

## The personal jurisdiction of the Arab court for human rights compared to the European court of human rights

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**Abstract:** The research dealt with the personal jurisdiction of the Arab Court for Human Rights compared to the European Court of Human Rights, by indicating who are the natural persons and legal persons who are entitled to file claims and the conditions for their acceptance with the two courts, adopting the analytical approach and the comparative approach to find out the deficiencies in the statute of the Arab Court for Human Rights and address them. Several results and proposals were reached. As for the most important results, they are represented by the narrowing of the scope of personal jurisdiction in the statute of the Arab Court for Human Rights and confining it mainly to the states parties to the Arab Charter for Human Rights, and on the condition that there is a personal interest for the state in the case, while the scope of personal jurisdiction in the European Court of Human Rights has expanded to include the states parties to The European Convention on Human Rights without the existence of a personal interest and any individual, non-governmental organization or group of persons, and that the jurisdiction of the Arab Court of Human Rights is optional, while we find it compulsory at the European Court of Human Rights. As for the most important proposals, it is represented by amending the text of Article (19) of the statute of the Arab Court for Human Rights, to expand the scope of personal jurisdiction, by defining the right of individuals, non-governmental organizations, and a group of persons to file lawsuits in response to the development of the individual's status in international law. Also, amending the statute of the Arab Court for Human Rights, by adding a provision that makes the court's jurisdiction compulsory in all cases.

**Keywords:** Human rights, Individual lawsuits, Personal jurisdiction, State lawsuits, The Arab court, The European court.

### 1. Introduction

The Charter of the League of Arab States was concluded in the year 1945 AD, and it is devoid of any legal article dealing with human rights, and the matter continued in this way until the year 1968 AD, and on the occasion of the global celebration of the twentieth anniversary of the issuance of the Universal Declaration of Human Rights, the Arab League established the Permanent Arab Committee for Human Rights.

Where this committee played a positive role in concluding a number of instruments concerned with human rights, and in the forefront of these instruments, the Arab Charter for Human Rights issued in 1994, which contained loopholes that weakened the human rights system, and the Arab Charter for Human Rights was amended in the year 2004, It entered into force on March 16, 2008, and this charter constituted an important step in the path of strengthening the human rights system within the framework of the League of Arab States.

However, mere acknowledgment of human rights is not sufficient to ensure respect for these rights without the existence of an effective protection mechanism. The protection mechanism established by the Charter is represented by the Arab Human Rights Committee, which is entrusted with receiving and studying the reports of the state's parties to this Charter and submitting recommendations to the Council of the League of Arab States, which are recommendations without legal effect.

The Arab Charter for Human Rights did not provide for the establishment of a judicial mechanism for the protection of human rights. The League of Arab States realized this gap in the Charter and the need to address it. It intensified its efforts during the years 2012, 2013, and 2014, which resulted in the adoption of the statute of the Arab Court for Human Rights in the session of the Council of Foreign Ministers held in Cairo 7/9/2014.

The statute of the court enters into force with the ratification of seven countries, which has not been achieved until today.

As for the European level, the European Convention on Human Rights was concluded in 1950, and sixteen protocols were attached to it to keep pace with the development of the course of human rights.

It is the first agreement for the protection of human rights at the level of regional systems, and the establishment of the European Court of Human Rights, which began its work in 1959, and the number of its judges is the number of members of the Council of Europe, and they are now forty-seven judges elected for a period of nine years that is not renewable under the fourteenth protocol amending the

### *1.1. European Convention on Human Rights*

In the beginning, the court was not a permanent judicial body, and its mandate was not compulsory with regard to individual cases.

A radical and deep qualitative development took place in the court system with the conclusion of the Eleventh Protocol, which entered into force on 1/11/1998, whereby the jurisdiction of the court became compulsory in all cases, and it became the only mechanism for the protection of human rights contained in the European Convention on Human Rights of 1950, and all its protocols. modified.

### *1.2. Research Importance*

The importance of the research stems from the importance of an effective protection system to protect human rights in the Arab world, and the mechanism capable of doing so is the Arab Court for Human Rights.

