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The European Court of Human Rights: A Study on the Effectiveness of Judicial Procedures and Decisions

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Abstract:

This study examines the efficiency of the European Court of Human Rights through an analysis of its litigation procedure, the mechanisms for issuing judgments, and the effectiveness of those mechanisms in practice. The research focuses on the aptitude of the Court to manage applications efficiently and maintain the right to a fair hearing within the boundaries of the European Convention on Human Rights.

The findings show that the European Court of Human Rights played a key role in developing fair-trial guarantees; however, its procedure still faces practical problems of various types. Even within these limitations, the Court remains a very important judicial body within the larger European human-rights protection system. Its procedural

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mechanisms must, hence, be continuously improved if procedural justice is ever to be fully realysed.

Keywords: European Court of Human Rights; fair trial; European Convention on Human Rights; prosecution; judgments; decisions.

1. INTRODUCTION

The European system was among the first to establish a judicial supervisory mechanism capable of examining allegations of violations of the 1950 European Convention on Human Rights, thus establishing an advanced system for the protection of human rights. In this regard, the European Court of Human Rights was created as the supervisory organ responsible for compliance with the Convention; which represents a major milestone in the development of international human-rights protection.

The European Court of Human Rights is one of the fundamental pillars forming part of the European judicial architecture. It is an international mechanism in charge of ensuring that the basic rights and freedoms of persons are respected against violations committed by States Parties to the European Convention on Human Rights.

The member States of the Council of Europe estimated that the supervisory mechanisms established under the Convention needed far-reaching restructuring with a view to enhancing the effective protection of human rights and fundamental freedoms. This estimation was

motivated, in particular, by the exponential growth in applications and by the steady expansion of the Council of Europe's membership. The States decided, on this basis, to revise certain provisions of the Convention, notably with the aim of replacing the Commission and the Court by a new permanent Court.

The amendment came in the form of Protocol No. 11, which was adopted by the Heads of State and Government in October 1993, opened for signature on 11 May 1994, and took effect on 1 November 1998. It was succeeded by Protocol No. 14,[1] adopted with a view to restructuring and further improving the procedural mechanism of the European Court of Human Rights, speeding up the procedures' process, and shortening the time taken to deliver judgments, due to the tremendous increase in applications submitted to the Court, itself a result of the increasing number of new States joining the Convention system.

Whereas the inflow of complaints, particularly those of Central and Eastern European States, led to a significant increase in the number of applications lodged with the Court, thirteen European States joined the Council of Europe between 1998-the date of entry into force of Protocol No. 11-and the adoption of Protocol No. 14 on 15 May 2004. After the

[1]-Protocol No. 14 to the European Convention on Human Rights was adopted on 13/5/2004 and entered into force on 1/6/2010.

membership increased to 47 States, it was required that appropriate amendments be made to the protection mechanism of the Convention. Largely for that purpose, the European Commission of Human Rights was abolished and only one body-the European Court of Human Rights-remained as the one entrusted with ensuring the faithful implementation of the Convention by the States Parties. In turn, the right of applying was granted to individuals without the need for the prior consent of the respondent State, although this right was made subject to appropriate procedural guarantees and restrictions.

This research is important, as it examines one of the principal judicial mechanisms within the European system for the protection of rights and freedoms, and evaluates its capacity to secure procedural judicial justice. In so doing, the research facilitates the understanding of the relationship between international law and the effectiveness of judicial implementation at the national level.

The central research question would then be: amid the European Court of Human Rights' supervisory judicial function, how far do the procedures before the Court and the judgments it delivers ensure the effective protection of the rights guaranteed by the European Convention on Human Rights?

It follows a descriptive methodology regarding the Court's legal and institutional framework, its structure, composition, and judicial jurisdictions. The research further analyzes relevant provisions of the European Convention on Human Rights and its additional Protocols. In relation, an analytical method is used to study the efficiency of the judicial procedures of the Court and the influence of its case-law concerning the protection of procedural judicial justice.

