




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


IUCN Workshop
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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



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."




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...

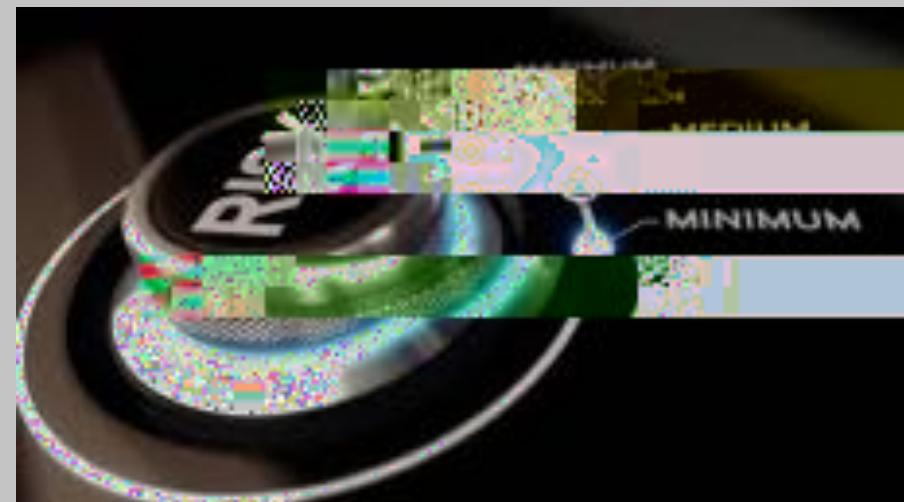
Art. 1 ECHR: „jurisdiction“


- 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)?

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- Öneriyıldız, Art. 2 ECHR (Right to Life), Art. 1 Protocol 1 (Property)
 - Branduse, Art. 3 ECHR (Prohibition of Torture)

- Substantive
 - No harm / precautionary principle, polluter pays (T tar, Öneriyıldız)
- Procedural
 - EIA (T tar)
 - Information (Vides Aizsardz bas Klubs)
 - Participation (Grimkovskaya)
 - Access to justice (Okayay, Taskin)

- Real risk of damage
- Significant negative influence



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

ECHR provides an anthropocentric forum of environmental protection

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