The establishment of the Arab Court for Human Rights constitutes a new qualitative leap in the Arab regional system for human rights, and it is supposed to fill the shortcomings implied by the Arab Charter for Human Rights, which was issued lacking a judicial mechanism protecting the basic rights and freedoms that it stipulated.

It is hoped that the establishment of an Arab court for human rights will achieve effective protection of human rights similar to the human rights courts in the European, American and African regional systems.

We have chosen to address the personal jurisdiction of this court compared to the oldest and most effective European Court of Human Rights in the protection of human rights, which is considered a model to be followed at the level of regional systems, and even at the global level.

We hope that this research will contribute to enriching the Arab legal library in the field of human rights, and that the Arab legislator will benefit from it in order to promote the Arab Court for Human Rights, to make it a judicial mechanism that provides an effective and real guarantee for Arab human rights.

### *1.3. Problematic*

The problem of the research revolves around showing the adequacy of the provisions of the Statute of the Arab Court of Human Rights, in securing effective and real protection for human rights, specifically in terms of the personal jurisdiction of this court, and the conditions for filing cases with it

compared to the oldest European Court of Human Rights in the regional systems, which has become a judicial mechanism Standard by which to measure human rights protection systems.

#### 1.4. Curriculum

The researchers relied on the analytical approach by analyzing the legal texts in the statute of the Arab Court for Human Rights and jurisprudential opinions, as well as the comparative approach, in comparison with the Arab Court for Human Rights in the legal system of the European Court of Human Rights, to find out the deficiencies in the statute of the Arab Court for Human Rights and to address them.

#### 1.5. Search Plan

Accordingly, the research plan was divided into two requirements:

The first requirement: the parties that have the right to file a lawsuit with the Arab Court for Human Rights.

Section One: State Lawsuits.

Section Two: Individual Cases.

The second requirement: the conditions for accepting cases at the Arab Court for Human Rights.

The first section: Conditions for accepting states' claims.

Section Two: Conditions for Acceptance of Individual Claims.

#### 1.6. The First Requirement: The Parties that have the Right to File a Lawsuit with the Arab Court for Human Rights

By the parties to file a case with the Arab Court for Human Rights, we mean the persons who have the right to file complaints with this court compared to the European Court of Human Rights, whether they are natural persons or legal persons, and accordingly we divide this requirement into two branches, the first section deals with states' claims and in the second section We deal with individual cases.

#### 1.7. Section One: State Lawsuits

The statute of the Arab Court for Human Rights guarantees the right of states to file complaints with the Arab Court for Human Rights<sup>1</sup>, but with conditions as follows:

First: That the complaining state and the complained-about state be a party to the statute of the Arab Court for Human Rights, or that it has declared its acceptance of the jurisdiction of the court as referred to in Article (20) of the statute<sup>2</sup>.

It is permissible for the member states of the League of Arab States who are not parties to the statute of the Arab Court of Human Rights to accept the jurisdiction of the court by virtue of a declaration deposited with the General Secretariat, and this declaration can be absolute or restricted to a specific case or a certain period or on the condition of reciprocity.

Second: That the complaining country has a personal interest in the case, that the individual whose rights were violated as stipulated in the Arab Charter on Human Rights of 2004, or any other Arab agreement in the field of human rights, is one of its nationals, that is, he enjoys its nationality.

#### 1.8. This Condition is Criticized from Two Sides

The first aspect: which is the requirement of personal interest for the possibility of resorting to the court, which contradicts the objective nature of human rights rules, this nature that enables any country to file a complaint with the court against any country that has violated the Arab Charter for Human Rights, or any other Arab agreement in the field of human rights. To protect the principle of respect for

<sup>1</sup> . Article (19/1) of the Statute of the Arab Court for Human Rights states: "The state party whose national claims to be a victim of a violation of a human right has the right to resort to the court, provided that the complaining state and the state whose right is complained of are parties to the statute, or that they are have accepted the jurisdiction of the Court as referred to in Article 20 of the Statute."

<sup>2</sup> . See Paragraph (1/2) of Article 20 of the Statute of the Arab Court for Human Rights.

human rights and to strengthen the human rights system, in line with international human rights standards.

