water can be realized. Rising global temperatures, prolonged droughts, desertification, and extreme weather events increasingly threaten both the availability and quality of freshwater resources. The legal recognition of this interdependence has been progressively reinforced through international environmental agreements and emerging judicial practice²⁴.

Climate change affects the way in which the right to water is understood. According to recent studies, the global water crisis is exacerbated by climate change, since approximately 90% of climate-related disasters concern water²⁵. For this reason, the need for a hydrological transition that respects aquatic ecosystems is strongly emphasized, as well as the necessity to adopt measures aimed at combating water scarcity among impoverished populations and persons living in vulnerable conditions.

The impact of climate change on human rights and vulnerable groups had already been highlighted by the UN Human Rights Council in Resolutions 7/23²⁶ and 10/4²⁷. In a more recent resolution, the same Council recognized the right to a clean, healthy and sustainable environment, which necessarily includes access to sufficient and safe water²⁸.

At this point, it is essential to identify accurately and systematically the main effects of climate change on the right to water:

1. Reduction of water resources: Climate change diminishes global water reserves and renewable surface water and places into doubt the natural availability of water in the coming years²⁹.
2. Disturbance of the hydrological cycle: Rainfall patterns and the hydrological cycle more generally have been affected, resulting in increasing droughts and extreme weather events that may jeopardize water quality and water-supply services.
3. Increased water stress: Climate Change is expected to alter water-pressure levels, resulting in heightened water stress³⁰.
4. Temperature rise: Rising temperatures facilitate the development of bacteria in water, thus threatening that dimension of water quality³¹.

²⁴ Darrow, Mac: *Climate Change and the Right to Water*. In Langford Malcolm – Russell, Anna (eds.): *The Human Right to Water: Theory, Practice and Prospects*, Cambridge University Press, Cambridge, 2017. p. 174

²⁵ UN Human Rights Special Procedures: *Special Thematic report on climate change and the human rights to water and sanitation*. p. 1. <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf> (2025. December 15.)

²⁶ Human Rights Council Resolution: 7/23/28.3.2008

²⁷ Human Rights Council Resolution: 10/4/25.3.2009

²⁸ Human Rights Council Resolution: 48/13/18.10.2021

²⁹ UN Human Rights Special Procedures: op. cit. p. 3

³⁰ Bates, Bryson et al. (eds.): *Climate Change and Water*. Intergovernmental Panel on Climate Change (IPCC), Technical Paper, 2008, p. 45.

³¹ Falkenmark, Malin – Lannerstad, Mats: *Consumptive Water Use to Feed Humanity – Curing a Blind Spot*. In *Hydrology and Earth System Sciences*, Vol. 9 (2005), pp. 15-28.

5. Impact on daily life and gender inequality: Climate change affects the daily lives of many people—especially women in developing countries, who are responsible for water collection³². This illustrates the “gender inequality” embedded in the enjoyment of the right to water.

6. Food security: Climate change affects the relationship between water and food, as it increases the risk of food insecurity and the spread of new diseases³³.

7. Climate-included displacement, thereby affecting the right to housing due to environmental degradation, as has already been established by the international conference of United Nations member states held in Indonesia in 2007.

Consequently, it becomes clear that water, as a human right, is increasingly threatened. Rising competition exacerbates water scarcity, while global competition over water resources casts doubt on the long-term preservation of affordable water prices for all individuals³⁴.

Furthermore, climate change is expected to increase the evaporation of surface waters³⁵. This finding is particularly relevant for Greece, which already suffers from a shortage of surface water and is therefore driven towards excessive extraction of groundwater³⁶. Floods are expected to increase simultaneously, affecting specific river basins. It is also well established that agricultural activities influence water quality. In Greece, eutrophication is a significant problem for which the Greek State has been condemned twice by the Court of Justice of the European Union—first for failing to designate the affected areas, and second, for failing to adopt a complete program to limit this phenomenon.^{37 38}

Climate Change now creates even more unfavorable conditions for agriculture and directly affects its efficiency. In particular, due to climate change:

- a) soil quality deteriorates,
- b) drought phenomena intensify,
- c) extreme weather events become more frequent.

Under these circumstances, agricultural activities will struggle to comply with good agricultural practices, ultimately undermining water quality. The negative effects of climate change are especially evident in countries such as Greece, where 86% of water consumption is used for irrigation.

