



THE EUROPEAN CONVENTION OF HUMAN RIGHTS AND THE ENVIRONMENT: LIMITS & POSSIBILITIES

IUCN Workshop

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THE EUROPEAN COURT OF HUMAN RIGHTS AND THE ENVIRONMENT



OVERVIEW OVER TODAY'S TALK

1. ECtHR jurisdiction in environmental cases
2. Bandwidth of ECHR rights involved in environmental cases
3. ECHR obligations pertaining to the protection of the environment
4. Justifications
5. Conclusion

ECHR AS A MEANS OF ENVIRONMENTAL PROTECTION? THE JURISDICTION OF THE ECTHR

Art. 1 ECHR

"The High Contracting Parties shall secure to **everyone within their jurisdiction** the rights and freedoms defined in Section I of this Convention."

PERSONAL JURISDICTION (RATIONE PERSONAE)

- **Art. 1 ECHR „everyone“**
- **Art. 34 ECHR "individuals"**
 - Not nature per se
 - No "actio popularis" = popular action
 - But: environmental interest organizations as "watchdogs for nature"



SUBSTANTIVE JURISDICTION (RATIONE MATERIAE)

Art. 34 ECHR: "violation ... of the rights set forth in this Convention"

- Civil and political rights (liberties)
- ECHR guarantees no right to a clean and healthy environment, no right to health, right to water...

TERRITORIAL JURISDICTION (RATIONE LOCI)

Art. 1 ECHR: „jurisdiction“

- Territorial (Chagos Islanders)
- In exceptional cases: „State agent authority and control“, „effective control over an area“ (Louizidou, Al Skeini, Al Jedda, Chagos Islanders)
- = enterprise under control of the State (Trail Smelter Arbitration)?

BANDWIDTH OF ECHR RIGHTS INVOLVED IN ENVIRONMENTAL CASES

- Öneriyıldız, Art. 2 ECHR (Right to Life), Art. 1 Protocol 1 (Property)
- Branduse, Art. 3 ECHR (Prohibition of Torture)
- Hatton, Art. 8 ECHR (Right to Personal and Family Life)
- Okyay, Art. 6 ECHR (Fair Trial)
- Vides Aizsardzības Klubs, Art. 10 ECHR (Right to Information)

SCOPE OF POSITIVE OBLIGATIONS UNDER THE ECHR

■ **Substantive**

- No harm / precautionary principle, polluter pays (Tătar, Öneriyıldız)

■ **Procedural**

- EIA (Tătar)
- Information (Vides Aizsardzības Klubs)
- Participation (Grimkovskaya)
- Access to justice (Okuyay, Taskin)

VIOLATION OF A DUTY TO PROTECT ECHR RIGHTS : STANDARD OF PROOF

- Real risk of damage
- Significant negative influence



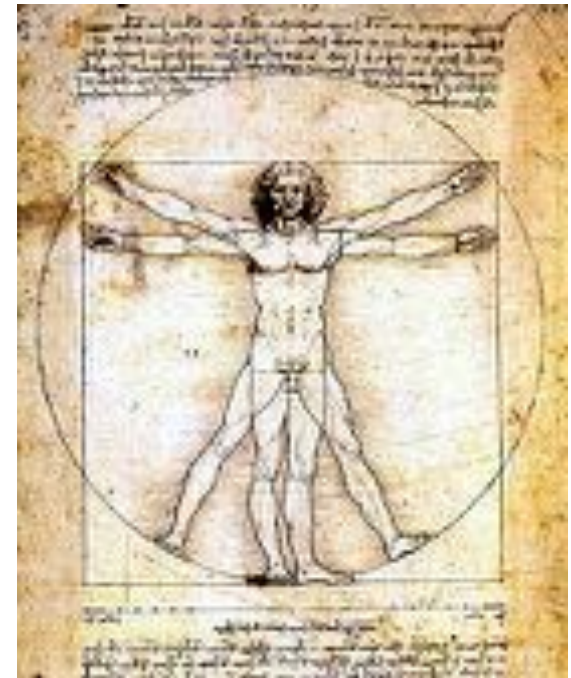
JUSTIFICATIONS FOR ECHR VIOLATIONS

- **Margin of appreciation** of States regarding fulfillment of positive obligations
- Economic capacity of states determines scope of duty to fulfill (Hatton)

CONCLUSION

ECHR provides an **anthropocentric** forum of environmental protection

- living human applicants
- attribution of acts/omissions and damage to the State
- margin of appreciation





I AM LOOKING FORWARD TO YOUR
COMMENTS

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