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An Overview of the European Court of Human Rights

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Abstract

Based on the European Convention on Human Rights, in 1959 the European Court of Human Rights was established in order to deal with applications against member states (High Contracting Parties) about the violation of the rights and freedoms contained in the Convention including: the right to life, the prohibition of slavery, servitude and forced labor, the right to liberty and security, the right to begin entitled to a fair trial, the right to freedom of expression, the right to respect for one's private and family life, the right to freedom of thought, conscience and religion and so on. Subsequently, various Protocols were annexed to this Convention including the Protocol 11 of European Convention on Human Rights. Through eliminating former two-steps system consisting of European Commission of Human Rights (ECHR) and the European Court of Human Rights, the system became one-step. A fundamental revision was made in the structure and the proceedings system of the Court. In this article, along with the introduction and the consideration of the structure and the judicial procedure of the new Court, we proceed to examine the Court jurisdiction and how the decisions are made.

Keywords: *Human Rights, The European Court of Human Rights; The European Convention on Human Rights; Jurisdiction*

Introduction

In today's society, human rights protection has been on the agenda of some international conventions. The Convention for the Protection of human Rights and Fundamental Freedoms was signed by the member states of the Council of Europe on 4 November 1950 in Rome and became applicable in these Countries from September 1953 onward.

The European Court of Human Rights has been established by this convention, currently with more than 50 years of judicial experience, is also one of the most important international judicial organizations and from November 1998 onward the Protocol 11 became enforceable and along with its being imperative, the former two-steps system consisting of European Commission of Human Rights and the European court of Human Rights changed its structure into a one-step system, that is the new European Court of Human Rights, and that significant changes were made in the way an application was dealt with and in the Court procedure as well. This article will answer this question: How can this structure secure the rights guaranteed in this Convention against member states?

Given that the topics related to the Court are very broad and diverse, attempts have been made to address issues about: the history and the structure of the Court, the issue of the Protocol 11 of the European Convention on Human Rights and the aforementioned Court after this Protocol, judges and the manner of their election, jurisdiction and so forth.

1- The history and the structure of European Court of Human Right

The external visualization of the European Court of Human Rights was established on 1 November 1998 and it was a substitution for then existing executive structure including the European Commission on Human Rights established in 1954 and the Court of Human Rights was which established in a limited way before that in 1950.

The new Court was the result of the confirmation and the permission of the Protocol 11 which was considered as a supplement to the Convention ratified in November1998. Subsequently, the judges of this Court were elected by the Council of Europe and the Court was established roughly one year later as well.

The number of full-time judges sitting in the Court is equal to the number of member states which is currently 47. Every elected judge is the liaison of that country with the Court. Despite some correspondences and connections, anyway it does not mean that the representatives of each state are only limited to the judges in respect of that state (for example Mr Villiger, who has been elected as a judge representing liecntenstein, has Swiss citizenship). The judges are supposed to be impartial judges not the representatives of states.

The Court has been organized into five Sections, each of them contains a fair election in terms of geographical and gender balance. Members elect a President for the whole Court and five Presidents for the five Sections of the Court and also two people are elected as Vice-Presidents. All conditions are imperative only for a three-years period of time. Every Section is composed of a panel including the President of the Section and six other judges in rotation. The Court also includes a Grand Chamber containing seventeen members consisting of the President of the Court, Vice-Presidents of the Court and the Presidents of Sections in addition to a group of judges in rotation and balanced. The election of judges is made alternately among the judges of Sections every nine year (Zarrokh, 2007).

2- Protocol 11 of European Convention on Human Rights

The expansion of the number of the members of the Convention and applicants made longer day to day the period of time for the proceeding of an application as far as the proceeding of an application took at least between 4 to 5 years. The case, at first, was sent to the European Commission of Human Rights for preliminary proceeding and after this step and in the case of the confirmation of this Commission, the case was referred to the Court. The prolongation of the proceeding process and the time to deal with applications caused some offers made in order to create a new system for making the proceeding of an application easier, more accessible and consequently shorter.

From November 1998 onward, the Protocol 11 became enforceable and along with its being imperative, the former two-steps system, consisting of the European Commission of Human Rights and the European Court of Human Rights, changed its structure into a one-step system that is the new European Court of Human Rights.

Protocol 11 has not created substantial changes in the provisions of the European Court of Human Rights.

Also, this protocol has not created substantial changes in the criteria and the standards of the admissibility of applications in the European Court of Human Rights. However, upon entering into force of this protocol and in addition to the elimination of the European Commission of Human Rights, dramatic changes were created in the manner of the proceeding an application and the Court procedure (Fatemi, 2000).

3- The European Court of Human Rights after the Ratification of Protocol 11

After the ratification of the Protocol 9, people gained direct access right to the European Court of Human Rights and after 1998 and according to the Protocol 11, the two institutions of the European Commission of Human Rights and the European Court of Human Rights were merged into each other and all the jurisdiction and authorities of the European Commission of Human Rights were assigned to a single court under the title of the European Court of Human Rights. It should be reminded, regarding jurisdiction in dealing with an application, that all the functions in the past which were the responsibilities of the European Commission of Human Rights were transferred to the European Court of Human Rights. Also, the Committee of Ministers of the Council of Europe, which had various judicial and administrative duties concerning brought applications, keeps its functions under the Article 54 of the European Convention on Human Rights (administrative duties) and its jurisdiction has been annulled under the Article 32 (judicial duties). Explaining that, according to the new amendments, the authorities of the Committee of Ministers of the Council of Europe have been reduced dramatically. Subsequent to a request from the European Convention on Human Rights following a predicted complaint, however, the Committee of Ministers of the Council of Europe should comment on it.

