Preliminary Use of Internal Legal Tools for Protection of International Rights

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Abstract

According to the ECtHR, there are two fundamental reasons that the domestic remedies referred to in Article 13 of the Convention are of relevance: a) firstly, because the ECtHR deals with a case only after all the remedies provided for by the domestic law of the country concerned have been exhausted; b) Secondly, it has now become the practice of this Court to develop, in the course of the investigation, whether the domestic remedies have been exhausted, and a concrete line of determination of the burden of proof in the proceedings. In determining whether any domestic remedy meets the criteria of availability and effectiveness, the particular circumstances of the individual case must be taken into account. Consideration should be given not only to the formal remedies available, but also to the general legal and political context in which they operate, as well as the applicant's personal circumstances. So in order to determine if any internal remedy meets the availability and effectiveness criteria, during the study, we needed to consider the particular circumstances of each individual case. According to the ECtHR for the purposes of Article 13 of the Convention, an effective domestic remedy must be a remedy, an effective remedy, a legitimate body for the individual to complain about, the local authorities must provide the appropriate legal and remedy. The paper seeks to find out what are the factors that may impede the submission of a case alleging infringement to an international court. The methodology used is the doctrinal and analytical doctrine of judicial practice.

Keywords: domestic, remedies, circumstances

1. Introduction

The growing concern over the application of the exhaustion of national remedies to international law requires careful consideration of its origins and historical development. It is generally accepted today that to attribute international responsibility to a state occurs only at the international level following the depletion of national remedies by the individual concerned, as the state has sought to resolve the issue with its available remedies. Researchers. The early meaning of this rule, however, meant self-help and solidarity and civil responsibility for the actions of fellow citizens.

Internal remedies mean remedies that are open to the injured individual before the courts or administrative authorities of the state, which is allegedly responsible for causing the damage. The possible means that a foreigner may have available vary from country to country. For this reason there can be no coding rule to regulate all situations. In the first place, a foreign national must exhaust all possible judicial remedies. If domestic law permits an appeal to a higher court, this appeal must be filed in order to reach a final decision on the case. The foreigner is required to exhaust all the means which may result in a binding decision. The totality of local remedies does not include only remedies intended to provide a favor and not to claim a right.3 In fulfilling the rule of exhaustion of internal remedies, it is important to know the internal laws and procedures in order to assess whether all possible remedies have:

A.A.Caçado Trindade"Origin and historical development of the rule of exhaustion of local remedies in international law" published nè http://rbdi.bruylant.be/.


been exhausted. In order to meet the requirement of exhaustion of local remedies, a State must allow foreigners access to courts within its territory for the purpose of repairing the damage caused to it. Failure to exercise this right is in itself a violation of international law known as ‘denial of justice’. Only after all legal remedies, including appeals, have been exhausted and res judicata on the merits of the case can the claim for diplomatic protection be raised. Means based on the discretionary actions of public bodies are not included in this rule.

The rule of exhaustion of domestic remedies is justified by the principle of non-interference in the affairs of another state. That is to say, states should be free to organize their internal systems at their own discretion. If a foreigner goes beyond these mechanisms and makes international claims, international law may find itself involved in the internal affairs of a state. Moreover, a logical underpinning of this rule can be found in the fact that the alien who conducts an activity within the territory of the host state enjoys protection but also has responsibility before the laws of the country, so it seems fair for him to seek repair under these laws in the domestic courts.

2. The Principle of Subsidiarity

The principle of subsidiarity means that the primary responsibility for the protection of human rights rests with the states: only when all domestic remedies have been exhausted can a claim be made to the ECtHR. The claim must also be made within six months of the failure of the last resort. The main objective is to encourage petitioners to seek justice before national authorities before coming to Court. Reasoning to exhaust all national remedies is a rule enabling national authorities, in particular courts, to prevent or remedy alleged violations of the Convention. This causes states to not be held accountable for their actions before an international body if it has been able to rectify the problems encountered by the applicant.

The ECtHR reiterates that the exhaustion rule provided for in the Convention obliges the complainants to use the domestic remedies usually available and sufficient in the domestic legal system to enable the restitution of the allegedly infringed law. The existence of these tools must be assured, both in practice and in theory. If these criteria are not met, these tools lose their availability and effectiveness. The responsibility to prove compliance with these criteria rests with the State to which the claim is based.