2. The European Court of Human Rights: Legal Institutional Framework:

the judicial protection mechanism for fundamental rights and freedoms in the European system is based since its establishment under the 1950 European Convention on Human Rights, the Court has undergone institutional development, transforming from a judicial body with limited powers and mechanisms into a permanent judicial institution with a broad mandate, able to exercise effective oversight of the obligations of the States Parties.

2.1 The Legal foundation of the European Court of Human Rights: The European Court of Human Rights is one of the most important international judicial mechanisms established to ensure respect for fundamental rights and freedoms, which are stipulated in the 1950 European Convention on Human Rights. Its headquarters are in Strasbourg. The European Court of Human Rights in the old system was a judicial body consisting of a number of judges equal to the number of member states of the Council of Europe.

The European Court of Human Rights consists of 47 independent judges (one judge for each State Party). The Court may receive complaints from any person, non-governmental organization, group, or individual claiming to be a victim of a violation by a State Party of the rights set forth in the Convention or its Protocols.

The judges of the Court are elected for 9 years by the Parliamentary Assembly of the Council of Europe by a majority vote from among the candidates on a list submitted by the Council of Europe[2].The nomination process takes into account the need to represent major regions and their legal systems, "balanced representation in elections between genders," and the necessity of choosing a competent person regardless of their nationality[3]. This embodies the principle of the effective judge. Although each judge is elected from a specific State Party, they do not represent their countries when deciding cases. They perform their duties in a personal and completely independent capacity. The international judicial representation of each State Party guarantees the independence of judges and ensures that the State is not represented in judgments[4].

International judicial representation for each State Party guarantees the independence of judges and the absence of state

[2] -See Article 40 of the Convention concerning the term of office of judges, following the entry into force of Protocol No. 14.

[3] -European Convention on Human Rights, Article (21/1).

[4] -Françoise Tulkens, and others, Judge Loukis Loucaides, An Alternative View on the Jurisprudence of the European Court of Human Rights, Acollection of Separate Opinions (1998-2007), Leiden, Boston, 2008, p11.

representation when ruling. In addition to its dynamic judicial structure, the Court is given the ability to:

- Handle large numbers of complaints (organizational efficiency).
- Distinguish between routine issues and substantive or highly important issues.
- Ensure fair procedures, the independence of judges, and the impartiality of appeals.
- Enhance confidence in the Court by both individuals and states[5].

What distinguishes the European Court of Human Rights is that its composition takes into account factors that make it more capable of performing the tasks assigned to it, whether in terms of the composition of its judges and the criteria adopted in their selection, or in terms of the formation of the Court itself with its committees and chambers[6].

2.2 Jurisdiction of the European Court of Human Rights: The jurisdiction of the European Court of Human Rights extends to all individual claims and petitions (Article 34) relating to the interpretation or application of the European Convention on Human Rights and its Protocols. Article 34, as amended by Protocol No. 11, of the European Convention on Human Rights establishes the right of individual applications, allowing any person, non-governmental organization, or group of individuals to bring a case to the Court if they claim to be the victim of a violation of their rights under the Convention.

[5] -Ibid.

[6] -Articles (21, 23, 24) of the European Convention on Human Rights, Article 2 of Protocol 14.

The High Contracting Parties to the Convention must not hinder the effective exercise of this right. This is an original jurisdiction that is unique to the Court, by which it decides on the matters and cases presented to it with a decision that is binding on the parties.

The Court's jurisdiction to consider this type of complaint is not optional, but is mandatory by virtue of Protocol No. 11 annexed to the Convention, which granted the Court compulsory jurisdiction to consider these complaints. With reference to the texts of the Convention and its supplementary Protocols, the Court's jurisdiction is limited to considering matters relating to the interpretation and application of the European Convention and its Protocols, as stipulated in Article 32 of Protocol No. 11 annexed to the Convention, which states:

- The Court's jurisdiction extends to all matters relating to the interpretation and application of the Convention and its Protocols, which are referred to it, as stipulated in Articles 33, 34, and 47.
- In case of a dispute regarding the Court's jurisdiction, the Court shall decide on it.