Also, the Committee of Ministers of the Council of Europe is in charge of supervising over the execution of the given judgements by the European Court of Human Rights. In fact, regarding this issue that the enforcement of the judgements of the European Court of Human Rights is dependent on the desire and the will of states and that there is no performance guarantee for the obligation of losing-party state, hence; the Committee of Ministers of the Council of Europe will bother that state with a follow-up every six months in this regard that whether a losing-party state has performed the desired actions in association with an enforceable judgment or not, and somehow encourages that state to take necessary measures.

"The headquarters of the European Court of Human Rights is located in Strasbourg, France, and 46 judges are busy in it. The judges are elected by the Parliamentary Assembly of the Council of Europe for a period of six years (there is the possibility of its extension). It is necessary to mention that Protocol 11 has not created substantial changes in the criteria and the standards of the admissibility of applications in the European Court of Human Rights. However, upon entering into force of this protocol and in addition to the elimination of the European commission of Human Rights, dramatic changes were created in the manner of the proceeding an application and the rule of Court procedure"(Armaghan, 2010).

4. The Structure of the European Court of Human Rights

The structure of the European Court of Human Rights consists of administrative and judicial units. Secretariat, the Court registrar are administrative units of the Court and committees, chambers and Grand Chamber are judicial units of the Court. Also, Sections and the Plenary Court should be named as the pseudo-judicial elements of the Court.

5- The Judges of the Court and the Manner of their Election

Due to the judicial nature of the Court, we first proceed to the issue of judges as the most important factor of the Court, who are, of course, responsible to exercise the jurisdiction of the Court (the Articles 20-24).

The Convention and the Articles 2-7 of the rules of Court hearing are allocated to the issue of the judges. The number of judges sitting in the Court is equal to the number of the contracting states. The judges are elected, from among those figures of high moral character possessing the scholar qualification required for being appointed to high judicial office or be jurisconsults of recognized competence, by the Parliamentary Assembly of the Council of Europe from among a three-candidates list nominated by each contracting state. The citizenship condition, which had been already foreseen, was eliminated in the new amendments and therefore each member state can introduce candidates other than their respective people in their list.

Moreover, the condition of prohibition of the electing two judges with the same nationality, which had been foreseen in the Article 38 of the Convention before the amendment, has been eliminated and in this way it has been tried to use all existing human capacities in Europe by removing previous restrictions.

The judges shall be elected for a period of six years. They will act according to their own personal recognized competence and not on the behalf of their respective states or the states introducing them.

This important issue has been foreseen to emphasize the independence and impartiality of judges and therefore any activity which is incompatible with their independence, impartiality and full-time office is prohibited. Judges must notify the president of the Court of any activity other than judging in the Court that they intend to engage in; an appropriate decision will be made in the Plenary meeting of the Court, in any case, if there is a theoretical disagreement in this regard.

The re-election of judges is unimpeded and their dismissal will be impossible unless due to the loss of the prescribed conditions and the vote of two-thirds of the other judges in the Plenary meeting of the Court.

The term of office will start from the date of their appointment. In the case of the judges who are re-elected and the judges replacing other judges whose tenure has ended or is about to end, the start of the tenure is from the expiration date of the previous tenure. If a judge replaces a judge whose term of office has not expired, the term of office of this judge will be the same as the remaining term of the previous judge.

After being elected and before taking office, judges announce by oath or official announcement that they will be honest, independent, impartial and confidential in the performance of their duties as judges. And finally, in the case of a decision to resign, the President of the Court must be notified and this is subject to the assignment of cases that in which the resigned judge has participated in the substantive hearing. The resignation will be formalized by the President of the Court after six months from the date of receipt.

The retiring age of the Court judges is 70. Therefore, a judge's mission ends at this age despite the length of her/his tenure.

5-1- Ad hoc Judge

One of the measures envisaged in the Court is the membership of judges, who are introduced by relevant states, in a Chamber of the Court hearing a case by the Parliamentary Assembly of the Council of

Europe. If any of these judges for some reason cannot attend the hearing, as the case may be, at the invitation of the President of the Chamber the relevant state will have the authority whether to introduce one of the other judges of the Court instead of that judge or to introduce an Ad hoc judge for the hearing. An Ad hoc judge must also possess the qualifications required referred to them in the paragraph 1 of the Article 21 of the Convention. According to Article 29(1)(3) of the rules of Court, if an Ad hoc judge, like other judges in the Court, has a personal interest in a case; or has taken an action previously as a lawyer or advisor to one of parties or even one of the stakeholders to the dispute; or had been a member of the Court or of the Investigation Commission; she/he has been forbidden to interfere in that case.

Also, according to the Article 30 of the rules of Court, if two or more applicant or respondent Contracting Parties have a common interest, the President of the Chamber may invite them to agree to appoint a single judge elected in respect of one of the Contracting Parties concerned as common-interest judge who will be called upon to sit ex officio. If the Parties are unable to agree, the President shall choose the common-interest judge by lot from the judges proposed by the Parties.

5-2- Judge Rapporteur(s)

According to Articles 48, 49, 50 of the rules of the Court, a Judge Rapporteur has been foreseen under three titles: where an application is made under Article 33 of the Convention, the Chamber constituted to consider the case shall designate one or more of its judges as Judge Rapporteur(s), who shall submit a report on admissibility when the written observations of the Contracting Parties concerned have been received. The Judge Rapporteur(s) shall submit such reports, drafts and other documents as may assist the Chamber and its President in carrying out their functions.

