DOWNLOAD PDF LOCAL REMEDIES IN INTERNATIONAL LAW

Chapter 1 : Download [PDF] Local Remedies In International Law Free Online | New Books in Politics

- Local Remedies in International Law - Second Edition - by - Chittharanjan Felix Amerasinghe Frontmatter/Prelims More information Local Remedies in International Law. Second Edition. This work examines the local remedies rule historically and particularly in modern international law.

The rule of exhaustion of local remedies started as an international law principle relating to diplomatic protection. The idea was that a measure of respect should be accorded to the respondent state and its legal rules. In human rights law, the rule of local remedies is based on the principle that states should be primary enforcers of Convention rights. It was felt that unlike diplomatic procedures, the application of the rule should conform to fairness and not cause the individual undue hardship in securing a reasonably quick resolution in Strasbourg. In effect, petitioners are not prevented from bringing cases straight to the Strasbourg Court without first going through the national authorities, it is simply that if they do so, it is open to the respondent state to assert inadmissibility based on non-exhaustion. Once this is established the burden passes to the petitioner to prove that local remedies have been exhausted. In theory then the Court should not have to address issues which are new compared to the procedure in the national system, nor should it have to scrutinise the case more carefully than the judicial authorities have been given an opportunity to do on a national level. So it makes it difficult to establish any hard edge around the application of the principle. We can only glean the broadest of guidelines as to how does the rule of exhaustion work, in practice. The requirement of availability A remedy is considered available if it can be pursued by the applicant without difficulties or impediments. The requirement of effectiveness A remedy to be effective must exist within the domestic legal system and offer a reasonable prospect of success. In the early landmark Irish abortion counselling case Open Door and Dublin Well Woman v Ireland the Commission the body then arbitrating on admissibility stated that an applicant is only required to have recourse to remedies which are capable in practice of providing redress in relation to the particular situation at hand. On the other hand where it is arguably possible for the courts to interpret domestic law in a manner compatible with the Convention without applying for a declaration, an applicant is expected to make use of the Human Rights Act Upton v United Kingdom No real prospect of success An applicant is dispensed from the obligation to exhaust certain local remedies if, in the circumstances of the case, those remedies are inadequate; a remedy which does not have a reasonable prospect of success is not an effective remedy and thus there is no need to exhaust it. A remedy is ineffective if, considering the given case law in the national reports, it does not offer any real chance of success. The burden of proof is effectively on the applicant to give evidence of the existence of such unpromising case-law. The fact that an identical claim has been dismissed may be sufficient to indicate that there is no real prospect of success. The case of Costello-Roberts , it will be remembered, was a challenge to the widespread use of corporal punishment in private schools in the UK. The same complaint The applicant is required to raise in substance in the domestic proceedings the complaints made in Strasbourg and in compliance with the formal requirements and time-limits imposed by domestic law Cardot v. It is not necessary for the formulation of the Convention complaint to be identical, just the substance. Account will be taken not just of the personal circumstances of the applicant, but of the general legal and political context in which the alleged remedies operate. Applicants are not expected to try more than one remedy if there are more available McCann v United Kingdom , nor is anyone required to try the same body again by way of a repeated application Granger v United Kingdom Availability of non-judicial remedies There is some uncertainty over whether remedies of a non-judicial nature, such as recourse to an Ombudsman, need to be exhausted or not. In the early days the Commission tended to allow such applications through. So for example it was not considered an effective remedy to have recourse to the Board of Visitors or any other body whose powers are limited to recommendation Lehtinen v Finland ; Leander v Sweden. The availability of a request for exercise of ministerial discretion to award compensation is not considered an effective remedy for the purposes of Article Procedural limits In its case law about exhaustion of local remedies, Strasbourg has consistently held that the formal requirements and time limits laid down in domestic law should normally be complied with.

This is the case even in asylum and cases where there is alleged ill treatment in the destination state to which the individual has been deported Bahaddar v Netherlands In deportation cases involving allegations of torture then the Court takes the approach that automatic and mechanical application of domestic procedural rules should not deny asylum seekers a realistic opportunity to prove their claim; procedural rules must enable full effect tobe given to Article 3. Whether the applicant is required to go thus far, or further to the Supreme Court is very fact sensitive. Article 35 is of course an admissibility requirement, whereas Article 13 is a substantive obligation imposed on Contracting States. But they effectively say the same thing. In many cases Strasbourg allows applicants to fast-track their claims via this provision. The court thus disregarded the express requirement in the text of Article 13, which is the guarantee of an effective remedy only if one or other of the substantive rights set forth in the Convention have actually been violated, to a mere requirement that a person has an arguable case on violation.