Although the extent and intensity of climate-change effects vary from country to country³⁹, it is evident that this phenomenon threatens the human right to water and reveals the limitations of the traditional one which cannot accommodate new and future challenges⁴⁰. The re-conceptualization of the right is essential if related rights are to be preserved, such as the right to food, the right to health, and the right to participate in the political and cultural life of the country. This need for adaptation of the right is also reflected in emerging case-law linking climate change with the right to water, which will be examined in the following sections.

Within the broader framework of protecting the right to water, the need to protect the biodiversity of aquatic ecosystems also emerges. The term biodiversity covers all forms of life within aquatic environments⁴¹. For this purpose, Directive 92/43 and the corresponding Greek Ministerial

³² Darrow, Mac: op. cit. p.174

³³ Tilman, David – Balzer, Christian – Hill, Jason and Befort, Belinda: *Global food demand and the sustainable intensification of agriculture*. In PNAS, November 2011, 108 (50), pp. 20260-64

³⁴ Zikos, Dimitrios – Hagedorn, Konrad: *Competition for Water Resources from the European Perspective*. In: Ziolkowska, Jadwiga R. - Peterson, Jeffrey M. (eds.): *Competition for Water Resources. Experiences and Management Approaches in the US and Europe*. Elsevier Inc., Amsterdam, 2017. pp. 19-35.

³⁵ UN Human Rights Special Procedures, op. cit. p. 5.

³⁶ Gogos, Konstantinos: *The planning of Water Resources Management as a Prerequisite for the Authorisation of Projects*. In: Proceedings of the Conference “Environment – Public Procurement: Recent Developments”. Association of Members of the Legal Council of the State – Hellenic Single Public Procurement Authority. Nomiki Vivliothiki, Athens, 2016. pp. 269-296

³⁷ Court of Justice of the European Union, C-149/2014, European Commission v. Greece, 23.4.2015.

³⁸ Court of Justice of the European Union, C-298/2019, European Commission v. Greece, 27.2.2020

³⁹ UN Human Rights Special Procedures, op. cit. pp. 13-20

⁴⁰ WWAP – Connor, Richard: *World Water Development Report 2015: Water for A Sustainable World*. UNESCO, Paris, 2015. pp. 65-67.

⁴¹ Chrysogonos, Kostas: op. cit. 1 p. 850

Decision 33318/3028/11-12-1998 were adopted⁴². Similarly, Directive 79/409/EEC – now replaced by Directive 2009/147/EC along with Greek Ministerial Decisions 414985/29-11-1985 and 37338/1807/E.103/1-9-2010, and Laws 1650/1986 and 3937/2011, provide relevant protection.

International literature stresses that climate change affects the biodiversity of aquatic ecosystems⁴³. For example, significant threats have been recorded⁴⁴, particularly with respect to birds and migratory waterfowl. This discussion is internationally significant, as it aims to minimize the risk of extinction of aquatic life forms, which are already particularly vulnerable.⁴⁵ The preservation of biodiversity depends largely on maintaining minimum water flows and levels – elements which, as previously noted, are themselves affected by climate change⁴⁶.

III.2. International Climate Change Frameworks and Water

III.2.1. United Nations Framework Convention on Climate Change (1992)

The United Nations Framework Convention on Climate Change (UNFCCC), adopted in 1992, established the first global framework for addressing anthropogenic climate change. While the Convention does not explicitly mention water, it recognizes that climate change “will affect natural and human systems” and calls upon States to adopt measures ensuring “sustainable management of resources essential to human well-being (Articles 1-4).

III.2.2. Kyoto Protocol (1997)

The Kyoto Protocol (1997) deepened this commitment by setting binding emission-reduction targets for developed countries. In its preamble and implementing mechanisms, it implicitly acknowledges that mitigation and adaptation policies must protect vital resources, including water, whose scarcity and contamination are among the most severe consequences of climate disruption.

III.2.3. Paris Agreement (2015)

The Paris Agreement (2015) marked a paradigm shift, explicitly linking climate action to human rights. Article 7 emphasizes the importance of adaptation, including measures to safeguard water security, while the preamble recognizes that States must respect, promote, and consider their obligations concerning “the right to health, the rights of indigenous people, local communities, migrants, children, persons with disabilities, and people in vulnerable situations”. Water is implicitly situated at the heart of these rights.