Where an application is made under Article 34 of the Convention, the applications filed by private persons, the President of the Section to which the case has been assigned shall designate a judge as Judge Rapporteur, who shall examine the application. In their examination of applications, Judge Rapporteurs may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant. Judge Rapporteurs shall decide whether the application is to be considered by a single-judge formation, by a Committee or by a Chamber. If the presented evidences in such applications, according to the Judge Rapporteur(s), are sufficient to indicate the inadmissibility of the applications and or accordingly, those applications should be strike out of the Court's list of cases, such applications shall be examined by a Committee. The Judge Rapporteur(s) shall submit such reports, drafts and other existing documents may be beneficial, as the case may be, to the Chamber or the Committee to carry out their functions.Finally, in line with her/his functions abased on the Article 30 relating to the relinquishment of jurisdiction from a Chamber of the Court to the Grand Chamber and the Article 43, The referral of judgements given by Chambers to the Grand Chamber for being reconsidered, the President of the Grand Chamber can elect one or more Judge Rapporteur(s) in inter-state applications or one Judge Rapporteur(s) in applications running by private persons from among her/his judges (Abolfazl, 2005).

6- Amendments Prescribed in Accordance with Protocol 14

One of the major areas in which Protocol 14 has attempted to reform existing system is the period of tenure and dismissal of judges.

In the current system, judges are elected for a term of 6 years and their re-election is unimpeded (the paragraph 1 of the Article 23 of the Convention).

According to the Article 2 of the Protocol 14, the terms of office of judges has been increased from 6 years to 9 years, and it is not possible to re-elect them. According to the Parliamentary Assembly of Europe Council, the above provisions would contribute to the greater efficiency and continuity of the

Court and would consolidate its independence and impartiality of judges (the paragraph 13 of the would contribute to the greater efficiency and continuity of the Court and would consolidate its independence 1649 (2004) of the Parliamentary Assembly of Europe Council dated May 2004). The role of increasing the term of office of judges from 6 to 9 years in the continuity of the judicial Court and the coherence of its judicial procedure is quite obvious. However, regarding the effect of impossibility of re-election of judges on their independence and impartiality, it seems that the existential philosophy of this rule is that judges should be able to adjudicate regardless of their re-election considerations. Explain that the election of judges of the Court is such that each member state submits a list consisting of these people and the Parliamentary Assembly of Europe Council elects one person from the list proposed by each state for membership in the Court. The Council of Europe believes that the idea of being included in the list proposed by states for re-election could have a negative effect on the independence of the judgement and the impartiality of the judges, therefore, eliminating this possibility will be a step towards the independence of the Court.

During the drafting of Protocol 14, a proposal was made stating that the three-person list submitted by states should include candidates of both sexes.

This proposal, which was made to increase the number of female judges in the Court, was not amended in the text of the Protocol 14 because it was thought the criteria for nominating candidates by states should be their eligibility not their gender. However, one year later in 2005 the Parliamentary Assembly of Europe Council decided in a resolution not to consider lists of candidates where the list does not include at least one candidate of each sex. This resolution adds that exceptionally the list submitted by states can be exclusively composed of the candidates of the same sex if under 40% of the total number of judges belong to the sex which is under-represented in the Court (See resolution 1426 (2005) of the Parliamentary Assembly of the Council of Europe entitled "Candidates for the European Court of Human Rights").

The purpose of this exception is that, in the event of the existence of a clear imbalance between the sexes in the membership of the Court (female and male judges), states can restore the balance and adjust this imbalance more quickly by introducing gender-specific candidates. Now that, for example, only 11 of the 44 judges currently in office are women (that is less than forty percent of total judges), states can only nominate female candidates on their proposed lists; thus, increasing the number of female judges and create more balance between the two groups.

The Article 2 of the Protocol 14, like the paragraph 2 of The Article 23 of the Convention, provides that The terms of office of judges shall expire when they reach the age of 70. Determining a maximum age of 70 years for judging and that their terms of office is 9 years should not be construed as member states may not nominate candidates who are over 61 years of age at the time of election (70(maximum age) – 9(service period) = 61). Such a thing would deprive the court of experienced judges. Therefore, states are not allowed to nominate people over the age of 61 to serve on the court.

Despite this, the Council of Europe has recommended member states to nominate candidates who can complete at least half of their tenure before reaching the age of 70 (Akhavi, 2005).

6-1- The Jurisdiction of the European Council of Human Rights

Explaining the concept of jurisdiction, it is interpreted that: 'Jurisdiction is the authority given to a court to deal with an application (and) give its judgement '. In general, the acceptance of the concept of jurisdiction in the dealing with any application is based on the principle of legality of crimes and punishments which has also been mentioned in the Article 8 of the Universal Declaration of Human rights. As for the jurisdiction of the European Court of Human Rights, it can be said: 'The Court shall hear disputes in the realm of the jurisdiction delegated in the Convention. The jurisdiction of this Court in the Convention is supplementary '.

The principle of complementary jurisdiction has been specified in Article 1 of the Statute of the Permanent International Criminal Court. But this concept in the European Convention on Human Rights can also be deduced from Article 26 and that means that the Court starts to investigate simply when national mechanisms for the protection of the rights enshrined in the European Convention on Human Rights do not exist and or that they are insufficient. Accordingly, this Court has not been established with this aim to replace the national courts. This important issue, which is also useful for the main jurisdiction of national courts in the protection of human rights, is confirmed from two perspectives. First, the Council of Europe, under human rights instruments, has left this primary duty to member states to have effective oversight on the implementation of human rights standards and the compensation for material and moral damages of individuals who have been the victims of violating these standards; secondly, it is ratified in the Convention itself that the condition for accepting an application by the Court is the lack of a national mechanism or its inefficiency and the criterion for the recognition of these two pillars is the plaintiff's appeal to all existing potential and actual mechanisms in the relevant legal system.