The second aspect: represented by the condition that the individual whose rights were violated should have the nationality of the complaining country.

This condition also contradicts human rights standards, as human rights are universal, interdependent, intertwined and indivisible, and this was confirmed in the Vienna Declaration and Program of Action for Human Rights for the year 1993 AD<sup>3</sup>.

This condition also contradicts Article 1/4 of the Arab Charter for Human Rights of 2004, which emphasized the universality of human rights.

Also, this condition contradicts the first paragraph of Article 2 of the Arab Charter for Human Rights, which obliges every state in the Charter to ensure that every person subject to its jurisdiction has the right to enjoy the rights and freedoms stipulated in the Charter without discrimination on grounds of race, color, sex, language, or religious belief. opinion, intellect, national or social origin, wealth, birth, physical or mental disability.

It also contradicts the provisions of Article 12 of the same Charter, which stipulates that the right to litigation in all its levels is guaranteed to every person subject to the state's jurisdiction.

And the International Federation for Human Rights is right when it says that the enjoyment of rights cannot be linked to the enjoyment of the status of a citizen<sup>4</sup>.

As for the European regional system, according to the provisions of Article 33 of the European Treaty on Human Rights amended by the 1998 Protocol, any state party to it can refer to the European Court of Human Rights any alleged violation of the provisions of the Convention and the protocols annexed to it by any other state party<sup>5</sup>.

#### *1.10. Here we Refer to Two Issues*

The first issue: It is the state's parties to the European Convention on Human Rights and the protocols attached to it that have the right to file complaints with the European Court of Human Rights against another state party that has violated the provisions of the Convention and its protocols.

In other words, states that are not parties to the European Convention on Human Rights cannot refer to the European Court of Human Rights.

The second issue: The European Convention on Human Rights did not stipulate the existence of a personal interest for the state that files a complaint with the European Court of Human Rights, as is the case in the statute of the Arab Court for Human Rights, which stipulated the existence of a personal interest for the complaining country before the Arab Court for Human Rights.

There is a general right that allows any state party to the Convention to file a lawsuit in the name and for the account of all the states parties to the agreement. This is what the European Court of Human Rights has called in several rulings issued by it as an inalienable right for every state party to protect European public order<sup>6</sup>.

The protection of European public order constitutes, in essence, a common guarantee and an objective nature of European human rights<sup>7</sup>.

The European experience in the field of human rights is considered a pioneering experience that surpasses many regional and international agreements<sup>8</sup>.

<sup>3</sup> . United Nations, World Conference on Human Rights, Vienna Declaration and Program of Action, June 1994, New York 1995.

<sup>4</sup> . FIDH-icj, March, 2014, p.15.

<sup>5</sup> . Article 33 of the European Convention on Human Rights states: (Any High Contracting Party may apply to the Court for any breach of the provisions of the Convention and its protocols which it believes can be attributed to another High Contracting Party).

<sup>6</sup> . Com.edh, l'affaire autriche/ halie. arret du 11/1/1962, ann u.p. 139, in Dr. Muhammad Youssef Alwan, Dr. Muhammad Khalil Mu sa, International Human Rights Law, Sources and Means of Control, Part One, House of Culture for Publishing and Distribution, 2005, p. 296.

<sup>7</sup> . Dr. Abd al-Azim al-Janouri, The European Union (The Confederation of European State), New University House publications, 1999, pg. 46.

<sup>8</sup> For more details about the European system for the protection of human rights, see: Muhammad Amin Al-Maidani, The European System

for the Protection of Human Rights, Al-Halabi, Beirut, 2009.

<sup>8</sup> . Dr. Ali Muhammad Al-Dabbas, Judge Ali Alian Abu Zaid, Human Rights and Freedoms and the Role of the Legitimacy of Police Procedures

in Promoting them, 4th Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman 2017, p. 80.

This confirms the leadership of the European experience in the field of human rights and the superiority of many regional and international agreements, as well as the aspect of jurisprudence.