Together, these instruments outline a normative evolution: access to water has become a climate-dependent human right, demanding both mitigation and adaptation obligations from States.

III.3. Case Law on Climate Change and Water

In recent years, courts around the world have begun to address the human rights implications of climate inaction, progressively acknowledging the connection between climate change, environmental degradation, and fundamental rights, including the right to water.

⁴² Gogos, Konstantinos: *The Environmental Permit for Projects in Natura – 2000 areas – the Rules of Article 6 of Directive 92/43*. Sakkoulas Publications, Athens-Thessaloniki, 2009. p. 29.

⁴³ Stefanidou, Natasa: *Climate Change and biodiversity loss: marine phytoplankton community tolerance to temperature and salinity stress* (Dissertation). AUTH, Thessaloniki, 2019. p. 17.

⁴⁴ Bairlein, Franz – Huppopp, Ommo: *Migratory fuelling and global climate change*. In Moller, Anders Pape et al. (eds.): *Birds and Climate Change. In Advances in Ecological Research*. 2006/35, p. 33-47.

⁴⁵ Senapathi, Deepa: *Climate Change and Birds: Adaptation Mitigation & Impacts on Avian Populations: A report on the BOY'S Annual Conference held at the University of Leicester, 6-8 April 2010*. In Ibis, Issue 2010/4, pp. 869-872.

⁴⁶ Tsiaousi, Vasiliki et al. (eds.): *Water regime and Biota: proposed minimum values of lakes water level of rivers discharge in Macedonia and Thrace, Greece*. The Goulandris Natural History Museum/Greek Biotope – Wetland Center, Thermi, 2007. p. 197.

III.3.1. European Court of Human Rights

The first landmark judgment is *Klimaseniorinnen v. Switzerland* (ECHR, 2024)⁴⁷. The Court in this judgment linked climate change to Article 8 of the ECHR on private and family life, holding that Switzerland's inaction in addressing the climate crisis amounted to a violation of that right. In particular, in this case, the association of elderly women brought proceedings against Switzerland, arguing that the heatwaves caused by climate change were deteriorating their health. The Court found a violation of Article 6 of the ECHR concerning access to justice, as well as Article 8 of the ECHR on private and family life. According to the ECHR, climate change is encompassed within the scope of Article 8 ECHR and obliges member States to take measures to address its negative consequences, both under the Climate Change Convention and since Switzerland had delayed in adopting measures to mitigate climate change.

The Court, explicitly linking climate change to its impacts on water, referred to this issue repeatedly: (1) it emphasized the connection between the environment and the right to water; (2) it stressed the necessity of ensuring this right in order to achieve sustainable development; (3) it highlighted the global water crisis; (4) it stated that safe and potable water is linked to the right to health and to a dignified standard of living and private life; (5) it clearly noted that the consequences of climate change affect all forms of water.

The Court further underlined that the impacts of climate change disproportionately affect the most vulnerable groups, such as the elderly, and observed that climate change will lead to severe droughts and water scarcity. Accordingly, it held Switzerland responsible for violating Articles 6 and 8 of the ECHR. This judgment makes it clear that, since climate change affects water, this in turn affects individuals' private life, as access to adequate water constitutes a precondition for a dignified existence.

III.3.2. Domestic Jurisprudence

At the national level, we must first examine the decision in *Luciano Liluya v. RWE AG* (Oberlandesgericht Hamm, 2025)⁴⁸. This case concerned the action brought by a Peruvian mountain guide and farmer against RWE, a major German electricity producer. The company emits greenhouse gases, thereby contributing to climate change and increasing the risk of flooding in the claimant's area in principle, rely on the German Civil Code (Article 1004) and, if adverse effects on his property were shown to result from climate change, he could claim both compensation and the implementation of flood-prevention measures. This could operate both preventively and repressively. The court also held that the great geographical distance between the claimant's property and the company's facilities did not constitute an obstacle for establishing legal responsibility.