It is important to indicate that the acceptance of complementary jurisdiction will be followed by the dynamism of national systems in the areas of legislation, judiciary and execution.

With this explanation, the Court will not have this jurisdiction to file a petition independently and directly on the behalf of the victim of the violation of the provisions contained in the Convention and pursue the matter legally within the framework of its rules. Therefore, after the plaintiff's fail in getting results in a competent territorial system, the plaintiff will have the opportunity to refer application to the Court. The concept of jurisdiction in the proceedings of the European Court of Human Rights, especially in the case of IIascu, has been clearly specified.

In this case, the Court has explained the concept of jurisdiction in accordance with the International Law. The European Court of Human Rights has emphasized many times that the European Convention on Human Rights is considered as a part of the Public International Law which of course has been able to have impacts over time in this area and is not merely limited to the framework of the rules of the Public International Law. In International Law, the principle is based on this that the concept of jurisdiction has a territorial horizon and is limited to the sphere of the sovereignty of a state, but exceptionally, with special circumstances, this jurisdiction can be extended to the outside borders of the state and facilitates for that state the context of assigning liability for the violation of human rights and freedoms. The extraterritorial application of the Convention and the extension of the obligations of a state towards the citizens of non-member states stem from the nature of human rights treaties. According to the Article 1 of the European Convention on Human Rights: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention".

But in the proceedings of the European Court of Human Rights, the concept of "jurisdiction " is not interpreted as something equivalent to "territory".

Therefore, member states will be held accountable for their actions outside their own territory and the Court will have jurisdiction in this regard.

This procedure can be seen well in the Ocalan case. In this case, the Court accepted the condemnation of the Turkish government within the framework of its obligations to the Convention. Of course, the extraterritorial jurisdiction of the Court in dealing with the extraterrestrial acts of the Contracting States has been well restricted in the Court procedure and the Bankovic case shows this adopted policy by the Court. The Court made such a statement in this case: 'By reference to the regional nature of the Convention on European Human Rights and also citing the need to the execution of the Convention within the framework of the legal territory of member states, the Convention has not been drafted and ratified for implementation in all parts of the world, accordingly, members of the Court unanimously declared the case inadmissible'. On the fist of November 1998, a great turning point took place in the history of the European Court of Human Rights. Until this date, the jurisdiction of the Court

was not mandatory. The European governments had freedom of action, according to the Article 25 of the European Convention on Human Rights, to accept an application for the indemnification of personal damages or, according to the Article 46 of the Convention, to accept the jurisdiction of the European Court of Human Rights. But with the approval of Protocol 11and with placing application mechanism, the jurisdiction of the Court became mandatory. In general, the jurisdiction of the European Court of Human Rights has been defined in the realm of sovereignty of members of the Council of Europe.

The Council of Europe is an institution outside the EU system and was established in 1949 in London. The Council of Europe has two main pillars: The Consultative (Parliamentary) Assembly and the other one the Committee of Ministers. The representatives of the parliaments of member states are present in the Consultative Assembly and the representatives of the member states are present in in the Committee of Ministers with full independence as well. The EU also has a judicial body called the European Court of Justice. The European Court of Human Rights and The European Court of Justice are distinguishable from two aspects. First, the jurisdiction of the European Court of Justice is limited to the countries located in the geographical area of Europe provided that they are members of the European Union. But the jurisdiction of the European Court of Human Rights extends to all member states of the Council of Europe, including non-European countries. Second, the natural person or legal persons of private law do not have the right to appeal to the European Court of Justice to complain about human rights violations by EU member states and in this Court, states are still the subject of international law in the field of human rights; but there is no such restriction in the European Court of Human Rights.

6-2- Explaining the concept of jurisdiction in the European Convention on Human Rights

The Article 1 of the European Convention on Human Rights plays a key role in the system of referral and monitoring of the Convention and because, according to the Convention, the provisions of this article are considered as one of the factors limiting the scope of obligations of states, its interpretation is of great importance in the procedure of the Commission and the European Court of Human Rights.

Given that the preliminary works, which have led to the drafting and the ratification of this Article 1, may be used in its interpretation (as it has been mentioned in the rulings of the Court); it will be useful to express the brief course of the drafting and the ratification of the Article 1.

According to the Article 1of the initial draft of the Convention which was approved by the Parliamentary Assembly of the Council of Europe, member states have to guarantee the execution of the Convention for all persons residing in their territories. When discussing this article in the subcommittee, it was supposed to replace the phrase of "living in" instead of the phrase of “residing in" and the purpose of this amendment was to expand the scope of the Convention to individuals who do not have legal residence in the member states. But in the final amendments, the term "under jurisdiction" was used to expand the scope of the people under support of the Convention.

The mentioned committee, in justifying these amendments, stated that the condition of "residence" was largely restrictive. Therefore, it was felt necessary to extend the scope of the support of the Convention to include all persons within the realm of the territories of states both legally and illegally; and given that residency in the domestic laws of the states has different meanings, in order to avoid possible ambiguities in the implementation of this article, "under jurisdiction" phrase was used at last.