The research team concludes from the foregoing that the European Court of Human Rights is ahead of its counterpart, the Arab Court for Human Rights in this field, which necessitates that the Arab experience try to benefit from it by introducing amendments to the statute of the Arab Court of Human Rights in the European style.

#### *1.11. Section Two: Individual Cases.*

The statute of the Arab Court for Human Rights does not recognize the right of an individual to resort to the Arab Court for Human Rights in the event that one of his basic rights stipulated in the Arab Charter for Human Rights and other Arab conventions in the field of human rights is violated, and keeps it confined to the state of his nationality.

Thus, the statute of the Arab Court for Human Rights did not keep pace with the development of the individual's status in international law.

In the classical era of international law, the individual was not given any attention, and attention was focused only on the state and its rights and duties as the main international legal person.

However, with the establishment of the United Nations Organization in 1945 AD in the aftermath of World War II, and the ensuing destruction and tens of millions of victims, the individual became interested in the international community, and this interest was reflected in the Charter of the United Nations Organization, where the Charter dealt with the issue of human rights in eight places directly<sup>9</sup>.

He established the main principles of international law, and at the forefront of these principles is the principle of respect for human rights regardless of differences in gender, language, religion, wealth, political or other opinion, and there is no difference between men and women.

No one can question the binding international legal nature of these principles.

According to the Charter, all member states are legally obligated to seek the full implementation of all human rights and freedoms<sup>10</sup>.

The Charter linked human rights to international peace and security, and they became of international concern, and the relationship between the individual and the state was no longer an internal matter at the heart of the internal authority of the state with regard to human rights.

With these developments in international law and international relations and the subsequent developments that followed, the individual became an important position in international law, which is closer to the limited international personality<sup>11</sup>. In the opinion of one of the great commentators of international law, these developments led to the recognition of the individual as an international subject<sup>12</sup>.

One of the manifestations of the development of the individual's status in international law is his acquisition of the right to litigate with many international and regional legal institutions, in order to defend his rights and freedoms in

In the event of its violation, according to the principle that every right has a claim that protects it, as we have found that in the European regional system<sup>13</sup>.

With regard to non-governmental organizations, the case can be filed through civil society organizations, subject to the approval of their country's government.

Where the statute of the Arab Court for Human Rights allowed national non-governmental organizations to resort to the court, but according to the restriction that they be accredited and working in the field of human rights in the same country whose national claims to be a victim of a violation of a

<sup>9</sup> . See the preamble, Article 1, Article 13, Article 55, Article 56, Article 62, Article 68, and Article 76 of the United Nations Charter of 1945 AD<sup>9</sup>

<sup>10</sup> . Claus Höfner, how to file complaints against human rights violations, Amman, UNESCO Office 2004, p. 10.

<sup>11</sup> . Dr. Muhammad Aziz Shukri, Introduction to International Law, Damascus 1978 AD, p. 191.

<sup>12</sup> . Dr. Muhammad Talaat Al-Ghunaimi, Al-Wasat in the Law of Peace, Alexandria, 1982 AD, p. 362.

<sup>13</sup> . Prof. Dr. Maher Salih Alawi Al-Jubouri, Guarantees of Actual Protection of Human Rights, 1st Edition, Al-Dhikra for Publishing and Distribution, Baghdad, 2018, pg. 200.

human right<sup>14</sup>. Accordingly, we find that the personal jurisdiction of the Arab Court for Human Rights Human beings are extremely narrow, which does not rise to the level of regional human rights courts, and is not compatible with the principles and rules of human rights.

In this regard, we wonder if the situation in the European Court of Human Rights is like this.

With reference to the provisions of Article 34 of the European Convention on Human Rights amended by the Eleventh Protocol of 1998 AD, any natural person, non-governmental organization, or group of persons has the right to resort to the European Court of Human Rights claiming that it is a victim of a violation of one of their rights by one of the parties to the Convention. The provisions of this Article shall not impede the effective exercise of this right.

The court does not have the jurisdiction to consider complaints filed against individuals or against private institutions, such as commercial companies<sup>15</sup>, for example, as such complaints are handled by the national judiciary.