Chapter 2 : Diplomatic protection - Wikipedia

Local remedies can range from making a case in court to lodging a complaint with local police. A complaint to an international body should include proof that domestic remedies have been exhausted, including information about any legal proceedings that took place in the country.

In the introductory chapter of this book I have attempted to justify its publication in spite of the apparently vast literature that already exists on the subject. It is hoped that it will not be regarded as yet another book on local remedies. This still remains true for this second edition of the work. It must be emphasized that individuals as aliens, because of the ease of travel, are as much affected by the rule of local remedies as foreign legal persons. Notably, i a new Chapter 5 has been introduced dealing with the all important subject of contracts involving aliens, ii the application xiii xiv preface of the rule to human rights protection, as updated and revised, has been included in a single chapter Chapter 13 rather than spread throughout the book, and iii the former Appendix, as updated and revised, dealing with international organizations in the context of the rule has been converted into Chapter Further, comments made by some reviewers which were thought to be in need of treatment have been taken into account in this second edition. As has been pointed out, a bibliography is unnecessary in a treatise of this nature which to a large extent did break and does break new ground. The references in the footnotes to other material is completely adequate. My thanks go to my friends, Laura and Emily Crow, who typed Chapters 5 and 13 and part of Chapter Table of cases A et al. Federal Republic of Germany, A. II, 47 Administrative Decision No. Federal Republic of Germany, Ambatielos Case, 36, , Ambatielos Claim, 4, 16, 17, 37, 39, 60, 61, , , , , , , , , , , , , Ambrozy, American International Group, Inc. Iran, 4, Anglo-Iranian Oil Co. Case, 36, , , , , , xv xvi table of cases Applicability of the Obligation to Arbitrate under Article 21 of the United Nations Headquarters Agreement of 27 June Opinion, 37, Application No. Italy, 17, 67, 68, 70, 72, 79, 80, 82, 96, , , , , , , , , , , , , Award No. Uruguay Barcelona Traction Co. Case , 10, 16, 37, 62, 64, 75, , , , Barcelona Traction Co. Case , 16, 37, , 51, 64, 87, 90, , , , , , , , Barcelona Traction Co. Denmark, , Belgian Linguistics Case, 69 Bleir v. Uruguay, Board of Trade v. France, , table of cases Bozano v. Federal Republic of Germany, Buscarini v. San Marino, , Busk Madsen v. Denmark, C v. Italy, Civet Case, Communication No. Belgium De Becker v. Case, Delcourt v. Greece, Denmark, Norway, Sweden and the Netherlands v. Claim, 47, Ditterich, Diverted Cargoes, On a matter of: Case, Electricity Co. Colombia Farrell v. UK, , , Farrell Case: Belgium, , , Fillastre and Bizoarn, Finnish Ships Arbitration, 4, 16, 37, 39, 47, 60, 61, , , , , , , , , , , , First Cyprus Case, , First Greek Case, 81, , , Foley, Forests of Central Rhodope Case, , Foti v. Italy, Foti and Others, Francis, Frelinghuysen v. Uruguay, Giorgio Uzielli No. US, 49 Greece v. France, Hammel v. Madagascar, Harrison, Hasan v. Peru Hermon, Case of: Belgium, Interhandel Case, 4, 16, 37, 39, , 75, 95, International Fisheries Co. Case, , Interocean Transportation Co. Austria, J and Others v. Austria, Kamma v. The Netherlands, , Kaplan v. UK, Kearney Case, Kjeldsen v. Denmark, , Koolen v. Belgium, Kornmann v. Federal Republic of Germany , Kornmann v. Federal Republic of Germany , , , Krzycki v. Aminoil, Lawless v. UK, Little, Losinger and Co. UK, Madsen, Busk v. Uruguay, Moution v. Austria, table of cases xxiii N. Denmark, , , , , , , North American Dredging Co. Case, 49 Norwegian Loans Case, 16, 37, 59, 75, Nottebohm Case, 36, 46, 48, 50 Olivia Case, Ominayak et al. UK, Orlandi, Ozorio Nos. Case, Panavezys--Saldutiskis Railway Case, 36, 45, 48, 52, 62, 75, , , , , , , , , , , , , , Parker Case, , Patino, , Pedersen v. Case, Pietroroia v. Case, Queen Case, R. Czechoslovakia, Reinarz, Remli v. Austria, , , , , , Roach v. Canada, , SS Wimbledon Case: Sweden, , , Swiss Confederation v. Federal Republic of Germany No. Belgium, , xxv , , T. France, Taft Case, Tarrab No. Case, Trumbull, R. Belgium, , , , , US v. La Abra Silver Mining Co. Case, US ex rel. Blaine, 49 49 xxvi table of cases Vagrancy Cases, Van der Musselle v. Belgium, Van der Sluijs, Zuiderveld and Klappe v. The Netherlands, Van Gent No. Belgium, Vassiliou, Velasquez Rodriguez Case: Italy, , Vicente, Viviano Gallardo Case: Uruguay, Wemhoff v. Federal Republic of Germany, 69 Wiechart v. Netherlands, Zamir v. Further developments have occurred in the twentieth century, particularly since For example, the rule has been extended from its original area of application, namely, the diplomatic protection of nationals abroad, to 2 3 4 5

