



The Right to Enjoy a Healthy Environment and the Deposit Return System in Romania

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Received: August 30, 2024

Accepted: December 27, 2024

Published: April 5, 2025

Keywords:

Deposit Return System;
DRS;
Healthy environment;
Human rights;
Romania;
Strasbourg



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Abstract: *The environment is protected by public international law although a general framework convention does not exist. We all have the right to enjoy a sound, quiet and healthy environment! It is not just a current slogan, very heard nowadays, but it is also a right, even though it is not expressly guaranteed by the European Convention on Human Rights, but also by other international instruments such as the European Social Charter. Nowadays we have to discover and explore how we can protect the environment by using human rights law.*

The main aim of this study is to increase the understanding of the relationship between the international protection of human rights under the European Convention on Human Rights and the environment, as well as to contribute to strengthening environmental protection at the national level.

Therefore, on one part, we will highlight the most relevant cases of the European Court on Human Rights on environment-related matters, and on the other part, we will inform the scientific community about how the deposit return system (DRS) is working in Romania after its launch on 30 November 2023. In our opinion, the DRS represents a huge step towards a more sustainable future for Romania, which will entail the right to enjoy a healthy environment.

1. INTRODUCTION

At the time of finalization of this study, the international community is gravely challenged by two international armed conflicts causing flagrant violations of public international law, with strong indications of serious human rights violations in Ukraine and Israel. In a modern world such as the one we live in, actions such as those happening in those territories only serve to drag us back from the path of normal and healthy social development, seriously violating both individual rights, such as the right to life, the right to freedom from torture and ill-treatment, the right to a healthy environment, the right to privacy, and collective rights, such as the right to development, the right to peace and the right to the common heritage of humanity.

Of all these rights, the right to enjoy a healthy environment has been discussed more and more in the last decades, considering that human rights have evolved due to globalization. We notice that the environment is being increasingly affected, the underdevelopment of certain regions is worsening, and great economic disparities are being created between people.

Given our interest in the European continent, our analysis will focus on the European Convention on Human Rights adopted within the Council of Europe and the case law of the European Court for Human Rights.

In order to maximize the rights and freedoms set out in the Convention and the protocols, the Strasbourg judges have found that their text must be interpreted dynamically, as it evolves with

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society. This method of interpretation ensures that the guaranteed rights are effective. This evolutive interpretation proves that the treaty text, in both its procedural and substantive parts, is “*a living instrument (...) which must be interpreted in the light of current conditions*”². As a result of this method of interpretation, new rights such as the right to a healthy environment have been recognized, although they are not enshrined *in terminis* in the European Convention on Human Rights.

For this kind of interpretation, the Strasbourg Court identifies the standard of protection using the domestic law of the Member States and, at the international level, the case law of other international jurisdictions³, practice⁴ and standards created by other international bodies⁵ or by the rules of other international organizations⁶.

Analysing the case-law of the European Court of Human Rights, we can easily notice that the right to enjoy a healthy environment could be invoked together with Article 8 of the Convention - *Right to respect for private and family life*, which states that:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.”*⁷.

This article has very complex content and it has been interpreted by the Court in a series of judgments, starting with the direct protection of the right to family life, the right to a home, the right to correspondence, the right to privacy, and indirect⁸ protection such as the right to enjoy a healthy environment. The right to privacy includes the right to personal privacy, the right to social privacy, the right to enjoy a healthy environment. Although the right to privacy belongs to the category of civil rights, under the Convention it is considered an individual right and the definition of “privacy” is in practice legally inapplicable.

This article also acquires new meanings in the light of new social realities, meaning that the judges take into account the social context and the changes in society.

Article 8 is essentially a negative right, it excludes any unlawful or arbitrary interference by the authorities or third parties. The second paragraph of the article lays down the conditions under which these rights may be limited: the interference must be provided for by law, must be necessary for a democratic society, and must pursue one or more legitimate aims. Because there is

² ECHR, *Tyrer v. Great Britain* (application no. 5856/72), Judgment of 25.04.1978, § 31.