We point out here that the jurisdiction of the European Court of Human Rights has become compulsory since the conclusion of Protocol Eleven of 1998 AD and its entry into force on 1/11/1998 AD.

Where the conclusion of this protocol constituted a radical and profound shift in the judiciary of the European Court of Human Rights, and strengthened the status of the individual, and he became able to sue any European country, including his own, before the European Court in the event that one of his rights guaranteed in the European Convention on Human Rights was violated. and all sixteen protocols thereto.

The individual no longer needs the approval of any state party to exercise this right, including the state to which he belongs by nationality<sup>16</sup>.

Since the mandate of the European Court of Human Rights became compulsory in the eleventh protocol, the European system of human rights has become defined as a kind of centralization in the judicial authority<sup>17</sup>.

Every natural person without exception can request European protection when he assesses that his basic rights have been violated by one of the contracting parties, and without any restrictions, as there is no requirement of nationality, residence, civil status, capacity, competence or reciprocity<sup>18</sup>.

It includes every human being in the world, even if he does not hold any nationality<sup>19</sup>.

The basic condition that must be met in individual complaints is that the complainant must be a victim of a violation of one of the rights established in the European Convention and its protocols.

That is, he has a personal interest in the lawsuit other than the lawsuits of countries that can be filed to protect European public order, as we stated previously.

In the context of individual lawsuits, any non-governmental organization can resort to the court, such as political parties, trade unions, companies, and some legal persons that do not exercise public authority.

It also enables any group of persons to resort to the court in the event that one of the parties to the European Convention and its protocols violates one of its guaranteed rights.

A group of persons means an informal association consisting of two or more persons for a temporary period<sup>20</sup>.

The right to individual appeal has been expanded to include indirect victims such as the victim's husband or the victim's brother<sup>21</sup>.

. See Article 19/2 of the Statute of the Arab Court for Human Rights.<sup>14</sup>

. The European Court of Human Rights, questions and answers, p.7.<sup>15</sup>

. Ahmed Al-Rashidi, Human Rights between Theory and Practice, Edition (2), Dar Al-Shorouk International Library Publications, Cairo, 16 2005, pg. 210.

. Dr. Muhammad Yusuf Alwan, d. Muhammad Khalil Musa, previous reference, pg. 297.<sup>17</sup>

. a. Mari Muhammad Abdullah Omar Al-Falah, The Legal System of the European Court of Human Rights, Modern University Library, 2016<sup>18</sup> AD, p. 121.

. Amjad Shammout, The Arab Court for Human Rights, Reality and Orientalism, Al-Nahr Al-Akhbari, 9/28/2017, p. 317.<sup>19</sup>

. A. Mari Muhammad Abdullah Omar Al-Falah, previous reference, p. 122.<sup>20</sup>

Thus, we find that the European Court of Human Rights has expanded to a very large extent its personal jurisdiction, whether in state cases, or in individual cases in order to achieve the principles and rules of justice and international standards of human rights to the level where the European person has become a person of European international law.

After we have clarified who are the persons who are entitled to resort to the Arab Court for Human Rights and the European Court of Human Rights, it remains necessary to know the conditions for resorting to the two courts, and this is what we will address in the second requirement of this research.

#### *1.12. The Second Requirement: The Conditions for Accepting Cases at the Arab Court for Human Rights*

Before the Arab Court for Human Rights and the European Court proceed with the litigation procedures, it works to examine the admissibility of the claims and the extent to which their conditions are fulfilled. Accordingly, we divide this requirement into two branches:

Conditions for accepting states' lawsuits in the first branch, and the conditions for accepting individual lawsuits in a second branch.

#### *1.13. The First Section: Conditions for Accepting States' Claims*

The Arab Court for Human Rights is complementary to the national judiciary, and does not replace it. The court does not accept complaints submitted to it unless certain conditions are met that apply to all types of cases in accordance with Article Eighteen of the Statute of the Court.

#### *1.14. The Case Must<sup>22</sup>*

**First:** Exhaustion of all means of litigation in the country against which a final judgment has been made in accordance with the national judicial system.