By contrast, the court appeared to stress that the fact that the claim was brought by a single individual – rather than a collective group – posed a difficulty, highlighting once again the collective and structural dimension of climate-change-related water issues. The claim was ultimately dismissed because the risk that the water from the glacial lake would reach the claimant's house within the next 30 years was assessed at below 1%. Consequently, there was no sufficiently concrete danger to his property arising from potential flooding of the lake. The court also underlined that lowering the lake's water level was technically feasible and that the protective capacity of the dam had been underestimated.

Despite the negative outcome for the claimant, the court's reasoning is notably progressive regarding the right to water. First, it explicitly links climate change with the right to water and the risk of dangerous flooding affecting an individual's property. Second, it recognizes a legal basis for bringing damages claims in climate-related water cases even when the alleged harm lies in the future (the court examined the relevant risks over a 30-year-horizon). Article 1004 of the German Civil Code concerns the prohibition of installing or maintaining harmful conditions on a neighbouring property.

The judgment reflects a significant reconfiguration of the right to water in the era of climate change and raises new legal questions about how citizens can be protected from such phenomena. Since RWE operated lawfully under a valid permit, the claim could not have been framed under the Greek model of state liability based on Article 105 of the Introductory Law to the Civil Code.

⁴⁷ European Court of Human Rights, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, 9.4.2024

⁴⁸ Oberlandesgericht Hamm, *Luciano Lliuya v. RWE AG*, 28.5.2025

Drawing once again on German case law, the decision of the Federal Constitutional Court in *Neubauer et al. v. Germany*⁴⁹ is particularly instructive. In this case, several citizens and activists argued that the Climate Protection Act lacked clarity regarding the measures the government was required to take in order to protect individuals from climate change. The Court held that the Act violated Article 20a of the German Basic Law, in the sense that it did not ensure adequate protection of rights in the future, especially for the generations to come, since this is a right that entails long-term guarantees of freedom. In other words, there was no balanced and proportionate allocation of obligations between present and future generations. Therefore, the Court's reasoning, as in the previous decision, concerned future violations of rights.

According to the Federal Constitutional Court, the fact that Germany cannot halt climate change on its own does not exempt it from responsibility; each state must periodically reassess the impacts of climate change at regular intervals. Article 20a of the Basic Law refers – according to common translations – to the natural foundations of life and animals. It explicitly provides that “Mindful of its responsibility toward future generations, the state shall protect the natural foundations of life and animals”.

We observe that climate change jurisprudence introduces a forward-looking dimension to rights-based claims: it requires legislative clarity and effectiveness, and it does not allow the state to rely on the fact that climate change constitutes an international, transboundary issue.

Reference must be made to *Kivalina v. ExxonMobil* (U.S. Federal Court, 2009)⁵⁰. In the United States, the Inuit community of Kivalina sued major energy corporations for damages resulting from climate-induced erosion and loss of access to freshwater. Although the claim was dismissed for lack of justiciability, the case remains emblematic of how climate change directly undermines the right to water and habitation, exposing the limitations of existing legal frameworks in providing effective remedies.

A landmark decision is *Urgenda Foundation v. State of the Netherlands*, decided by the Supreme Court of the Netherlands⁵¹. The Supreme Court upheld the judgment of the Court of Appeal and found the Dutch State liable. The reasoning of the Dutch courts may be summarized as follows.

First, the courts refer to the effects of climate change, such as water scarcity, droughts, sea-level rise, flooding, and melting ice caps. The decisions rely on Articles 2 and 8 of the European Convention on Human Rights (ECHR), concerning the right to life on the one hand and the right to respect for private and family life on the other. On the basis of these provisions, an obligation emerges for the State to reduce greenhouse gas emissions by at least 25% by 2020.

Second, the courts establish that States have a duty to take measures against threats which they know endanger human life. At the same time, a corresponding obligation of the Netherlands is identified under the United Nations Framework Convention on Climate Change and the Paris Agreement of 2015, to which it is a contracting party. In other words, under Articles 2 and 8 of the ECHR, the Dutch State is under an obligation to adopt measures to ensure that climate change does not threaten the life, or private and family life, of Dutch citizens.

The Dutch courts place particular emphasis on the consequences of climate change, such as the lack of access to drinking water, flooding resulting from sea-level rise, and the loss of biodiversity. Accordingly, by failing to adopt adequate measures, the State violates Articles 2 and 8 of the ECHR. The Court of Appeal, whose findings were upheld by the Supreme Court, notes the existence of a real risk that the lives of Dutch citizens may be threatened and that their private and family life may be disrupted on the basis of the available scientific evidence on climate change. It is thus established that the Dutch State has failed to take the necessary measures to prevent the threat posed by climate change and, for this reason, has breached Articles 2 and 8 of the ECHR.