³ For example, the International Court of Justice, the United Nations Committee against Torture, the Inter-American Court of Human Rights.

⁴ For example, the practice of the United Nations Human Rights Committee.

⁵ For example, the standards of the Committee for the Prevention of Torture (the Council of Europe's monitoring body).

⁶ For example, Amnesty International, the US State Department.

⁷ Please see [European Court of Human Rights \(n.d.-a\)](#).

⁸ We emphasize that it is an indirect protection because the pollution or degradation of the environment do not constitute direct violations of Article 8.

one permissible interference in the second paragraph, we consider this right to be a conditional right. Although the Member States have a wide “margin of appreciation” (i.e. discretion), each interference will be analyzed according to the facts of the case.

Therefore, based on the principle of subsidiarity, it is not upon the Court to determine which measures are appropriate and necessary to protect the environment (who acts as a last resort only), but upon the domestic authorities, since they are best placed to decide on environmental issues.

2. THE ENVIRONMENT-RELATED CASES INVOLVING DIFFERENT VIOLATIONS OF THE PROVISIONS OF THE CONVENTION

Over the years, the Court was called upon to rule in environment-related cases “*on account of the fact that the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.*”⁹. In this respect, the Court has already ruled in more than 300 environment-related cases, in which individuals have argued at least one breach of their Convention rights due to adverse environmental factors, situation that underlines that we can protect the environment by using human rights law. Therefore, in this situation, the environment-related cases are not only on the grounds of Article 8 of the Convention, as we will underline below, depending on the subject-matter of the cases.

The first category of cases would be the cases raising *environmental* issues, the Court having been referred several cases, out of which we present the following cases in which a range of environmental factors impacted individual convention rights, and the Court found at least one violation of the Convention:

- i. *Öneryıldız v. Turkey* – Grand Chamber Judgment of 30 November 2004 - involving dangerous industrial activities:
 - the applicant complained that the Turkish authorities failed to take measures to prevent a methane explosion that engulfed his house (and ten other houses) and killed nine close relatives, although (a) his house was built without authorisation, close to a rubbish tip, and (b) there was an expert report provided for the authorities warning about the likelihood of an explosion;
 - the Court held that Turkey violated Article 2 (right to life - both its procedural and substantive parts) of the Convention, Article 1 of Protocol No. 1 to the Convention (protection of property), Article 13 of the Convention (right to an effective remedy);
- ii. *Budayeva and Others v. Russia* – Judgment of 20 March 2008 - involving natural disasters:
 - the applicants alleged that the authorities failed to mitigate the consequences of a mudslide that devastated a town situated in a mountain area, while they were injured, sustained psychological trauma for losing their relatives and their homes, and they also failed to carry out a judicial enquiry;
 - the Court held that Article 2 of the Convention (right to life – both substantive and procedural) has been violated;
- iii. *Florea v. Romania* - Judgment of 14 September 2010 – regarding passive smoking in detention:
 - the applicant complained that he had to share for nine months a prison cell of 35 beds with 110-120 other detainees (out of which 90% were smokers), although he was suffering from chronic diseases (e.g. hepatitis and arterial hypertension);
 - the Court found that Article 3 of the Convention (prohibition of torture) was violated because these conditions exceeded the threshold of severity required by this provision; the same solution was given also in *Elefteriadis v. Romania* – Judgment of 25 January 2011;

⁹ European Court of Human Rights (n.d.-b).