At the time of drafting the Convention, experts and drafters did not want to limit the execution of the Convention to individuals residing in the realm of the territories of states; the flexible phrase of "under jurisdiction" was used for this reason. The Article 1 of the European Convention on Human Rights stipulates: “Contracting States must provide everyone within the realm of their jurisdiction with the freedoms and the rights contained in the part 1 of this Convention”.

Therefore, the responsibility of the governments is not merely limited to the measures that they take in the realms of their territories. This article does not seek to limit the Convention to citizenship or nationality as well; meaning that member states are also held liable for the human rights violations toward foreign nationals under their jurisdiction.

The concept of jurisdiction in the proceedings of the European Court of Human Rights, especially in the case of IIascu, has been clearly specified. In this case, the Court has explained the concept of jurisdiction in accordance with the International Law. The European Court of Human Rights has emphasized many times that the European Convention on Human Rights is considered as a part of the Public International Law which of course has been able to have impacts over time in this area and is not merely limited to the framework of the rules of the Public International Law.

From the point of view of public international law, the term "under jurisdiction" contained in the Article 1 of the Convention in the first place oversees territorial jurisdiction and this jurisdiction often has to be exercised within the realms of the territories of states. The principle of territorial jurisdiction is one of the accepted principles in international law and this principle stems from the right of the sovereignty of states. Of course, this general assumption may be limited under exceptional circumstances including: Where a state is prohibited from exercising domination and sovereignty over a part of its territory. This may be due to the military occupation of the territory by other countries or this may be due to the support of one state for military or political facilities in the territory of another country. From the point of view of international law, the principle is that the concept of jurisdiction has a territorial horizon and is limited to the sovereignty of a state but exceptionally, under special circumstances, this jurisdiction can be extended beyond the borders of a state and it facilitates the context of assigning responsibility for the violation of human rights and freedoms in the form of extraterritorial for that state. The extraterritorial application of the Convention and the extension of the obligations of states toward the nationals of non-member states stems from the nature of human rights treaties. The concept of jurisdiction contained in the Article 1 is not necessarily limited to the national territory of a member state to the Convention. Rather, according to the principles of public international law, the responsibility of a state may also be realized as a result of legal or illegal military operations outside its territory; of course, it depends on the fact that the mentioned measures will eventually lead to the effective control over this land. The obligations of member states to all persons under jurisdiction to guarantee the rights and freedoms contained in the Convention stems from the exercise such control whether this control is exercised by the military or as a result of the local administration of that area. According to the Convention, in any case, states are held liable for the persons and the properties under their jurisdiction. States are also responsible for the actions of their agents and staff who carry out missions outside their territory. Therefore, regarding the nature and scope of the obligations of the states, according to the Article 1 of the Convention, it can be examined in three sections (Nazari, 2011).

7 - Types of Jurisdiction

Pursuant to the Article 32 (1) of the Convention, the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto. Also, in accordance with Article 32 (2) of the Convention, in the event of dispute as to whether the Court has jurisdiction, the Court shall decide. According to the provisions of the Convention, two types of jurisdiction can be recognized for the Court, which are advisory jurisdiction and judicial jurisdiction.

7-1 - Advisory Jurisdiction

The jurisdiction of the European Court of Human Rights is not limited to the judicial review of complaints. It also offers an advisory opinion as the case may be. Advisory jurisdiction has been referred to in the Protocol 11 and now it has been mentioned in the Article 47 of the Convention as well. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions

concerning the interpretation of the Convention and the Protocols thereto. However, such opinions shall deal not with any question relating to the content or the scope of the rights or freedoms defined in Section1 of the Convention and the Protocols thereto. In other words, the Committee of Ministers cannot ask the Court for advisory opinion on the content and the scope of the prescribed rights and freedoms. To request an advisory opinion of the Court must have been approved by a relative majority vote of the representatives entitled to sit on the Committee of Ministers. In a response to this request, the Grand Chamber of the Court will announce its advisory opinion by examining the question. The Grand Chamber of the Court shall decide whether a request for an advisory opinion is within its competence and if the Grand Chamber of the Court does not recognize a request within its advisory jurisdiction, it shall announce its reasons in this regard. Advisory opinions of the Grand Chamber shall be reasonably given by the majority vote of judges. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of judges, any judge shall be entitled to deliver a separate opinion or even to express her/his opposing opinion. The given opinion and or any decision made in this regard must be signed by the President of the Court and the Secretary of the Court; and the Committee of Ministers, the member states and the Secretary-General of the Council of Europe must be informed. The European Convention on Human Rights is an international treaty and is subject to the rules of the interpretation of international treaties.

In general, the principles used in the interpretation of this Convention are: the principle of practical and effective interpretation, the principle of knowing the text of the Convention alive, the principle of the narrow interpretation of exceptions to the principles of the Convention, the principle of integrity in the interpretation of the Convention and the principle of the priority of the Convention over international standards.

7-2 - Judicial jurisdiction

The jurisdiction of the Court relates to claims brought under the Articles 33 and 34 of the Convention. Pursuant to the Article 33, any High Contacting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contacting Party and Pursuant to the Article 34, the Court may receive applications from any person, non-governmental organization or group of individuals claiming to be a victim of the violation of rights contained in the Convention or the Protocols by one of the High Contracting Parties of the rights. After filing a complaint and initially accepting it, the Court will first try to resolve the matter through a friendly settlement procedure; it can be said in the explanation that: "Adopting a friendly settlement procedure for resolving disputes and lawsuits in the Court is known as an important tool in reducing the volume of cases submitted to the Court". If the matter is not resolved peacefully, the Court enters the proceedings and through the proceedings the Court will ultimately issue the appropriate decision and opinion in accordance with the provisions of the Convention and the Protocols thereto. However, the Court may at any stage of the proceeding decide to strike an application out of its list of cases where the circumstances lead to the conclusion that the matter has been resolved. This point has been mentioned in the Article 37 of the Convention (ibid).