This article shows that the Court, within the scope of its jurisdiction, exercises the task of ensuring the protection and non-violation of the rights and freedoms contained in the European Convention and its annexed Protocols, and the ruling on its jurisdiction is a "jurisdiction of

jurisdiction." Furthermore, according to Article 32, the Court does not consider matters relating to the interpretation or application of any other European document, such as the European Social Charter[7].

2.3 Rights Protected Under the Jurisdiction of the European Court of Human Rights : According to Article 32 of Protocol No. 11 to the European Convention on Human Rights, the Court, acting within the jurisdiction conferred upon it, is entrusted with ensuring the protection of, and preventing interferences with, the rights and freedoms established in the Convention and its Protocols.

The purpose of the Convention was, therefore, to endow these pre-existing rights with a regional legal framework, to subject their implementation to supranational supervision, and to promote unity among the member States of the Council of Europe[8]. The Protocols subsequently[9] appended to the Convention introduced further rights not contained in the original text.

The European Convention on Human Rights guarantees fundamental rights, including the right to life and a fair trial, the

[7] -Mohammad Yusuf Alwan, Mohammad Khalil Al-Mousa,International Human Rights Law, Sources and Means of Control, Part One, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2008, pp. 160-166.

[8]-Nabil Mostafa Ibrahim Khalil, International Mechanisms for the Protection of Human Rights, Dar Al-Nahda Al-Arabiya, Cairo, 2005 edition, p. 337.

[9] -Two new protocols have been adopted but have not yet entered into force: Protocol No. 15 dated 24 June 2013, and Protocol No. 16 dated 2 October 2013.

prohibition of torture and slavery, the right to live in decent conditions, and the right to respect for private and family life. It also guarantees political rights such as freedom of expression, assembly, and association. The prohibition of discrimination is a fundamental right explicitly guaranteed by the Convention. Furthermore, it includes women's rights in accordance with international conventions established under the auspices of the United Nations, such as the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights[10].

The European Court has contributed to interpreting the rights contained in the Convention in a way that accommodates new rights, such as environmental rights, and to developing the precautionary principle within the framework of international law11. Notable examples include Guerra and Others v. Italy, in which the applicants argued, on the basis of Article 8, that pollution generated by a chemical fertiliser factory situated near their homes constituted an interference with their private and family life. Similarly, in López Ostra v. Spain, the applicant contended that gas emissions and offensive odours emanating from solid and liquid

[10] -Lamara Abderraza, Women's Rights Between Secular Legislation and Divine Laws, Journal of Legal Studies and Researche, Vol: 10 No 2, June 2025, p. 63-81.

[11]- Abdelaziz selma achba, Mansouri Mohamed, The Legal and Judicial Foundations of the Precautionary Principle in International Environmental Law: A Study of the Legislative Framework and International Policies, Journal of Legal Studies and Researche, Vol: 10 No 2, June 2025, p. 97-116

waste treatment facilities located only twelve metres from her residence posed health hazards and interfered with her ability to choose her home, thereby constituting a violation of Article 8[12].

In the application of such reservations, the former European Commission of Human Rights declared itself incompetent to review a number of complaints lodged against Austria, insofar as they related to Article 6 a provision with respect to which Austria had entered a reservation. However, the Court subsequently adopted an expansive approach when interpreting its substantive jurisdiction, extending protection to rights not expressly mentioned in the Convention but deemed indispensable to securing the enjoyment of the rights expressly guaranteed therein. This includes both procedural safeguards and substantive rights flowing from the principle of a fair trial enshrined in the Convention[13].

3. Litigation Procedures and Fair Trial Guarantees before the European Court of Human Rights: An Effectiveness Study : The proceedings before the European Court of Human Rights represent the cornerstone of its oversight role regarding the extent to which States Parties respect the rights and freedoms guaranteed in the European Convention. In addition to the Court's legal and institutional structure, litigation procedures constitute the practical framework through which

[12] - Mohammad Yusuf Alwan, Mohammad Khalil Al-Mousa, Op. Cit., pp. 433–434.