6 7 Article 41 c of the International Covenant on Civil and Political Rights, Article 26 of the European Convention on Human Rights and Article 46 of the American Convention on Human Rights. Jessup, A Modern Law of Nations p. A consequence of these developments is that international organs, such as the European Commission of Human Rights which was not essentially a judicial organ, although it acted in a quasi-judicial capacity in dealing with cases alleging violation of human rights, and the European Court of Human Rights, which is, have had to deal with the application of the rule of local remedies. It is important to recognize that it is the rule as accepted in general or customary international law that these organs have been applying. However, the purported content and limits of the rule being applied are those of the customary universal rule of international law. Also, in effect much of the relevant and documented application of the rule has been taking place in regional arenas, although the UN Human Rights Committee also applies it under the relevant instruments. The regional nature of the organs that have most frequently been dealing with the rule may not be critical, in so far as the organs are genuine international organs which are enforcing international obligations. The exposure of the 8 See e. It is also true that in the area of diplomatic protection or in the relationship between an individual and a foreign state there has been a growing tendency, where possible, to exclude by implication or express agreement the application of the rule of local remedies, as is demonstrated by the Convention on the Settlement of Investment Disputes between States and the Nationals of other States,9 by many bilateral investment treaties, and by the Claims Settlement Declaration by Algeria of relating to the agreement between the US and Iran. The lesson to be learnt from this kind of practice is that the rule of local remedies is still regarded as very pertinent to the settlement of international disputes involving aliens and can only be excluded generally by a deliberate act of states involved in a dispute. That having been said, it must also be remembered that of special importance is the fact that the development of the rule in recent times has 9 10 11 See Article The fact that a state or states may agree to exclude the application of the rule in the settlement of a dispute does not detract from the quality of the rule as a customary rule of law. The incidence of this practice in recent years merely attests to the willingness of respondent states for a variety of reasons to submit disputes directly to international settlement in the interests of peace. That states consciously address the issue of the rule in connection with the settlement of disputes involving the protection of aliens is proof that the rule is otherwise viable and a serious impediment to the direct settlement of a dispute at the international level. It does not in fact reduce the importance of the rule or affect its relevance in the area of the diplomatic protection of aliens. In effect, in so far as it is the rule of customary international law that is basically being applied, this is what is of relevance, so that it is not untrue to say that what has been developed is basically the rule of customary international law relating to diplomatic protection. While the application per se, for example, of the rule of local remedies as an incident in the protection of human rights through international instruments will be examined, the evolution of the rule in its application as a rule of customary international law, originally linked with diplomatic protection, will certainly be a particular focus of attention. Recent developments show that the rule of local remedies is regarded not only as an existing rule but also as in many ways a useful one.

Chapter 3 : 'Local remedy first" - ICSID and the Kilic decision | Global law firm | Norton Rose Fulbright

In this book, Professor Amerasinghe examines the local remedies rule in terms of both historical and modern international law. He considers both the customary international law as well as the application of the rule to, among others, human rights protection and international organizations.

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Exhaustion of local remedies â€" General principles of international law â€" Codification â€" Practice and procedure of international organizations â€" Preliminary objectionsâ€"ICSID Arbitration Rules article 41(5).

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Covering all the important institutional aspects of international organizations, it discusses a range of topics including membership and representation, international and national personality, the doctrine of ultra vives, liability of members to third parties, dissolution and succession.

Chapter 6 : Editions of Local Remedies in International Law by C.F. Amerasinghe

Professor Amerasinghe examines the local remedies rule in terms of both historical and modern international law. He considers both the customary international law as well as the application of the rule to, among others, human rights protection and international organizations. New material includes bilateral investment treaties and state contracts.

Chapter 7 : Local Remedies in International Law

IISD Best Practices Series Exhaustion of Local Remedies in International Investment Law ILC Draft Articles on Diplomatic Protection The ELR requirement as a condition for the exercise of diplomatic protection is considered by the ILC as a.