8 – The Session of the Plenary Court

A Plenary session of the Court shall be convened at the invitation of the President of the Court or at the request of at least one-third of the judges. This Plenary Court will also have an annual meeting, the quorum required to formalize the plenary sessions of the Court is two-thirds of the elected judges The quorum of the plenary Court shall be the presence of two-thirds of the elected judges in office. According to the Article 25 of the Convention, the functions of the Plenary Court are: electing its President and one or two Vice-Presidents for a period of three years; they may be re-elected; with the possibility of re-

election; setting up Chambers; electing the Presidents of the Chambers; they may be re-elected; adopting the rules of the Court; and electing the Registrar and one or more Deputy Registrar.

8-1 – The Presidency of the Court

In the plenary meeting of the Court, attended by all members, the President of the Court and her/his one or two Vice-Presidents, as well as the Presidents of Chambers, are elected for a period of three years; they may be re-elected for another three years. According to the Rule 9 of the Court, the functions of the President of the Court are: directing and the administrating the Court; being responsible for its relations with the authorities of the Council of Europe; presiding at plenary meetings of the Court, meetings of the Grand Chamber and meetings of the panel of five judges. The President shall not take part in the consideration of cases being heard by Chambers except where he or she is the judge elected in respect of a Contracting Party concerned.

8-2- Sections

According to the Rule 25 of the Court, the Court is divided into at least four Sections. Each judge shall be a member of a Section and the composition of the Sections shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties; members are elected for three years. On a proposal by the President, the plenary Court may constitute an additional Section. According to the Rule 25 of the Court, each Section is directed by a President who is elected at the plenary meeting of the Court. The Vice-Presidents of the Sections (elected by the Sections themselves) will assist the Presidents of the Sections and, if necessary, shall take their places. The Sections are not the judiciary pillars, and as it will be explained, in each Section a judicial Chamber consists of seven members, as well as several three-member committees of judges (Tabatabai, 2009).

8-3 – The Procedure for filing lawsuits in the Court

Filing a lawsuit in the European Court has a special petition form that the plaintiffs use to file complaints. In an initial stage, however, a complain can be filed in the Court with a simple letter, but after six weeks from the date of acceptance letter, the full petition form must be submitted to the Court.

Although the official languages of the Court are English and French, a preliminary letter can also be sent to any of the official languages of member states. There is no provision that a petition must be filed by a lawyer, and if the petition is to be filed primarily through a representative, the representative does not necessarily have to be a legal representative. No fees are paid to the Court at any stage. In some cases, it is possible to benefit from legal aid during the proceedings. There is no provision in the convention stating that the expenses of the defendant state must be paid by the claimant, however; the reasonable expenses of the plaintiff, whether as a cause of action or that the costs are stated in the Court order for the winning party, can be reimbursed by the defendant state.

Pursuant to the Article 41 of the European Convention, if the Court finds that there has been a violation of any of articles of the Convention articles or the Protocols thereto, the Court shall, if necessary, afford just satisfaction to the injured party and also rule on legal costs and financial and non-financial damages.

The copies of all documents cited must be submitted to the Court along with application form. The Court conducts its activities based on the principle of openness of the Court and the course of the hearings. Therefore, not only the rulings of the Court and its decisions regarding the admissibility or inadmissibility of lawsuits are exposed to everyone but also all the documents deposited with the Registrar.

In this way, the identity of applicants shall also be made available to the public unless in accordance with the fourth paragraph of the Rule 43 of Court, applicants who do not wish their identity to be kept disclosed to the public shall so indicate and shall submit a written statement of the reasons to the Court and if accepted by the Court, applicants are usually referred to by the signs X and Y. There are no provisions on urgent measures or security measures in the European Convention system, but if applicant's life is in danger or there exists fear of severe or inappropriate behavior, the Court shall take interim measures under the rule 39 of Court.

8-4 – The Procedure of the Court after Admitting an Application

When an application is declared admissible in the Court, the Court will begin to investigate and, if necessary, conduct an examination. Member states also have a duty to ensure the adequate freedom of movement and sufficient security for the representative of the Court and all plaintiff, witnesses and experts. The Court, at first, tries to settle the dispute friendly if possible but if it is not possible, the Court will continue to hear. The Court can reject an application if the applicant does not intend to pursue the application; or the matter has been resolved or for any other reason established by the Court, it is no longer justified to continue the examination of the application.

8-5 - Criteria and Standards for Admitting an Application

These criteria and standards have been set out in the Articles 34 and 35 of the European Convention:

First of all, the applicant be able to prove that she/ he is a direct or potential victim or among indirect victims and prove that has gone through all domestic authorities to the last stage to realize her/his rights and if there was no reference it was due to the ineffectiveness of that authority.

Second, the applicant should file a complaint in the court no later than six months after the last stage of the issuance of the ruling of the domestic review authority.

Third: that the identity of the applicant must be established for the Court, so unknown and anonymous applications will not be admitted.

Fourth: that the related applications must not been substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement. In other words, the complaint should not be repetitive in substance.

Fifth: that the complaint should not be a kind of abuse of individual application such as repeated applications and addressing a state with inappropriate words and ...

Sixth: that the application should not be manifestly ill-founded.

Seventh: that the application should not be incompatible with the provisions of the European Convention.