This condition confirms the complementary nature of the Arab Court for Human Rights. The national judiciary of the parties to the court's statute is originally competent to consider complaints of human rights violations, and it conforms to the rules of international law.

However, the Arab legislator made this condition absolute without placing restrictions to limit its effects, especially in cases of lack of independence of the national judiciary, or in cases of denial of justice, whether in the narrow sense or in the broad sense, including the unjustified prolongation of trials.

It is appropriate here not to keep this condition at all as a pretext to prevent victims from accessing the Arab Court for Human Rights, and to give the court discretion in evaluating national remedies.

**Second:** The lawsuit must be filed within six months of notifying the plaintiff of the final judgment.

It is appropriate here to specify the start of the six-month period, as logic leads to the fact that the period begins from the date of issuance of the final final judgment if it was in presence, or from the date of notifying the plaintiff if the judgment was issued in absentia.

**Third:** The case should not be filed on the same issue with another regional human rights court.

It is a condition that prevents the conflict of jurisdiction between regional human rights courts, especially with the presence of the African Court of Justice and Human Rights, and the presence of a large number of Arab countries within the regional system of the African Union.

As for the conditions for accepting states' claims to the European Court of Human Rights, we find the first paragraph of Article 35 of the amended European Convention. It specified two basic conditions that must be met not only in state claims, but also in individual cases.

These two conditions are:

The first condition: the exhaustion of national remedies in accordance with generally accepted principles of international law.

. Ibid., p. 123.<sup>21</sup>

. See Article 18 of the Statute of the Arab Court for Human Rights, which states: "The jurisdiction of the court is complementary to the national judiciary and does not replace it, and the court may not accept the case in the following cases: The national judiciary, 2- Filing a lawsuit on the same subject before another regional human rights court, 3- Filing the lawsuit six months after informing the plaintiff of the conclusive ruling."

The second condition: that the case be filed with the European Court of Human Rights within six months from the date of issuance of the final national decision.

With regard to the condition of exhausting the internal appeal methods available in the national legal system, it aims to give the state an opportunity, through its three powers, to provide justice to the victims and prevent violations of the European agreements on human rights and their protocols.

This is on the one hand, and on the other hand, the concern for the national sovereignty of the member states of the Convention and its protocols, especially since the jurisdiction of the European Court of Human Rights is compulsory, which allows the state to be held accountable or prosecuted in the event of its violation of the provisions of the European Convention and its protocols.

Perhaps what is meant by the internal methods of appeal is all the methods provided by the legal system of the defendant state, civil, penal, administrative, constitutional, ordinary and exceptional.

In the case of Slobodan Milosevic, the European Court of Human Rights decided not to accept the complaint against the Netherlands, as the reasons for its ruling stated that its failure to accept the case as a whole was due to the failure to exhaust internal means of redress in accordance with Article 35, paragraph (1) and (4) of the European Convention amended by Protocol No. (11) She added that she could not say with certainty whether the grievances submitted to her were first presented at the internal level, and stated that the grievances were raised before an internal court, but the complainant did not exhaust the possibility provided by Dutch law to object to a ruling. The court on August 31, 2001 indicated that Milosevic abandoned the grievance he filed before the Court of Appeal against this ruling, depriving himself of the possibility of resorting to the Court of Cassation<sup>23</sup>.

Undoubtedly, this condition constitutes a factor of weakness in the European protection system for human rights, but the court did not apply this condition in its entirety and restricted its scope.

It takes into account the situation of the complainant and the circumstances of the case brought before it. Through many of the cases brought before this court, it has made it clear that the latter was understanding and appreciative of such situations and circumstances, which makes it overlook the application of this rule or exempt the complainant from it.

Or ask the complained-about state to prove that the internal appeal methods were open to the complainant and facilitated for him<sup>24</sup>.

As for the second condition, which stipulates that the lawsuit be filed within six months from the date of the issuance of the final internal decision, it is a logical condition and is consistent with the interest of the plaintiff, and it prevents statute of limitations, the loss of evidence, and achieves effective and effective protection of human rights in the European regional system.