In determining whether any domestic remedy meets the criteria of availability and effectiveness, the particular circumstances of the individual case must be taken into account. Consideration should be given not only to the formal remedies available, but also to the general legal and political context in which they operate, as well as the applicant's personal circumstances. The lack of funds does not relieve

2.1 What is an effective domestic complaint?

According to the ECHR for the purposes of Article 13 of the ECHR, an effective domestic complaint must meet the following criteria:2

a. To be a legal defense tool;
b. Be an effective legal tool. The Court has held that the remedy required by Article 13 of the Convention must be effective both in practice and in law, especially in the sense that its exercise is not unduly hindered by the acts or omissions of the organs of the respondent State. So the tool should provide clear and secure opportunities for reinstatement instead of the infringed right.
c. Legitimate body for the individual to complain about. The ECtHR has stated that the CC of the Republic of Albania will be considered as an effective internal legal remedy in respect of claims that violate the right to due process of law.
d. Local authorities must provide the appropriate legal solution. The ECtHR has held that Article 13 allows not only the competent domestic authorities to adjudicate complaints under the Convention but also to provide the appropriate legal remedy. The ECtHR states that the authorities required by Article 13 do not necessarily have to be judicial authorities, but if they do not, their legal powers and the guarantees they provide must be effective.
e. Local authorities must speak out by decision.

But according to the ECtHR, there are two fundamental reasons that the domestic remedies referred to in Article 13 of the Convention are of relevance: a) firstly, because the ECtHR deals with a case only after all the remedies
provided for by the domestic law of the country concerned have been exhausted; b) Secondly, it has now become the practice of this Court to develop, in the course of the investigation, whether the domestic remedies have been exhausted, and a concrete line of determination of the burden of proof in the proceedings. The exhaustion of domestic remedies and the existence of an effective European judicial system are essential to the normal functioning of the Court's control machinery. It is absolutely necessary for the individual to seek protection from the domestic legal system first and then, exceptionally, to be able to apply to the ECtHR. For this reason, States parties to the Convention are not only obliged to establish rules, but also to undertake concrete obligations for the best realization of individual rights. This leads to the discussion of how the domestic courts understand and apply the domestic remedies.

Klaes v. FRY case). It is important that this national authority complies with the requirement of the effectiveness of the complaint guaranteed by Article 13, especially with regard to the binding force of its decision. From this point of view it should be emphasized that the remedies should be effective in legal and practical terms and that the decision taken by the relevant authority should affect the merits of the case, or the alleged right, and not just its form.1

3. Cases Against Albania

In Marini v. Albania, the Court reiterates that the remedies available to the litigant at the local level to appeal the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged breach or continuation, or provide appropriate redress for any breach that has already occurred. Therefore, Article 13 offers the alternative that a remedy is "effective" if it can be used both to expedite the court's decision on the case and to provide the litigants with appropriate redress for the delays that have occurred.

In the case of Ramadhi and others v. Albania, in order to assist in the enforcement of the obligations under Article 46 by the respondent State, the Court sought to indicate the type of measures that the Albanian State could take to put an end to the nature and causes of the violations found in the present case. It considers that the respondent State must first of all provide for a remedy to provide a genuine and effective remedy for the identified violations of the Convention in the present proceedings, as well as for all similar pending appeals, in accordance with the principles for the protection of the rights provided for in Articles 6/1 and 13 of the Convention and Article 1 of Protocol No. 1.


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4. Conclusions

By providing the appropriate remedy, the State should inter alia designate the competent authority, lay down procedural rules, ensure that these rules are implemented in practice and avoid any obstacles to compensation under the Property Act. These objectives can be achieved by taking appropriate legal, administrative and budgetary measures. These measures should include the development of property valuation maps for complainants entitled to receive in-kind compensation, and the designation of an appropriate fund for complainants entitled to receive compensation in value. all of this to enable all petitioners to have a successful judicial decision in their favor, which compensates them under the Property Act, to obtain the designated amount or land as soon as possible. These measures should be treated as a matter of urgency. Therefore, in order to be ahead of the protection afforded by Article 6 of the ECHR, the rules of procedure sanctioned must be observed. The absence of these conditions does not legitimize anyone to claim a violation of the right of access to trial.

So in order to determine if any internal remedy meets the availability and effectiveness criteria, during the study, we needed to consider the particular circumstances of each individual case. According to the ECtHR for the purposes of Article 13 of the Convention, an effective domestic remedy must be a remedy, an effective remedy, a legitimate body for the individual to complain about, the local authorities must provide the appropriate legal and remedy.

The exhaustion of domestic remedies and the existence of an effective European judicial system are essential to the normal functioning of the Court's control machinery. It is absolutely necessary for the individual to seek protection from the domestic legal system first and then, exceptionally, to be able to apply to the ECtHR. For this reason, States parties to the Convention are not only obliged to establish rules, but also to undertake concrete obligations for the best realization of individual rights. This leads to the discussion of how the domestic courts understand and apply the domestic remedies.
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