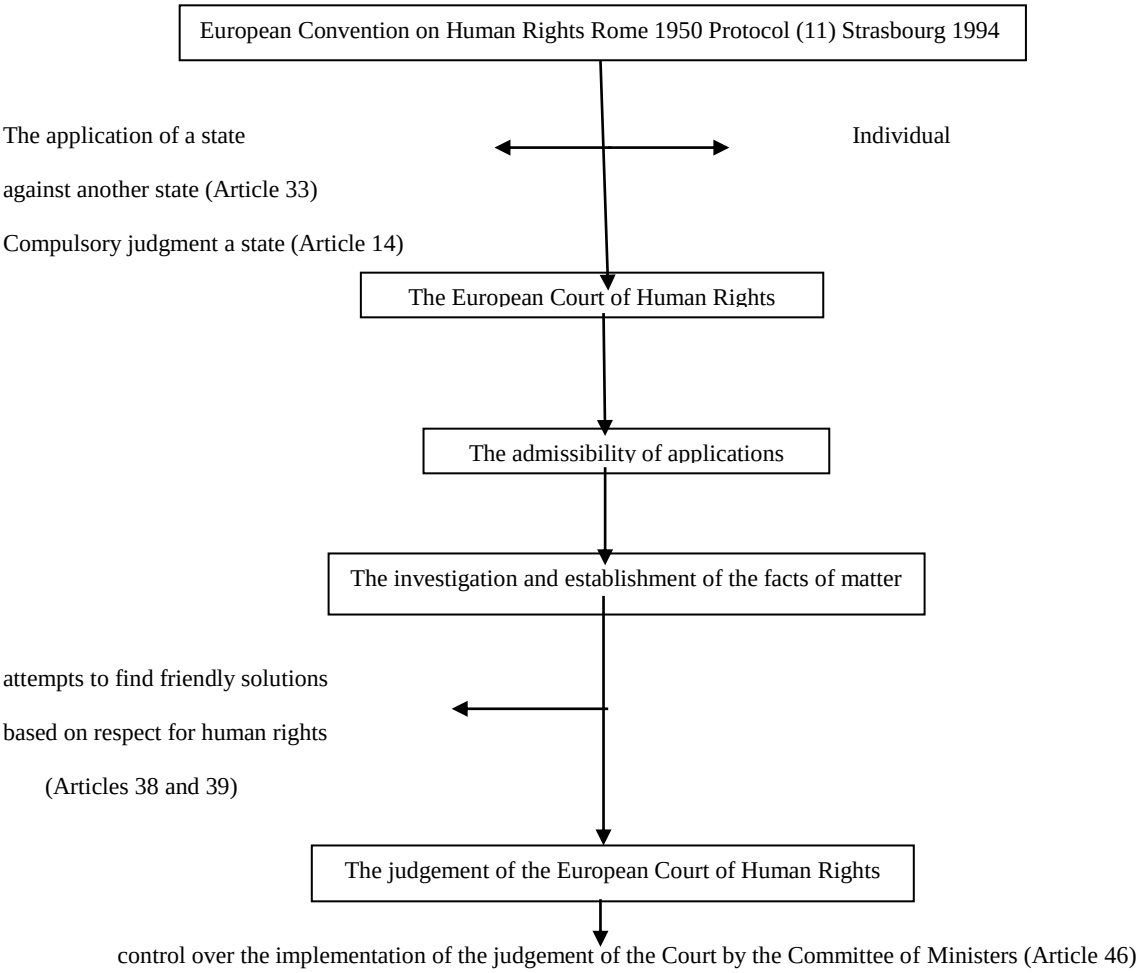
8-6 - The Procedure of Notification and Execution of the Court Order

The reasoned and often detailed judgement of the Court should be published a few months after the submission and registration of the final written opinions. Depending on the time of the notification of the ruling, the parties will be informed of the judgement within a few weeks. A copy of the judgement will be mailed to the parties, the Committee of Ministers, the Secretary General of the Council of Europe and a to third party, if there is any, and that often times judgements are written in both official languages and other judgements are written in one language. After the notification of the judgement, the judgement of the Grand Chamber shall become final when the parties declare that they will not request that the case be referred to the Grand Chamber; or three months after the date of the judgement, if reference of the case to the Grand Chamber has not been requested; or when the panel of the Grand Chamber rejects the