Article 2 of the ECHR gives rise to obligations concerning protection against natural disasters and industrial activities. These obligations must also extend to long-term risks, such as climate change, in light of the principle of intergenerational equity. Article 8 of the ECHR further encompasses measures aimed at protecting individuals from other environmental risks. Notably, the courts underline the collective dimension of the protection afforded by these provisions, insofar as society as a whole is

⁴⁹ Federal Constitutional Court of Germany, *Neubauer et al. v. Germany*, 24.3.2021

⁵⁰ U.S. Federal Court: *Kivalina v. ExxonMobil*, 30.9.2009

⁵¹ Supreme Court of the Netherlands, *Urgenda Foundation v. Netherlands*, 20.12.2019

protected – an observation also made in other judicial decisions. For example, residents of areas threatened by climate change are expected to initiate legal proceedings collectively.

According to the courts' reasoning, the Dutch State is under a mandatory obligation to take action, while retaining discretion as to the specific type of measures to be adopted. Those measures must, in turn, be reasonable and appropriate, in accordance with the principle of proportionality, a requirement to be assessed on the basis of environmental impact studies. At the same time, the measures must not impose a disproportionate burden on the State. Nevertheless, the existence of an immediate and real risk arising from climate change is unequivocally recognized. Particular emphasis is placed on sea-level rise, which, within a few decades, could render parts of the Netherlands uninhabitable.

Finally, although climate change constitutes a global problem, each State bears responsibility for its own share of mitigation measures within its territory and, simultaneously, an obligation not to cause harm to other States through its conduct, in accordance with the principle of non-harm. Pursuant to Article 13 of the ECHR, national courts are empowered to review whether a State complies with its obligations to mitigate the effects of climate change.

A similar approach is reflected in *Future Generations v. Ministry of Environment*, decided by the Supreme Court of Colombia⁵². The claimants brought an action against the Republic of Colombia concerning the increased deforestation of the Amazon rainforest. The Colombian government is obliged to take measures pursuant to the Paris Agreement on climate change, as well as under the corresponding national legislation aimed at reducing deforestation. According to the Court, deforestation of the Amazon is primarily linked to: (a) the disruption of the water cycle; (b) the reduced capacity of soil to absorb water during rainfall, thereby causing floods; and (c) changes in water availability and the overheating of the planet.

Overall, the claimants argued that, as a result of these processes, they are deprived of access to a healthy environment. These issues, they maintained, affect both the present generation and future generations in an intergenerational manner. The court of first instance dismissed the claim on the ground that the matter concerned a collective problem rather than an individual one. However, the appellate court held that legal action may be brought where a collective problem is linked to an individual right and where the violation of that right is fully established.

The Court emphasized the direct connection between the right to a healthy environment and ecosystems, on the one hand, and human dignity, private life, life, and health, on the other. Without the existence of a healthy environment, individuals – and sentient beings more generally – are unable to act, develop their private lives, or fully realise their personality. According to the Colombian Court, the non-enjoyment of the right to water, and more broadly of the right to a healthy environment, prevents Colombian citizens from living a dignified life.

On page 4 of its judgment, the Court highlights the international threats posed by climate change to the environment, including intense rainfall, droughts, and extreme weather events, as well as the extinction of species, namely forms of life inhabiting aquatic ecosystems. These rights are said to possess an element of “otherness”, that is, a value not only for the rights-holder asserting them, but also for the rest of the planet's inhabitants, as third-generation rights. The intrinsic value of nature requires the protection of fundamental rights for future generations as well.

The Colombian Court further notes that natural resources are no longer sufficient and are inherently limited. Consequently, the right acquires a legally binding dimension of “abstention”, in the sense of restricting the freedom of action of States with regard to the environment, in order to preserve it for future generations. To support its reasoning, the Court refers to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the 1992 Rio Conference, and, most importantly, the 2015 Paris Agreement on climate change.

