



MINISTRY OF ENVIRONMENT,
WATERS AND FORESTS

CABINET OF MINISTER

No. DGEICPSC/R/7928/7980/15.04.2024

To: Mr. Michel Forst, UN Special Rapporteur on environmental defenders under the Aarhus Convention

Ref: ACSR/C/2023/13 (Romania)

Dear Mr. Michel Forst,

We take this opportunity to thank you for your work as Special Rapporteur on environmental defenders under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

The Ministry of Environment, Waters and Forests (MEWF) recognizes the importance of access to environmental information, public participation in decision-making procedures and access to justice in environmental matters. The participation of environmental non-governmental organisations in regulation procedures represents an opportunity to improve environmental impact assessments and to set prevention and mitigation measures which are better adapted to the particularities of each site.

As Focal Point for the Aarhus Convention and competent authority for environmental protection, MEWF cooperates with other public authorities in order to ensure a proper implementation of the Aarhus Convention in Romania. One of the recent steps taken by MEWF in this regard is starting the process to adopt the "Guide to public authorities for public access to environmental information" by legislative act, in order to ensure a wider enforcement of this guide.

Regarding the complaint concerning the alleged persecution, penalization and harassment of Bankwatch Romania presented in your letter dated 16 February 2024, please receive our response to the matters raised.

The Romanian Government places high importance to the upholding and promoting human rights and fundamental freedoms, including the freedoms of expression and peaceful assembly. As a result, Romania has ratified almost all major international and regional treaties and protocols in the field of human rights. The civil society is also an important partner for the Government in promoting inclusive and sustainable economic development.

The Romanian authorities have carefully assessed the allegations of persecution, penalization and harassment of Bankwatch Romania and its staff members in connection with the exercise of their rights under the Aarhus Convention.

Under this assessment, the Romanian authorities did not find that there is an "ongoing, serious campaign of harassment and intimidation specifically targeting Bankwatch Romania and its staff members", as alleged, at the level of public authorities in Romania. Moreover, no legal

or administrative measure were started or instituted against Bankwatch, as it will be detailed below.

In each of the harassment allegations made by Bankwatch, the Romanian authorities have declared to have acted according to the national legislation in force.

A. Regarding the media, we would like to mention that the Romanian institution responsible for the audiovisual sector is the National Audiovisual Council (NAC), which ensures the regulation of the audiovisual content distributed by the audiovisual media services providers from Romania.

NAC's responsibility is not limited to the protection of specific groups, such as environmental defenders, but to the protection of all members of the public. NAC aims to rapidly identify and efficiently manage any form of discrimination or intimidation which might occur during audiovisual programs, in accordance with the legal norms and regulations. Moreover, it guarantees the respect of the pluralistic expression of ideas and opinions within the content of audiovisual media services, including the protection of political pluralism, encourages free competition and ensures the pluralism of information sources. Furthermore, NAC has the obligation to ensure the protection of human dignity, the right to one's own image and the protection of minors¹, the protection of Romanian culture and language, the culture and languages of national minorities, but also the transparency of the organization, operation and financing of audiovisual mass media.

Our national legislation is aligned with the EU legislation regarding audiovisual media services. The two legal "pillars" which form the basis of the audiovisual regulations are the Audiovisual Law no. 504/2002, as amended, which transposes Directive 2010/13/EU (Audiovisual Media Services Directive - AVMSD)² and the Code of regulation for the audiovisual content.

AVMSD sets obligations for video-sharing platforms (VSPs), as well. VSP service providers must implement appropriate measures to protect minors from harmful content which may impair their physical, mental or moral development and all citizens from incitement to hatred, violence and terrorism.

In a broad sense, in Romania, the regulation of disinformation overlaps, without being confused, with the regulation regarding correct information. According to the provisions of article 3 para. (2) of the Audiovisual Law no. 504/2002, all providers of audiovisual media services have the obligation to provide objective information to the public, through the correct presentation of facts and events, and to favour the free formation of opinions. Also, according to article 64 of the Code of regulation for the audiovisual content, by virtue of the public's fundamental right to information, providers must comply with the principle that information on a subject, fact or event must be correct, verified and presented impartially and in good faith.

NAC can exercise its right to control the content of programs offered by audiovisual media service providers only after the public communication of these programs³.

¹ Article 10 para (3) letter e) of the Audiovisual Law no. 504/2002, as well as Title III (articles 30-46¹) of the Code of regulation for the audiovisual content

² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

³ Art. 10 para. (4) of the Audiovisual Law no. 504/2002

The verification of the content and offer of program services is carried out periodically and whenever NAC considers it necessary or when it receives a complaint regarding non-compliance with the legal provisions, the regulatory norms or the obligations listed in the audiovisual license⁴.