[13] -Nabil Mostafa Ibrahim Khalil, Op.Cit, p 888.

the Court's protective function is embodied, especially with regard to the fair trial standards set out in Article 6 of the Convention.

the right to a fair trial results from Art. 6, sec. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms: "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)". A fair trial is the foundation of a democratic rule of law. Every person has the right to expect the state to respect the right to a fair trial.

The guarantee of a fair trial is a guarantee of impartiality, assessment of a case in an objective, independent and impartial manner this is of great importance for the subject of judgment/settlement of the judiciary. It is an expression of respect for the principles of a democratic state of law. The judiciary in the European Convention on Human Rights is dominated by the belief that the right to a fair trial is not only the rule that defines the trial, but also a guarantee that should be interpreted through the content of this article[14].

The procedures are of particular importance given the growing role of the Court as the first international judicial body that grants individuals the possibility of direct recourse to it.

[14] - Nuala Mole and Catharina Harby, The right to a fair trial, Human rights handbooks, No. 3, 1st edition 2001; 2nd edition, August 2006, Council of Europe, p4.

3.1. The Claimant before the European Court of Human Rights: Standing and Interest in Bringing the Case : Article 34 of the European Convention on Human Rights (ECHR) establishes the right of individuals, non-governmental organisations, and groups to submit applications to the European Court of Human Rights (ECtHR) when they believe that their rights under the ECHR or its Protocols have been violated. Based on this article, it can be said that the status of the plaintiff before the European Court of Human Rights is determined as follows:

3.1.1 Individual Claims : Under the original text of the European Convention (Article 25), individuals did not have the right to lodge complaints against states, except before the European Commission of Human Rights. However, since November 1998, when Protocol No. 11 entered into force, individuals have had the right to directly appeal to the court.

According to Article 34, any person, non-governmental organization, or group of individuals may file complaints with the Court in the event of a violation of their rights recognized by the Convention. The number of individual complaints increased by 15% between 1998 and 2003, and in 2005 alone, it recorded an increase of 2%. The Court received approximately 900 letters and 250 phone calls daily.The Court's website has been visited by 57 million people. Judgments were issued on 10,829 applications (compared to 6,931 in 2023, an increase of 56%). A significant proportion of these applications included [a specific type of

application], resulting in 1,102 judgments, a 9% increase compared to 202315. For a complaint to be accepted before the European Court of Human Rights, the following conditions must be met:

- **Victim status**: The complainant must have a legal standing and a direct interest, meaning that one of their rights has been violated, and the victim must provide evidence of this violation.
- **Exhaustion of domestic remedies (Article 35):** The Court has broad discretion in applying this rule, based on its interpretations and case law. This requirement aims to ensure effective protection of human rights and fundamental freedoms.
- **Time limit:** The complaint must be filed within six months from the date of the final domestic decision (Article 35/1).
- **Non-anonymity:** Complaints must not be submitted anonymously (Article 35, Paragraph A/B).
- **Originality:** The complaint must not have been previously submitted to the Court or any other international body.
- **Substantive grounds:** The complaint must be based on valid legal grounds in accordance with the European Convention on Human Rights and its protocols and must not constitute an abuse of the right to submit a complaint (Article 35/3).

15- Mohammad Yusuf Alwan, Mohammad Khalil Al-Mousa, Op. Cit, p 296.

- **Significance of harm:** The harm suffered by the individual victim must be substantial and serious. This requirement was introduced by Article 35 of Protocol No. 14 to the European Convention on Human Rights. The Court is authorized to assess the extent of the damage, determining whether it is significant and serious. This raises questions about the threshold for harm and whether it might inadvertently hinder individuals from exercising their right to file a complaint.
- **No nationality or residency restrictions:** Individual complaints are not linked to the complainant's nationality or place of residence. Foreigners, whether citizens of the signatory states or not, and even stateless persons, may bring complaints to the Court, provided the violations occurred in the relevant countries. This provision also extends protection to incapacitated persons and prisoners.