On the basis of the Paris Agreement, the Court finds that Colombia has indeed undertaken an obligation to reduce deforestation. This agreement was followed by the Sustainable Colombia initiative and the Vision Amazon Fund, both of which aim to mitigate the effects of climate change that have altered water sources. Emphasising the “green” orientation of the Constitution and the notion of an ecological Constitution, the Court notes that deforestation entails sea-level rise and the intensification

⁵² Supreme Court of Colombia, *Future Generations v. Ministry of Environment*, 5.4.2018.

of pollution originating from water resources. It also leads to reduced water availability and widespread droughts.

The Court refers to an anticipated increase in temperature of 2.14% by 2071 and, on the basis of the principle of intergenerational solidarity, holds that the Colombian State is obliged to reduce deforestation. It thus becomes apparent that water, as the most fundamental component of the environment, is not merely a present-day concern but a future-oriented rights - a third-generation right that concerns the entire world and all future generations.

Consequently, the Court held that the Colombian State had breached its obligations under the Paris Agreement on climate change by failing to reduce deforestation and had therefore violated the right to a healthy environment, within which the right to water is embedded. Finally, the Court recognized the Amazon rainforest as a subject of rights. In light of the above, it ordered the Colombian State to formulate and implement a plan to reduce deforestation in the Amazon.

The legislative and judicial developments examined so far allow us to draw certain conclusions regarding the relationship between climate change and the right to water. It is evident that climate change dramatically affects all dimensions of this right. Specifically, it impacts both its individual dimension – namely access to drinking water and personal hygiene – and its environmental dimension, as an integral component of the ecosystem. The right thus acquires a need for prospective and collective protection, insofar as, in most judicial decisions, these rights appear to be pursued through collective litigation, while the risks are assessed over a long-term horizon.

This observation reasonably gives rise to questions concerning the narrowness of existing constitutional provisions relating to the right to water. For example, in Greece, only one extension of the right to water – the environmental one – is interpreted as deriving from Article 24 of the Constitution, and even this in a manner that appears outdated, to the extent that climate change has reshaped its environmental dimension.

At a second level, the question arises as to whether current procedural frameworks adequately address the new form and renewed content of the right to water. Courts have recognized both a positive obligation on states to adopt measures aimed at mitigating climate change in relation to water, and a negative obligation to refrain from actions that would undermine this right. It appears that such protection may be afforded either through civil liability legislation (Articles 105-106 of the Introductory Law to the Civil Code in Greece) or through the development of a new form of tort liability.

Conclusion

In conclusion, the present research has sought to summarise the main findings regarding the relationship between the right to water and the principle of human dignity. The principle of human dignity is intrinsically linked to the right to water, elevating it to a prerequisite right for the effective enjoyment and protection of other fundamental rights within contemporary legal orders. This connection is recognized both at the European level and across other regions of the world, with particular emphasis on Latin America, Asia, and Africa.

Nevertheless, a significant divergence can be observed. Within the European legal order, the linkage between the right to water and human dignity has thus far been articulated primarily in exceptional contexts and has mainly concerned vulnerable or minority groups. By contrast, in other regions, this connection directly affects the average citizen and everyday life, constituting a general and persistent constitutional and social concern.

Climate change, however, fundamentally reshapes this contextual assessment. It directly affects the definition and normative content of the right to water, rendering traditional conceptualisations increasingly inadequate and, in some respects, obsolete. Contemporary case law now clearly acknowledges that climate change primarily impacts the right to water and the communities and regions that depend upon it. Phenomena such as flooding, the degradation of water quality, and threats to private property and personal security are expected to intensify and increasingly affect Europe in the coming years.

Under these conditions, constitutions can no longer treat water merely as an element of environmental protection or solely as a social right. They must recognise that this most fundamental natural resource is under direct threat. Accordingly, states are required – whether at the constitutional or legislative level – to incorporate legal frameworks capable of addressing these new dimensions of the

right to water, in order to safeguard citizens' rights both in the present and for future generations. Procedural mechanisms must also integrate effective tools to protect individuals from the impacts of climate change and to ensure the qualitative protection of water resources, which are likewise affected by climate change.

Such constitutional and legislative developments would contribute significantly to the protection of citizens in light of the emerging threats that climate change poses to the right to water. To the extent that water is intrinsically linked to human dignity, violations of individuals' rights resulting from the adverse effects of climate change on water resources necessarily entail a violation of human dignity.

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