- iv. *L'Érablière asbl v. Belgium* – Judgment of 24 February 2009 – regarding access to court:
 - the applicant, a non-profit organization acting for the protection of the environment, complained that an inadmissibility decision based on procedural grounds (there was no statement of facts) of the Belgium Conseil d'Etat breached its right of access to a court;
 - the Court found that Article 6 paragraph 1 of the Convention (right to a fair trial) was breached because the measure was disproportionate;
- v. *Karin Andersson and Others v. Sweden* – Judgment of 25 September 2014 - regarding access to court:
 - the applicants complained mainly that they could not fully legally review a Government's decision to allow the construction of a 10 km long railway close to their properties in northern Sweden;
 - the Court found that this constituted a violation of Article 6 paragraph 1 of the Convention (right to a fair trial) because it infringed their rights as property owners;
- vi. *Apanasewicz v. Poland* – Judgment of 3 May 2011 – regarding the failure to enforce final judicial decisions:
 - the applicant complained mainly that the state failed to enforce a final judgment of 2001 ordering a factory's owner to shut it down because it caused pollution, various health problems, inedible harvest (and the factory was still functioning at the time this judgment was given);
 - the Court found that it constituted a violation of Article 6 paragraph 1 of the Convention (right to a fair trial – due to overall duration of the legal proceedings, lack of diligence of the authorities, insufficient use of the legal coercive measures), and a violation of Article 8 of the Convention (right to respect for private and family life) because of the ineffectiveness of the measures taken by the authorities in order to protect the applicant's private and family life against the interference caused by the neighbour factory;
- vii. *Guerra and Others v. Italy* – Judgment of 19 February 1998 – regarding the environmental risks and access to information:
 - the applicants complained about the lack of practical measures taken by the Italian state in order to reduce the pollution of a chemical factory producing fertilisers near their homes and to reduce the major-accident hazards;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the state did not secure the applicants' right to respect for their private and family life;
- viii. *Roche v. the United Kingdom* – Grand Chamber Judgment of 19 October 2005 – regarding the environmental risks and access to information:
 - the applicant complained that, while he was in the British Army he was exposed to participation in mustard and nerve gas tests conducted (which determined hypertension, bronchitis and bronchial asthma), and that he did not had access to all the relevant and appropriate information to assess the risks to which he had been exposed to, during these tests;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the state did not fulfill its positive obligation of providing the information;
- ix. *Lopez Ostra v. Spain* – Judgment of 9 December 1994 – industrial pollution:
 - the applicant complained about the passivity of the authorities regarding the smells, noise and polluting fumes of a neighbouring waste-treatment plant;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the state failed to strike a fair balance between the applicant's effective

- enjoyment of the right enshrined in this provision and the interest of the economic well being of the respective town;
- x. *Tătar v. Romania* – Judgment of 27 January 2009 – industrial pollution:
 - the applicants complained about the fact that the technological process used by a neighbouring company in mining gold (the use of sodium cyanide in the open air) and an environment accident occurred in 2000 jeopardized their lives, as well as about the state's passivity to solve their complaints;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the state failed to assess the risks of that company operation, to take all the relevant and appropriate measures in order to protect the lives of the persons living there, as well as to ensure public access to the conclusions of investigations and studies in the environmental issues;
 - xi. *Dubetska and Others v. Ukraine* – Judgment of 10 February 2011 - industrial pollution:
 - the applicants complained that their health, their life and their living environment were damaged because of a coal mine operating by the state, near their homes, and the authorities failed to remedy the situation;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because of the state failure to take appropriate measures to remedy the respective situation, although the authorities were aware of the adverse environmental effects of the mine;
 - xii. *Moreno Gómez v. Spain* – Judgment of 16 November 2004 – neighbouring noise:
 - the applicant complained about the high level of noise and beyond permitted levels, for years, made by the neighbouring nightclubs and about the authorities passivity;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the authorities failed to respect its positive obligation under this article because it did not take the appropriate measures to deal with the night-time disturbances;
 - xiii. *Deés v. Hungary* – Judgment of 9 November 2010 – road traffic noise:
 - the applicant complained about the noise, pollution and smell caused by the heavy traffic on his street near a highway operating a toll, and of the excessive length of the court proceedings;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life), because the state failed to discharge its positive obligation and a violation of Article 6 paragraph 1 (right to a fair trial within a reasonable time) for the length of the proceedings;
 - xiv. *Bor v. Hungary* – Judgment of 18 June 2013 – rail traffic noise:
 - the applicant complained mainly about the extreme noise disturbance caused by the trains and about the state's failure to impose on the railway company an obligation to keep the noise level under control by constructing noise barriers;
 - the Court held that there had been a violation of Article 8 of the Convention (right to respect for private and family life) and a violation of Article 6 paragraph 1 (right to a fair trial within a reasonable time);
 - xv. *Dzemyuk v. Ukraine* – Judgment of 4 September 2014 – soil and water contamination:
 - the applicant alleged that his water supply for drinking and for gardening was contaminated by the construction of a neighbouring cemetery, and that the authorities failed to enforce a final and binding judgment declaring the cemetery illegal;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life);