3.1.2 Claims Between States: According to Article 33 of the amended text of the European Convention on Human Rights, any State Party to the Convention may submit a petition or application against another State Party concerning any violation of the rights established in the Convention or its protocols. This procedure does not require the state bringing the claim to have a personal or direct interest. Rather, there exists an objective or general right that allows any State Party to initiate proceedings on behalf of the parties to the Convention. The European Court of Human

Rights has consistently recognized this as an inherent right of every State Party to protect European public order[16].

The Convention stipulates that for inter-State communications to be accepted, the conditions set forth in Article 35 of the Convention, as amended by Protocol No. 11, must be met. These are general conditions applicable to all allegations of human rights violations, whether they involve communications between states or complaints from individuals. States rarely resort to such claims, as they cautiously avoid providing other States Parties with the opportunity to bring lawsuits against them under this mechanism.

Consequently, the number of claims submitted by states to the Court has not exceeded a few dozen petitions. One notable example is the case accepted by the European Court of Human Rights in 1996, brought by Cyprus against Turkey, concerning serious human rights violations committed by the Turkish military following the invasion of the island[17].

3.2 .The Procedural Framework of Applications Before the European Court of Human Rights: From Lodging the Application to the Issuance of Judgment : Applications brought before the European Court of Human Rights are dealt with in two separate stages: firstly, the

[16] -Mohammad Yusuf Alwan, Mohammad Khalil Al-Mousa, Op. Cit, p 296.

[17] -Djunaidi, Mabrouk, The complaints system as a mechanism for the international application of human rights agreements, doctorate in law, Mohamed Khider University - Batna - 2014/2015, p252.

examination of their admissibility, and secondly, consideration of the merits and judgment. Its judgments are normally supported by far-reaching guarantees aimed at their execution and compliance by the respondent State or States concerned.

3.2.1 .Examination of the Admissibility of the Application : At this stage, the President of the Court refers the application to one of the Court's Sections. The President of the Section then appoints a Judge Rapporteur to conduct a preliminary examination. Pursuant to Article 7 of Protocol No. 14, a single judge of the European Court of Human Rights may now decide on the admissibility or inadmissibility of an individual application, or strike it out of the list of cases; such a decision is final. This constitutes a significant procedural change, as such matters were previously determined by a three-judge Committee. The single judge is assisted in this task by a number of rapporteurs, who need not themselves be judges but may be drawn from the Registry of the Court[18].

The judge may refer the application to a committee of three judges, which decides on admissibility by a final and unanimous decision[19]. According to Article 8 of Protocol No. 14, the three-judge Committee is also empowered to deal with "repetitive cases," that is, applications

[18] -In 2024, 25,990 applications were declared rejected or struck off the case list by a single judge, panel, chamber, or grand chamber. See : Analysis of statistics 2024, ECHR, January 2025, p3.

[19]- Article 28 of the European Convention on Human Rights as amended by Protocol No. 11.

raising issues that have previously been adjudicated by the Court and concern alleged violations identical or analogous to those previously examined. In such cases, the Committee may rule not only on admissibility but also on the merits where the legal question has already been settled in the Court's case law.

If there is no unanimous decision, the application is referred to a Chamber of seven judges[20]of the Court for a procedure both as to admissibility and as to the merits. The Rapporteur is entrusted with the preparation of the case file, a task that involves communicating with the parties to request written observations. The Chamber then delivers its decision on admissibility and its judgment on the merits, separately, in accordance with the relevant Rules of Procedure[21].

Where an application is declared admissible, the Chamber or the Grand Chamber may request further written information or observations from the parties, and may also hold a hearing. The Convention also allows for intervention by third parties in proceedings before the Court. According to Article 36, as amended by Protocol No. 11, States Parties are authorized to intervene before any formation of the Court by submitting written statements and attending hearings in cases where the application has been filed by one of their nationals. Moreover, the President of the

[20] - Mohammad Al-Amin Al-Maydani, Op. Cit, p. 148.

[21] -Article (29/3) of the European Convention on Human Rights.

