

Informal settlements and fundamental rights

ECHR Article 1, Protocol 1: protection of property

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Content

- Introduction to the European Convention (ECHR)
- Focus on Article 1, Protocol 1 ECHR
- Informal settlements
- Öneriyildiz v. Turkey
- Pye v. United Kingdom
- Conclusions
- Further research

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2

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Introduction to the ECHR

- 1950: European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- Now: ECHR has been ratified by all 46 member states of the Council of Europe
- States are bound to secure to everyone within their jurisdiction the rights and freedoms laid down in the Convention
- European Court of Human Rights (Strasbourg)

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3

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Article 1 Protocol No. 1 ECHR

- Every natural or legal person is entitled to the **peaceful enjoyment of his possessions**. No one shall be **deprived of his possessions** except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
- The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to **control the use of property in accordance with the general interest** or to secure the payment of taxes or other contributions or penalties.

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4

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The test of Article 1 Protocol 1

1. Did the applicant have property in the sense of article 1?
2. Was there an interference with the peaceful enjoyment of the property?
3. Was the interference provided for by law?
4. Did the interference pursue the general interest?
5. Did the interference strike a fair balance?

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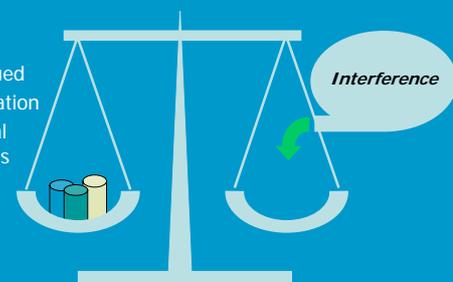
5

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Fair balance test

- Aim pursued
- Compensation
- Procedural safeguards



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6

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Informal settlements

- Squatter settlements, illegal settlements, slum quarters, shantytowns, encroachments
 - Characterised by inadequate dwellings and facilities, dense expansion of small, more or less provisional shelters built from diverse materials.
 - In this paper/presentation: occupiers of land who lack any title to the land
- ⊕ Does 'no legal title' mean 'no rights'?

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Öneryıldız v. Turkey

- Illegal settlement next to a rubbish dump
 - Methane explosion killed 39 people and destroyed 10 dwellings
- ⊕ European Court:
- Wide interpretation of 'possessions'
 - Proprietary interests in the dwelling



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Pye v The United Kingdom: *Squatters and adverse possession*

- Grazing license granted to the neighbouring farmer
 - Farmer continued use after expiring license: land owner didn't act
 - Farmer claimed adverse possession
 - Owner went to (national) court
 - Claim failed: 14 years of use
 - Owner lost his ownership to the squatter.
- ⊕ European Court: deprivation of title to registered land imposed on Pye an individual and excessive burden (*no fair balance*)

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9

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Conclusions

- Informal settlements:
 - POSITIVE: Rights to the land can be separated from the rights to buildings erected on it (Öneryıldız)
 - NEGATIVE: Acquiring title to land by adverse possession in case of registered land seems to be impossible (Pye)
- Task for the surveyor: When rights are not related to land itself, but they are respected as possessions, is this something that should be registered?

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Further research

- Article 1 Protocol 1 and/or Article 8
 - which way to go?
- Article 6 (procedural safeguards) related to the fair balance test of Article 1 Protocol 1 and Article 8 (which considers procedural safeguards)
- Casebook for planners

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11

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