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EFFECTIVE REMEDY - EXERCISE 3 (1/1 point)

3. How does the requirement to provide an effective remedy relate to the possibility to invoke international human rights law before domestic courts? Consider the following possibilities:

- ☐ The right to an effective remedy requires that domestic courts can directly apply international human rights to the claim alleging a violation which is filed before them;
- ☒ The right to an effective remedy is without prejudice of the choice made by the State as to how courts shall protect human rights, whether on the basis of international human rights law or on the basis of domestic constitutional or legal provisions; ✓
- ☐ The right to an effective remedy requires that domestic courts apply human rights to the cases presented to them, even *ex officio*, i.e., even if the victim of a human rights violation does not formulate a claim framed in human rights terms.

EXPLANATION

This question of course has a catch, since as we have seen, the right to have access to an effective remedy does not necessarily require access to a *judicial* remedy. Suppose, however, that the individual complaining about a violation of his human rights is referred to courts to order a cessation of the violation and to provide reparation. If this is the "remedy" accessible to him, the domestic courts before which the claim is filed should have the power to effectively protect the human right which the victim claims has been violated. It does not matter, however, whether the right is directly applied by the court relying on international law, or whether it is stipulated in the domestic constitution or in domestic legislation. It is the result that matters: the ability for the victim, on whatever source of law the claim is based, to seek a cessation of the violation or compensation for the violation that occurred. The duty of the State to provide an effective remedy therefore leaves the State free to choose whether or not to accept the direct applicability of international human rights in the domestic legal order. While this is perhaps the most elegant and simple solution, it is by no means the only one.

Thus for example, the European Court of Human Rights considers that 'Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms *in whatever form they may happen to be secured in the domestic legal order*'; and as we have seen, the Human Rights Committee states in its General Comment No. 31 that 'the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary *in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national*

The duty of the State to provide an effective remedy against alleged violations of human rights has, as its correlative, the duty of the individual to invoke such remedies prior to filing a claim against the State on the international plane. In order to comply with this requirement, it is not sufficient for the individual to seek the annulment of a measure affecting him or her: he or she must do so *by alleging that the State has violated a human right*, in order to give the State an opportunity to address the violation before the State is accused through at international level. The national authorities (including in particular courts) are not obliged to raise this *ex officio*, on their own motion.

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