Court may invite any State Party to the Convention that is not a party to the proceedings, as well as any person they see fit, to submit written observations on the issues raised by the case.

Article 13 of Protocol No. 14 empowers the Commissioner for Human Rights to "submit written observations and take part in hearings in any case before a Chamber or the Grand Chamber," strengthening the Commissioner's role by entrusting him or her with a new mandate to monitor how far States Parties comply with their obligations under the European Convention on Human Rights.

At the close of this stage, once an application has been declared admissible, the proceedings may conclude in one of two ways: the application may be struck out where the Court determines that continued examination is no longer justified[22], or the Court may seek to facilitate a friendly settlement between the applicant and the respondent State[23]. Protocol No. 14 in turn seeks to reinforce the friendly-settlement mechanism throughout all stages of proceedings before the Court. The Committee of Ministers remains responsible for supervising the execution of Court judgments rendered pursuant to such settlements[24].

3.2.2 Procedures for the Examination of Individual Applications : Within the European Court of Human Rights, there are two formations competent to examine individual applications referred to the Court: The

[22] -Article 37 of the European Convention on Human Rights.

[23] -Junaidi Mabrouk, op. cit., p. 261.

[24] -Article 15 of Protocol No. 14.

Chambers and the Grand Chamber. The Chambers constitute, in principle, the judicial formation responsible for determining the admissibility of applications that have been declared admissible and for issuing judgments on the merits. Unless the Court decides otherwise[25], hearings before the Chambers are public. All procedural steps taken before the Chambers bear a judicial character[26], such as the hearing of witnesses, with the participation of the parties, and appointment of experts. The parties and their representatives are entitled to cross-examine witnesses and experts, and the aforementioned procedure takes place publicly and is an essential guarantee of the right to a fair trial.

A case can be relinquished by a Chamber to the Grand Chamber, consisting of the President of the Court, the Vice-President, the Presidents of the Chambers, and a number of judges selected in accordance with the Court's Rules of Procedure. Relinquishment may take place at the request of one of the parties or where the Chamber considers that the case raises a serious question affecting the interpretation of the Convention or its Protocols, or that its resolution might lead to an outcome inconsistent

[25] -Article 33 of the Statute of the European Court of Human Rights.

[26] -Articles 63–70 of the Statute of the European Court of Human Rights.

with previous case law. The Grand Chamber settles the case by issuing a final judgment[27].

3.3 Effectiveness of the Judgments of the European Court of Human Rights: The effectiveness of the judgments of the European Court of Human Rights depends on the degree to which they are capable of being executed. Evidently, the Court's judgments become enforceable only once they have acquired final and binding force. The Court's judgments do not have automatic executory force in the regional legal orders of the States Parties-the Court is not an annulment jurisdiction.

Although binding in nature, judgments are not self-executing; States are left with full discretion in choosing the means they deem appropriate for implementing the Court's judgments within their own legal systems and for remedying or ceasing the violations found, except in so far as such a judgment awards "just satisfaction" to the applicant, in which case the respondent State has an express obligation to pay[28].

Under the European Convention on Human Rights, the Committee of Ministers of the Council of Europe has been vested with a mandate to supervise the execution of the judgments of the Court[29] by the respondent States. However, this supervisory power is very limited and cannot be compared with the enforcement powers vested in the United

[27] -Article (43/2, 3) of the European Convention on Human Rights as amended by Protocol No. 11.

[28] - Alwan Yusuf, Mohammad Khalil Al-Mousa, Op.Cit, p. 305.

[29] -Article 46 of the European Convention on Human Rights.

Nations Security Council under the UN Charter, particularly with respect to coercive measures.

Where a judgment is issued, the Committee of Ministers invites the State or States concerned to inform it of the measures adopted subsequent to the finding of a violation. In those cases where a State does not reply to the Committee of Ministers' request, the case is put back on the agenda of the Committee of Ministers for six months with a view to encouraging the State to execute the judgment. If, at the end of this six-month period, the State has not executed the judgment, the Committee adopts a resolution summing up the situation in light of the information provided by the State concerned.