There has been frequent practice within the court not to investigate the availability of the condition for the period if there is an actual and serious impediment that prevents the submission of the petition, such as if there is a force majeure, the court usually investigates the issue of the existence of compelling or impeding reasons that prevent the submission of the petition or petition<sup>25</sup>.

### 1.15. Section Two: Conditions for Acceptance of Individual Claims

We have already found out that the main person who can resort to the Arab Court for Human Rights is the country whose national claims to be a victim of a violation of one of the human rights stipulated in the Arab Charter for Human Rights, and any other Arab human rights agreements, in support of the first paragraph of Article 18 of the law. basic arbitrator.

The statute of the court allowed national non-governmental organizations to resort to the court, but on the condition that they are accredited by the same state party whose national claims to be a

<sup>23</sup> The European Court of Human Rights rejects Milosevic's complaint, Al-Arab newspaper, Year 25, Issue 6366, p. 1, at: A. Mari Muhammad

Abdullah Omar Al-Falah, previous reference, pp. 131-132.

<sup>24</sup> Dr. Abd al-Aal al-Derbi, International Supervision of the Enforcement of the Provisions of International Law (Comparative Study), 1st edition, The National Center for Legal Publications, Cairo 2014, p. 104.

<sup>25</sup> Dr. Muhammad Youssef Alwan, Dr. Muhammad Khalil Musa, previous reference, p. 300.



victim of a violation of a human right, and that they are working in the field of human rights, in support of the second paragraph of Article 18 of the Statute of the Court.

Also, the conditions for accepting state claims are the same as in individual cases (in the event that the defendant is a non-governmental organization).

As the statute of the Arab Court for Human Rights stipulated in the case that the conditions for exhausting the internal litigation methods be met with a final and conclusive ruling, and that the case in the same matter was not filed before another regional court for human rights, and that the case was filed within six months of informing the plaintiff of the conclusive ruling.

Whereas in the European regional system, as it has become clear to us that the personal jurisdiction is very broad for the European Court of Human Rights, it includes the states parties to the European Convention on Human Rights, any individual in the world, any non-governmental organization, and any group of persons.

Returning to the provisions of the amended Article 35 of the European Convention on Human Rights, we find that there are common conditions between state complaints and individual complaints, which are shown above, represented by the exhaustion of internal review methods, and the filing of a lawsuit within six months from the date of issuance of the final final judgment.

However, individual lawsuits require additional conditions other than these two, namely:

**First:** The complaint must have a known source, in order to prevent offending a state party to the European Convention on Human Rights and its protocols.

Second: The complaint should not have been previously presented to the European Court, or to another body.

It is not permissible to present the same complaint that was previously considered by the court and issued its ruling, unless new facts arise that allow it to be presented again to the court.

It is also not permissible to submit an individual complaint to the court and submit the same complaint to another international body.

Third: The complaint should not be inconsistent with the provisions of the European Convention on Human Rights and its annexed protocols.

As the right allegedly violated must be protected by the provisions of the Convention, and if it is not covered by protection by the Convention, then the complaint is unacceptable, and it can be said that the lawsuit is considered inconsistent with the provisions of the Convention if one of the following cases is available:

- 1- If the case relates to a substance that has been reserved by the defendant country in accordance with Article 64 of the Convention.
- 2- If the lawsuit is in violation of the provisions of the agreement stipulated in Article 15 of the agreement.
- 3- If the lawsuit relates to activities aimed at destroying the rights and freedoms stipulated in the Convention<sup>26</sup>.

Fourth: The complainant does not abuse his right to file a complaint with the intention of harming others, or aims to achieve illegal interests, such as if his purpose is political, propaganda, or an attempt to defame a country that is a party to the Convention.

Fifth: The harm suffered by the complainant was significant in accordance with the amended Article 35/3/b.

This is a new condition added to the fourteenth Protocol 14, which entered into force on 1/6/2010.

According to this condition, the European Court of Human Rights can dismiss an individual's claim if he has not suffered serious harm, unless respect for human rights as defined in the Convention and its annexed protocols requires that the claim be presented on the merits, and if the claim is not duly examined by a national court.