- xvi. *Brândușe v. Romania* - Judgment of 7 April 2009 – waste collection, management, treatment and disposal:
- the applicant complained about the authorities failure to take the necessary measures to tackle the high level of pollution (offensive smells) created by a former refuse tip situated near the prison where he was detained;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life);
- xvii. *Locascia and Others v. Italy* – Judgment of 19 October 2023 - waste collection, management, treatment and disposal:
- the applicants complained that authorities have failed to ensure the proper management of the refuse collection, treatment and disposal services, and to secure and clean up the landfill site;
 - the Court found a violation of Article 8 of the Convention (right to respect for private and family life);
- xviii. *Steel and Morris v. the United Kingdom* – Judgment of 15 February 2005 - freedom of expression:
- the applicants complained that the legal proceedings brought against them by McDonald's as a response to their environmental issue campaign and their outcome had infringed on their right to freedom of expression;
 - the Court found a violation of Article 10 of the Convention (freedom of expression), and a violation of Article 6 paragraph 1 of the Convention (right to a fair trial) because the denial of legal aid for the applicants contributed to an unacceptable inequality of arms with McDonald's;
- xix. *Rovshan Hagiye v. Azerbaijan* – Judgment of 9 December 2021 - freedom to receive and impart information:
- the applicant who was a journalist complained about the refusal of the authorities to give him access to information of public interest regarding the environmental and health impact of a military radar station;
 - the Court found a violation of Article 10 of the Convention (freedom of expression) considering that the information requested was of public interest, ready and available;
- xx. *Costel Popa v. Romania* – Judgment of 26 April 2016 - freedom of assembly and association:
- the applicant who was the founder of an environmental association complained about the Romanian courts of law's refusal to register this association due to the fact that he was not allowed to rectify the irregularities in the articles of association as provided by the domestic law;
 - the Court concluded that there had been a violation of Article 11 (freedom of assembly and association) because of the disproportionate character of the aim pursued by this sanction.

A second category of cases would be the more recent *climate change* cases. Three recent cases would be relevant in this respect:

- i. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*¹⁰ – Grand Chamber Judgment of 9 April 2024:
- the applicants complained about the consequences of global warming on their living conditions and health, and that the domestic authorities are not taking sufficient action to mitigate the effects of climate change, underlining that under the Convention, Switzerland has positive obligations to protect life effectively and to ensure respect for their private and family life, including their home;

¹⁰ We underline that because of the great interest in the climate change, a large number of third-party interveners (including Member States of the Council of Europe) asked for permission to intervene in the written stage of the proceedings of this case.

- the Court found a violation of Article 8 of the Convention (right to respect for private and family life) because the state had failed to comply with its positive obligations under the Convention concerning climate change, and because the authorities had not acted in time and in an appropriate way to develop and implement relevant legislation and measures, and of Article 6 paragraph 1 of the Convention (right to a fair trial) because the domestic courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the applicant association's complaints;
- ii. *Carême v. France* – Grand Chamber Decision on the admissibility of 9 April 2024:
 - the applicant, a resident and former mayor of a French municipality complained that France had not taken sufficient steps to prevent climate change and that this failure entails a violation of Article 2 of the Convention (the right to life) and of Article 8 of the Convention (the right to respect for private and family life);
 - the Court considered that the claimant had no victim status because he had no relevant links with that municipality and he did not currently live in France;
- iii. *Duarte Agostinho and Others v. Portugal and 32 Other States* Grand Chamber - Decision on the admissibility of 9 April 2024:
 - the applicants complained that the 33 Member States concerned failed to comply with their positive obligations under the Convention, read in the light of their undertakings under the 2015 Paris Agreement on climate change; the case concerned the greenhouse gas emissions that contribute to the phenomenon of global warming;
 - the Court considered that there is no extraterritorial jurisdiction and that the claimants did not exhaust the domestic remedies.