Protocol No. 14 conferred a new judicial dimension in enabling the Committee of Ministers to bring infringement proceedings before the European Court of Human Rights where a State Party refuses to execute the Court's judgments. In these circumstances, the Committee was previously restricted to threatening the State with expulsion from the Council of Europe in the event of persistent non-compliance[30].

Article 10 of Protocol No. 14 grants the Committee of Ministers the right to bring proceedings before the Grand Chamber of the Court by lodging a complaint against a Contracting State that refuses to implement

[30] -Mohammad Al-Amin Al-Maydani, Op.Cit, p. 31.

a final judgment concerning a case to which it was a party after having formally drawn that State's attention to its failure to comply, in accordance with Article 46 of the Convention. The Committee may also request the Court to provide an interpretation of a judgment it has previously issued, under certain circumstances.

In short, the European Court of Human Rights' judgments do not have an autonomous executory force in national legal orders. Yet the question remains: do States in practice refrain from giving effect to the Court's judgments within their legal orders, thereby diminishing the Court's effectiveness and failing to satisfy the victims of violations?

The answer to this question is given by Article (46/1) of the European Convention on Human Rights, which prescribes the obligation of the States Parties to abide by the judgments of the Court in any case to which they are parties. This obligation is intrinsically part of the Convention and prevails over the constitutional norms of the States Parties. In other words, at the heart of the European system lies the principle of legality-of law and of institutions-built on the undertaking of States to comply with the judgments of the European Court of Human Rights[31]. The Court itself characterized, in one judgment[32], the

[31] -Başak Çalı, Anne Koch & Nicola Bruch, The Legitimacy of the European Court of Human Rights: The View from the Ground, Strasbourg, 2 May 2011. Avialable: https://ecthrproject.files.wordpress.com/.../ecthrlegit

[32]-Loizidou v. Turkey, ECtHR, Judgment of 23 March 1995, Series A no. 310, para. 70.

Convention as "an instrument establishing a European public order," a system which overrides the constitutions of the Contracting States.

A State Party's refusal to comply with a judgment of the Court also constitutes a violation of Article 3 of the Statute of the Council of Europe, which requires States to respect the rule of law. It may give rise to sanctions, including suspension of the State's right to participate in the Committee of Ministers until it executes the judgment[33].

The States Parties to the Convention have tried to amend and adapt their national laws in order to bring it into conformity with the Convention and with the Court's jurisprudence. This trend unmistakably reflects the States' recognition of their duty to comply with the requirements of the Convention and the judicial interpretations developed by the European Court of Human Rights.

Given the declaratory nature of the judgments of the European Court of Human Rights34, whereby the Court finds a violation of the Convention or its Protocols, it may be said that a judgment of the Court does not, in itself, halt an ongoing violation of the rights of the individual

[33] -Alwan Yusuf, Mohammad Khalil Al-Mousa, Op.Cit, p. 308.

[34] -ECtHR Judgment in Marckx v. Belgium, 13 June 1979, para. 31. See: Maamach Salah Eddine, European Human Rights Law: Between Theory and Practice, Master's Thesis, University of Algiers, 2006/2007, p. 154.

applicant[35]. However, the binding force of the Court's judgments enables the removal of the consequences arising from such violations through the award of just satisfaction where domestic law does not permit, or permits only inadequately, the eradication of the effects of the impugned measure (Article 46/2)[36].

The Court's judgments do not extend to the annulment of legislation or the invalidation of acts or contracts within the domestic legal system, nor do they have effect erga omnes. They bind only the parties to the dispute and only in respect of the specific case adjudicated. Yet this raises the following question: does this mean that the judgments of the European Court of Human Rights are incapable of halting violations of the rights guaranteed by the Convention and its Protocols? A serious and fully effective resolution has not yet been entirely achieved, for the minimum purpose of an application is to secure cessation of the violation.

The obligation of the States to comply with the judgments of the Court is an obligation of result, according to Article 46 of the Convention. The State retains discretion in the choice of means to achieve compliance.

