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## EFFECTIVE REMEDY - EXERCISE 4 (1/1 point)

4. Article 2, para. 3, a), of the International Covenant on Civil and Political Rights refers to a duty of States "to ensure that any person *whose rights or freedoms as herein recognized are violated* shall have an effective remedy" (emphasis added). How should this be understood? Consider the following possibilities:

- ☐ The statement should not be read literally. The right to an effective remedy should be treated as independent from the substantive human right concerned: once a person invokes that his or her human rights have been infringed, he or she should be granted access to an effective remedy;
- ☒ The right to have access to an effective remedy should only be granted where a violation has taken place: there would be no point in imposing on the State a duty to provide access to an effective remedy every time an individual considers that he or she has been a victim of a violation, however vague or ill-founded the allegation. Therefore, if it is concluded that no violation of a substantive right has occurred, the alleged victim will not be allowed to claim that a right to an effective remedy should have been granted; ✓
- ☐ It would be contradictory to make access to a remedy conditional upon proving that a violation has taken place, since the purpose of the remedy is precisely to investigate the alleged violation and establish whether such a violation has indeed occurred; therefore it should be sufficient for the alleged victim, in order to be have access to a remedy, to bring forward a *plausible* allegation that her rights have been violated.

### EXPLANATION

The second interpretation, which corresponds to a literal reading of Article 2, para. 3 of the ICCPR, corresponds to the views expressed by the Human Rights Committee.

In contrast, the European Court of Human Rights considers, on the basis of Article 13 of the European Convention of Human Rights, that this clause requires the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the Convention and to grant appropriate relief (for instance, European Court of Human Rights (3rd sect.), *Čonka v. Belgium* (Appl. No. 51564/99) judgment of 5 February 2002, para. 75).

The approach of the European Court of Human Rights corresponds to the third of the three views listed above. Therefore, 'where an individual has an arguable claim to be a victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress' (Eur. Ct. H.R., *Silver and others v. United Kingdom*, judgment of 25 March 1983, Series A No. 61, para. 113; Eur. Ct. H.R., *Leander v. Sweden*, judgment of 26 March 1987, Series A No. 116, para. 77).

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Since the claim needs to be 'arguable', not every grievance based on the Convention requires access to a remedy in domestic law, however unmeritorious; on the other hand, the requirement of an effective remedy has an autonomous function to fulfil, and it may be violated even if no other substantive right appears violated: the right to an effective remedy must be understood as a right of the individual to have access to a procedure for the determination of the merits of the claim made under the Convention, unless the allegation of violation is totally without any plausible foundation.

Check

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