Between September 2022 and February 2023, the European Court on Human Rights held a series of procedural meetings in respect of climate change applications other than these three cases mentioned above, which were examined and then decided by the Grand Chamber, and decided to adjourn them – in a future research, we shall also highlight them¹¹.

3. THE DEPOSIT RETURN SYSTEM IN ROMANIA

As we can see above, pollution represents a major environmental concern in the Council of Europe and worldwide. Legislators, domestic authorities and individuals should not remain passive anymore and they should react fast in order to change something for good.

In Romania, in the previous years, important steps have been taken especially in the waste management and recycling services areas. Moreover, the deposit return system has been implemented since 30 November 2023, after it was expected to be implemented first by 1 January 2021. In a nutshell, this means that nowadays, when buying a product packaged in returnable packaging, for primary non-refillable packaging [from certain categories of beverages (i.e. water, soft drinks, beer, cider, wine or spirits), in primary non-refillable glass, plastic or metal packaging, with volumes between 0.1 l and 3 l inclusive], each consumer or end-user pays a guarantee of 0.50 RON (i.e. ten euro cents) together with that product's price, and when returning the packaging of the respective product to a collection centre, the respective guarantee is recovered by the consumer or end-user¹².

¹¹ *Uricchiov v. Italy and 31 Other States* (application no. 14615/21) and *De Conto v. Italy and 32 Other States* (application no. 14620/21), *Müllner v. Austria* (application no. 18859/21), *Greenpeace Nordic and Others v. Norway* (application no. 34068/21), *The Norwegian Grandparents' Climate Campaign and Others v. Norway* (no. 19026/21), *Soubeste and four other applications v. Austria and 11 Other States* (applications nos. 31925/22, 31932/22, 31938/22, 31943/22 and 31947/22), *Engels v. Germany* (application no. 46906/22).

¹² For more information regarding the deposit return schemes, please see [European Commission \(n.d.\)](#).

Other products except the ones mentioned above are not subject to this legal regime (e.g. beverage glasses, pouches - flexible pouch-type packaging in layers, bag-in-box - beverages in closed cartons and any other packaging that cannot retain its shape after emptying). However, for ease of identification, the products included in the deposit return system are marked on the packaging with a guarantee symbol.

We have already presented¹³ the legal framework applicable to the existing deposit return system in Romania (i.e. Government Decision No. 1074/2021 on the establishment of the deposit return system for primary non-refillable packaging, published in the Romanian Official Journal no. 955 of 6 October 2021), its basic functioning principles, and the deposit return system administrator (i.e. RetuRO Sistem Garantie Returnare S.A.), so we will not insist on the details of the regulation or initial implementation since it is not the object of this research.

The DRS administrator operates with exclusively private funding and its role is to ensure transparency on the quantities of beverage packaging put on the market and returned by consumers or end-users, contributing to Romania's sustainable development through responsible management of packaging waste in order to achieve the recycling targets imposed by the European Union.

But how DRS operation is perceived now in Romania¹⁴? We consider that DRS is already producing the expected effects: between December 2023 and the end of July 2024, Romanian officials underline that over 1.3 billion¹⁵ packages with packaging with the guarantee logo have already been returned by consumers or end-users to RetuRO. Nowadays, the effects of DRS implementation are visible: you see less and less DRS packaging in landfills, on roadsides, on river banks, in forests, or in nature.