35- E. Lambert, Les effets des arrêts de la Cour Européenne des Droits de l'Homme, Brussels, Bruylant, 1999, p. 59.

36 -Shai Dothan, Judicial Tactics in the European Court of Human Rights, Public Law and Legal Theory Working Papers, University of Chicago Law School, Chicago Unbound, at : chicagounbound.uchicago.edu/.../viewcontent.cgi?...(date of view 01-11-2025).

Implementing judgments therefore needs the intervention of domestic law in order to give effect to them. But does this imply that the European system is vulnerable?

Case law from the European Court of Human Rights demonstrates the opposite conclusion: even though the Court does not issue binding executive orders to States, nor does it annul domestic judgments that contravene the Convention, it nevertheless exerts albeit indirectly serious pressure on domestic legal systems, prompting legislative or judicial reforms in order to secure greater conformity with the European Convention on Human Rights and enabling far greater harmonisation amongst European legal systems. This is all part of the Court's wider aim of contributing to the coordination and coherence of European legislation[37]. Regarding the judgments that award just satisfaction, there is an unequivocal obligation upon the respondent State to pay the sums awarded[38].

Among the most important judgments in this sense is Allenet de Ribemont v. France (10 February 1995), in which the Court ordered France to pay 1,000 francs in costs and expenses, and two million francs in compensation for material and moral damage suffered by an innocent

[37] -Maamach Salah Eddine, Op.Cit, p. 162.

[38]- Ibid, p. 157.

individual whom the Ministry of the Interior had publicly accused of involvement in the assassination of a Member of Parliament and former minister.

Another important example is the case brought by Denmark against Turkey regarding the Danish national of Kurdish origin, Kemal Koc, who had travelled to attend his brother's funeral. He was subjected to ill-treatment during his arrest and interrogation in Ankara on 5 July 1996, under accusations of assisting the organization known as the "PKK." He was sentenced to four and a half years' imprisonment. On 5 April 2000, the European Court of Human Rights approved a friendly settlement between the two governments under which the Turkish authorities agreed to pay €450,000 in compensation and issue a formal apology for the ill-treatment suffered. The case also contributed to Turkey's subsequent adoption of new legislation and reforms in the field of human rights[39]

4. CONCLUSION :

In light of the foregoing, and within the framework of addressing the study's central research question, the present inquiry yielded the following findings:

[39] -Djunaidi, Mabrouk, Op. Cit, p. 252.

- The European Union's common framework for the protection of human rights is intrinsically linked to a European Court of Justice endowed with compulsory jurisdiction. What may be regarded as the most significant achievement in ensuring effective individual protection in Europe is the recognition of individuals' procedural capacity, which enables them to access judicial bodies directly.
- Several guarantees of a fair trial have been embodied in practice, including the public nature of proceedings, equality before the law between the applicant and the respondent State, the selection of a competent and impartial judge, and the requirement to provide reasoned judgments.
- The Court's jurisdiction extends to all matters concerning the interpretation and application of the Convention and its Protocols that are referred to it, excluding human rights treaties concluded within the framework of the European public order.
- The Court's judgments are binding only on the States that are parties to the case, which constitutes a notable limitation.
- The Court's judgments carry a moral obligation and do not possess direct enforceability within the territories of the States Parties, whose domestic laws and judicial decisions acquire the force of res judicata.

Based on the findings presented, the study puts forward the following recommendation:

- ✓ . Reviewing the admissibility criteria for applications: A proposal is made to re-examine certain criteria related to the severity of harm and its impact on access for genuine victims, with a view to reducing obstacles faced by individuals.
- ✓ . Strengthening mechanisms for the implementation of judgments at the national level: This entails the establishment of national oversight mechanisms within Member States to monitor the execution of the Court's judgments, including parliamentary committees or competent governmental bodies.
- ✓ . Promoting comparative studies: Academic research should be encouraged to assess and compare the impact of the Court's judgments on national policies, with a view to enhancing understanding of the effectiveness of the European Court of Human Rights within the broader European judicial system.

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