January 2023

Q&A – Exhaustion of Domestic Remedies

What are domestic remedies?

A remedy is a legal procedure that can be used by an individual or organisation to get legal redress. In the cases we are talking about here, the redress concerns situations where abuses of human rights are alleged.

Domestic remedies are therefore those that are within an individual State, that is to say not international courts or bodies.

Examples include using the domestic court system, criminal, civil and administrative appeals, employment and other tribunals, appeals to prosecutorial authorities, and other procedures.

And what does "exhaustion" mean?

To use (or at least to have attempted to use) the legal avenues available.

Why are they relevant to applications to the European Court?

Exhausting domestic remedies is one of the admissibility requirements for lodging an application with the Court.

What happens to an application in which the domestic remedies have not been exhausted?

Ordinarily, it is rejected.

The applicant can still avail of the remaining domestic remedy and, if unsuccessful, return to the Court to seek satisfaction.

If a remedy is seen by the Court as not being effective, then there is no need for an applicant to have tried to use it before coming to Strasbourg.

Why does the Court have this rule?

There are two main reasons. Firstly, the domestic authorities should have the opportunity to determine the situation and perhaps resolve it before it goes to the European Court. Secondly, the Court benefits from having the opinions on a case of, in particular, the domestic courts when deciding on it.

The rule is set out in Article 35 (admissibility criteria) of the European Convention on Human Rights.

What counts as a domestic remedy for the Court?

Of course, the answer will vary from country to country, reflecting the peculiarities of the individual systems. The key is that the possible remedy must be *accessible* to the applicant and *effective*, that is to say capable of remedying the problem, for example leading to a conviction or to an

acknowledgement of wrongdoing. A classic example would be pursuing a case in the domestic courts up to the highest court which it was possible to access (normally the supreme or constitutional court).

If there is more than one effective remedy, then only one needs to have been used by the applicant to the Court. There is no need to, say, pursue a civil remedy if a criminal complaint has been unsuccessful.

Can you give an example of when domestic remedies *have not* been exhausted?

Sure. This is a very common reason for applications being rejected by the Court, accounting for between 15-30% of applications that are rejected in a given year.

A simple example is that of *FINE DOO and Others v. North Macedonia* (no. 37948/13), which concerned a property dispute. The criminal proceedings in the dispute were still pending. As a result, the domestic courts had not yet had a chance to decide the case, and so the Court had to find the application inadmissible.

Another example is that of *Maslák v. the Czech Republic* (no. 58169/13), which concerned alleged ill-treatment under Article 3 (prohibition of inhuman and degrading treatment) when the police had been taking samples of Mr Maslák's saliva and scent when he had been a suspect in a crime. The applicant had not made a criminal complaint to the police against the police officers in question, as he had believed that would be ineffective. The Court held that doubts about the outcome for Mr Maslák did not make the remedy ineffective, and ruled the application inadmissible.

Can you give an example of when domestic remedies *have* been exhausted?

In part of the case of *Selahattin Demirtaş v. Turkey (No. 2)* (no. 58169/13), the Turkish Government argued that a large part of the complaints concerning Mr Demirtaş's pre-trial detention had not been raised by him in his initial application to the Turkish Constitutional Court. However, the Court held that as they concerned events that had happened after his application had been lodged, it had been permissible to complain at a later date. Mr Demirtaş had brought his complaints before the domestic courts and that part of his application was admissible.

An important consideration is that the complaint before the Court must have been raised in substance before the domestic authorities (in order to give them a chance to address it). In the case of *Gäfgen v. Germany* (application no. 22978/05), the applicant complained of, among other things including torture during police questioning, his kidnapping trial having been unfair under Article 6 (right to a fair trial) of the Convention. The German Government argued that the applicant had not brought the issue up correctly before the domestic courts. The Grand Chamber of the Court held that he had brought up the substance of these complaints, even if not referred to specifically, and so found the application admissible.

Is it possible to make use of other international remedies?

In contrast to domestic remedies, if an applicant has previously submitted a case to another international court or body, his or her application to the European Court may be rejected.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08