



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 228

April 2019

A.M. v. France - 12148/18

Judgment 29.4.2019 [Section V]

Article 35

Article 35-1

Exhaustion of domestic remedies

Effective domestic remedy

Effectiveness of a suspensive remedy, in respect of an asylum request submitted after the application had been lodged with the Court: *admissible*

Facts – After serving a prison sentence for acts of terrorism, the applicant, an Algerian national, was to be deported to Algeria under an administrative removal order, pursuant to the exclusion from France which had been added to his sentence. After appealing against the removal order before the administrative courts he asked the Court, on 12 March 2018, to indicate an interim measure suspending his deportation. On 19 March 2018 he lodged an application for asylum with the French authority for the protection of refugees and stateless persons (OFPRA), which rejected his request a few days later. He subsequently, on 6 April 2018, sent a properly completed application form to the Court.

Law – Article 35 § 1: The date on which the application was lodged, for the purposes of assessing compliance with the exhaustion of domestic remedies, had in the present case been the date of the request for an interim measure.

(a) *Effectiveness and accessibility of the asylum request* – The asylum request was the only automatic suspensive remedy available to individuals in a similar situation to that of the applicant. In its decision *M.X. v. France* ((dec.), 21580/10, 1 July 2014), the Court had found it established, first, that the asylum bodies would systematically decide on any risks incurred by the applicant on arrival in the destination country, before ascertaining whether the offences committed fell within any grounds for exclusion under the Geneva Convention or subsidiary protection mechanisms, and secondly that the French authorities would have full regard for any acknowledgment by the asylum bodies of risks under Article 3 of the Convention and would thus refrain from implementing the deportation in question even if the deportee was excluded from the Geneva Convention or subsidiary protections.

Moreover, there was no issue in the present case of a lack of access to the said remedy in practice.

Consequently, the application to the OFPRA had definitely been one of the remedies to be exhausted.

(b) *The time of the lodging of the asylum application* – In principle, applicants seeking to avoid deportation by a Contracting State were required to have exhausted any domestic remedies with a suspensive effect before requesting interim measures.

However, according to the Court's settled case-law, the last stage in the exercise of a remedy could be completed after the lodging of the application, provided the Court had not yet ruled on admissibility. In the present case, while the fact of applying to the OFPRA did not constitute the last stage of the procedure initiated by the asylum request, it was nevertheless the only stage at which a measure with suspensive effect could be secured. Even though that stage had been reached after the application was lodged, the Court had not yet decided on admissibility. The applicant had applied to the OFPRA one week after his application to the Court and the OFPRA had denied his asylum request four days later. Moreover, the applicant had in parallel used another remedy, namely an appeal to the administrative courts against the deportation order, before seeking a Rule 39 measure from the Court.

In those very specific circumstances, the Court took the view that it would be excessively formalistic to declare the application admissible at that stage for non-exhaustion of domestic remedies, the main point being that the authorities had been given the opportunity to rule on the violation of the Convention provision alleged by the applicant. The Government's objection as to the non-exhaustion of domestic remedies thus had to be rejected.

Conclusion: admissible (unanimously).

As to the merits, the Court went on to find, unanimously, that there would be no violation of Article 3 if the decision to deport the applicant to Algeria were implemented.

(See also the [Practical Guide on Admissibility](#))