Of course, we all know that all beginnings are always difficult, and when we are talking about a network involving millions of consumers and tens of thousands of manufacturers and retailers, creating a stable flow of packaging from production to recycling poses challenges at every step. The Romanian competent authorities announced in August that huge fines were given following checks on the DRS functioning, including to RetuRO¹⁶.

We really believe that Romania has come a long way in a very short time, made possible with the involvement and effort of the RetuRO administrator, consumers and end-users, producers, retailers and HORECA operators. All these stakeholders are laying the foundations of a collaboration on which a sustainable future will be built, and DRS really plays a vital role in pollution prevention.

4. CONCLUSION

The Convention and the case-law of the Strasbourg Court has encouraged governments of the Council of Europe Member States to take several steps to tackle the degradation of the natural environment and climate change. It is obvious that environmental pollution, such as hazardous waste, plastic waste, harmful industrial emissions, and excessive noise, affect people's health and well-being all over the world. From the analysis of the Court's case-law, over the years, it is even more obvious that these judgments helped the Member States to strengthen environmental protection.

¹³ Please see, for instance, [Spataru-Negura \(2024\)](#).

¹⁴ Please see [Romania Insider \(2024\)](#).

¹⁵ Please see [G4Media.ro \(n.d.\)](#).

¹⁶ Please see [Digi24 \(n.d.\)](#).

Please keep in mind that “*environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to environmental protection or nature conservation.*”¹⁷ For environmental damage to constitute a violation of Article 8 paragraph 1 of the Convention, according to Birsan (2010, p. 644) the judges must identify an “*adverse effect on the private or family life of a person and not merely a general impairment of it*”.

Specifically, the Strasbourg judges consider that individuals have the right to be informed about the environmental risks, to have access to the results of pollution studies, and to participate in environmental decision-making. Member States have, according to the Court, a number of positive obligations: to take appropriate legislative or administrative measures to protect the environment against pollution, as well as the obligation to provide the persons concerned with information on the possible risks of hazardous activities¹⁸.

In each specific case, the Court examines whether the public authorities have struck a fair balance between a person’s right to respect for private and family life and the economic well-being of the Member State concerned (the so-called “*fair balance test*”).

It is interesting that in the doctrine there are authors like Boroi (2016, p. 460) who speak of a primacy over all other fundamental rights of the right to enjoy a healthy environment - even over the right to life or other important civil rights. This is possible because the right to enjoy a healthy environment goes beyond the right to life: “[e]ven if it cannot be accepted that future generations already have a right to life, there is nevertheless an obligation on the part of present generations to protect the environment in such a way as not to compromise the life expectancy of those who follow”.

Over the years, Romania has constantly adapted and aligned its legislation and administrative practice to the European standards in matters essential to the existence of a democratic society (e.g. protection of the right to property, the functioning of the judiciary, the prohibition of torture and ill-treatment), taking into consideration the European Court of Human Rights judgments.

We are curious if and when, in the following years, will appear cases in front of the Court dealing with the challenges of the deposit return system from the perspective of the right to enjoy a healthy environment, especially since the deposit return system is the largest circular economy project in Romania. Why not yet? Because between the moment of the adoption of a new piece of legislation and the moment of a Court judgment, many years have to pass (please have in mind the provisions of Article 35 paragraph 1 of the Convention that sets the main admissibility criteria to refer a case to the Court – “*The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.*”).

Until then, Romania should follow the Court’s case-law in order to discover if the Court renders judgments regarding other Member States that have previously implemented the deposit return system (e.g. Germany, Denmark, Norway, Sweden, Finland, Croatia) and, in general, to learn from their experience towards the effective protection of the right to enjoy a healthy environment. But, at this moment, we did not identify any such judgement regarding the deposit return system schemes...

¹⁷ European Court of Human Rights (2012) (footnotes omitted).

¹⁸ See ECtHR, *Tătar v. Romania* (application no. 67021/01), judgment of 27.01.2009, para. 88.

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