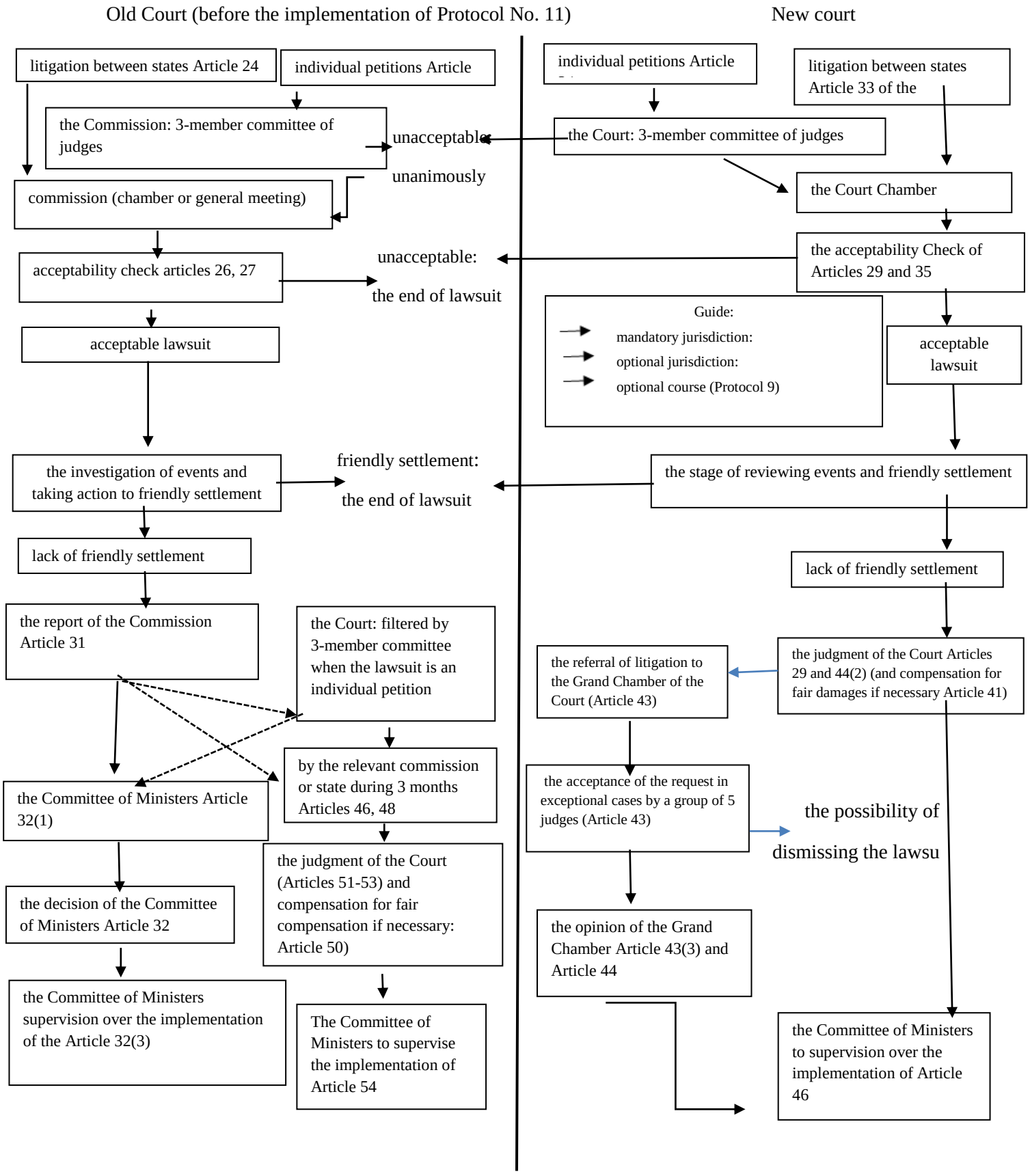
request to refer. In the event of a notice of appeal against a given judgement, the mentioned appeal will be considered by a committee composed of five judges of the Grand Chamber so that they establish whether there is a case among other cases that affects the interpretation of the Convention or it is considered as a serious case of general importance; and if establishing these two conditions, the case will be considered. A retrial is possible by discovering new conclusive facts but it is thought as an exceptional procedure.

The effect of the judgement of the Court is to oblige the defendant government to stop the violation of the Convention and to compensate damages incurred by the defendant, and to restitute the status quo ante. If it is not possible to restitute the status quo ante, the grounds must be provided for complying with the judgement of the Court. If any damage has been done to the claimant, the government must compensate them, too. At present, the judgments of the Court are essentially declaratory in nature and their implementation depends on the commitment of the member states, however; in practice, governments often times have shown that their political prestige is important to them, therefore; in most cases, they have respected the decisions of the Court. Of course, in many cases, the Court has been negligent with governments and has shown that the enforcement aspect of its decisions are important to it. Detailed sources are referred to regarding other issues relating to formal procedures and the methods of compensation (Mousavi Rozan, 2019).

9- The charter of the mechanism for the protection of human rights in the European Convention on Human Rights (Zakerian, 2014)



9-1 - Procedure diagram in the European Court of Human Rights



Conclusion

The structure of the new European Court of Human Rights has been established with the aim of speeding up the handling of complaints with greater capacity and capability than the former two-steps system. This important issue is being done by giving importance to jurisdiction, the manner of election and the qualifications of judges and using all the human resources available in Europe. The manner of the handling of complaints and the Court procedure also provides people with direct access to the Court and the new European Court of Human Rights makes decisions by giving judgments, executing judgments, supervising them, the powers of the President of the Grand Chamber, having supplementary and compulsory jurisdiction especially judicial jurisdiction, and finally going through the stages of proceedings based on the provisions of the Convention and its protocols.

The structure and procedure of the European Court of Human Rights enjoys a regular, direct and several-stages status and has appropriately played a very influential role in deepening and expanding human rights standards and consolidating and institutionalizing them at the level of European countries and it seeks to prevent any violation of the human rights of citizens of member states and also it had an influential role in the formation of Human Rights Conventions in other areas that is an undeniable issue. With the experience of the establishment of such a court, it seems necessary to establish an Islamic human rights court. The Organization of the Islamic Conference adopted the Islamic Declaration of Law (Cairo Declaration) on 5 August 1990 in Cairo and this declaration is usually considered as an Islamic reaction to the Universal Declaration of Human Rights after World War II in 9141.

But thirty-nine years after the enactment and recognition of the inherent human rights in the document, an oversight body for the implementation of those rights, like the European Court of Human Rights which is established, has not been formed and this is while Islamic countries face numerous human rights issues, and this makes it necessary to address the establishment of an Islamic human rights court, and if Islamic governments will, this issue would be realized.

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