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<sup>26</sup> See in detail these cases in: A. Mari Muhammad Abdullah Omar Al-Falah, previous reference, pp. 134-136.

This requirement has been criticized by human rights organizations and by several member states of the Parliamentary Assembly of the Council of Europe, which consider it vague and jeopardize the right to submit an individual application<sup>27</sup>.

The adoption of this condition came to face the steady increase in the membership of the Council of Europe, and the concomitant increase in the number of states parties to the European Convention on Human Rights and its protocols.

During the period from 1998 AD to 2004 AD, thirteen countries ratified the European Convention on Human Rights, and this led to an increase in the number of applications pending before the Court to 65,000 applications<sup>28</sup>.

It follows from this formula that there are two types of human rights violations, gross violations that are subject to the jurisdiction of the European Court of Human Rights, and non-serious violations that are not subject to the jurisdiction of the Court.

It is feared that this will encourage states to commit human rights violations under the pretext that these violations are not serious<sup>29</sup>.

However, whatever the justifications for making such an amendment by the European legislator, it limits individual lawsuits, and as a result deprives the individual of access to the desired justice, and the non-serious violations, which are countless, remain without prosecution.

## 2. Conclusion

At the end of this research, we reached several results, and accordingly we made several recommendations as follows:

## 3. Results

1. The scope of personal jurisdiction narrowed in the statute of the Arab Court of Human Rights, and limited it to states and non-governmental organizations under the condition that they be accredited and working in the field of human rights, while the scope of personal jurisdiction in the European Court of Human Rights widened to include the states parties to the European Convention on Human Rights of 1950 Any non-governmental organization or group of persons and any natural person, regardless of nationality.
2. The statute of the Arab Court of Human Rights stipulated that the complaining state should have a personal interest in the case, while in the European regional system this condition is absent in order to protect the European public order.
3. The statute of the Arab Court for Human Rights did not keep pace with the development of the individual's status in international relations and international law, and the development of human rights rules by depriving the individual of his right to file complaints with this court, while this right is reserved for every individual with the European Court of Human Rights regardless of his nationality.
4. The mandate of the European Court of Human Rights is compulsory, and any person is able to sue any state that is party to the European Convention on Human Rights of 1950, including his own country directly without an intermediary, while this is not in the statute of the Arab Court for Human Rights.
5. The Arab legislator made it a condition of exhausting internal litigation methods to accept cases absolutely without placing restrictions to limit its effects, while the European Court of Human Rights overlooks the application of this condition.

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. See European court of human rights, <http://www.Echr.int/echr>.<sup>27</sup>  
 . See Dr. Riyadh Al-Ajlani, The development of procedures for considering individual applications before the European Court of Human Rights, Damascus University Journal of Economic and Legal Sciences, Volume 28, Number Two, 2012, p. 183.

Damascus university.edu.sy <http://www.damesscusuniversity>  
 . Ibid., p. 188.<sup>29</sup>

6. As a result of the steady increase in the number of member states of the Council of Europe and the increase in the number of individual complaints by hundreds of thousands, a new condition has been added to accept individual claims under the Fourteenth Protocol (Article 35/3/7), which is that the damage to the complainant is significant and not simple, which exposes the right in individual lawsuits, the risk significantly reduces their number.

#### 4. Suggestions

- 1- Amending the text of Article (19) of the Statute of the Arab Court for Human Rights to determine the right of individuals, non-governmental organizations, and a group of persons to file lawsuits with the Court in response to the development of the individual's status in international law and to achieve justice.
- 2- Not requiring personal interest in states' cases to protect the Arab Charter on Human Rights and to strengthen the human rights system in accordance with human rights standards and the imperative nature of human rights rules.
- 3- Amending the statute of the Arab Court for Human Rights by adding a provision that makes the court's jurisdiction compulsory in all individual and state cases.
- 4- We call on the Arab legislator to amend Article (18/1) of the Statute of the Arab Court for Human Rights by placing restrictions on the condition of accessing internal litigation methods to accept the case before the court and not to keep it at all, in order to limit the effects of this condition in order to achieve justice.

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