Starting with 2022, NAC extended its authority over the providers of platforms for sharing user-generated video materials, established in Romania. The users from Romania who upload and/or generate audiovisual content on a user account hosted on a VSP, and for whom they have editorial responsibility, can be sanctioned with fines between 2,000 lei and 30,000 lei (approximately 400 to 6,000 euros), according to article 91² para. (1) from the Audiovisual Law no. 504/2002, if:

- a) explicitly incites to violence or hatred against a group of people or a member of a group based on considerations such as sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, political opinions or of other nature, belonging to a national minority, wealth, birth, disability, age, sexual orientation or chronic contagious or non-contagious disease;
- b) publicly incites to terrorist crimes or harms or presents a serious risk of harming public security or health, including national security and defense.

Moreover, in order to identify sanctioned users, NAC requests VSP providers for information about contact data stored by the platform. The platform is obliged to communicate the contact data of the respective users within 48 hours, under the penalty of a fine of up to 30,000 lei/day (approximately 6,000 euros) for delay⁵.

When the content of a VSP violates the provisions on the protection of minors and the general public against harmful and illegal audiovisual content and no other effective means are available to prohibit the violation of these provisions and to avoid the risk of serious harm to the collective interests of the public or to the legitimate interests of an individual, NAC requires VSPs providers to remove or restrict access to illegal content or to display a warning message to users when accessing such content or to deactivate the user's account for up to 12 months⁶. NAC may require both service providers providing storage space for VSPs to remove, disable or restrict access to a VSP, and registry operators, who allocate domain names to platforms, to remove the domain name of the platform⁷.

Regarding the processing of personal data for journalistic purposes, Romania applies the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation - GDPR).

According to article 85 of GDPR, "Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression".

⁴ Art. 10 para. (5) of the Audiovisual Law no. 504/2002

⁵ Art. 91² para. (5) of the Audiovisual Law no. 504/2002

⁶ Art. 42⁹ para. (1) letter a) of the Audiovisual Law no. 504/2002

⁷ Art. 42⁹ para. (2) - (5) of the Audiovisual Law no. 504/2002

Moreover, according to art. 7 of Law no. 190/2018 *on measures to implement Regulation (EU) of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC*, in order to reconcile the right to the protection of personal data, freedom of expression and the right to information, processing for journalistic purposes or for the purposes of academic, artistic or literary expression may be carried out, if it concerns personal data that were manifestly made public by the data subject or that are closely related to the data subject's status as a public person or to the public nature of the facts in which he/she is involved, by way of derogation from the following chapters of the GDPR: Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organisations), Chapter VI (independent supervisory authorities), Chapter VII (cooperation and consistency) and Chapter IX (specific data processing situations).

According to reason (153) of GDPR, "In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly".

People who consider themselves injured from the perspective of image damage can address the courts based on the provisions of the Civil Code.

B. With respect to the show "Punctul Culminant", dated 07.07.2022, at 21:00, a complaint made by Bankwatch Romania was registered at NAC, with the registration no. 7806/11.07.2022.

The Council, during the public meetings from 27 and 28.07.2022, analyzed the monitoring report for the mentioned show, watched relevant sequences, and listened to the point of view of the representative of the Romania TV channel. Following the debates of the Council members⁸, there was a proposal to sanction the post, which did not meet the legal number of votes for adoption⁹.

The proposal was made for the violation of some articles of the NAC Decision no. 220/2011 regarding the Code of regulation for the audiovisual content, namely:

Art. 40 para. (4) The moderators of a show have an obligation to firmly ask the interlocutors to prove the accusatory statements, in order to allow the audience to assess how justified they are.

Art. 64 para. (1) By virtue of the public's fundamental right to information, audiovisual media service providers must comply with the following principles:

- a) ensuring a clear distinction between facts and opinions;*
- b) information on a subject, fact or event to be correct, verified and presented impartially and in good faith.*

Art. 66 During news programs and debates, information on issues of public interest, which have a political, economic, social or cultural nature, impartiality and balance must be ensured and the free formation of opinions must be favored, by presenting the main points of view which are in opposition, during the period when the issues are under public debate.

⁸ Minutes of the meetings from 26, 27, 28 of July 2022 can be found at the following link https://www.cna.ro/article12067_12067.html

⁹ CNA issues decisions, instructions and recommendations, in the presence of at least 8 members and with the vote of at least 6 members (art. 15 para. (1) of the Audiovisual Law no. 504/2002).

In the matter of assessing whether a consent for disseminating personal images or information was needed or not, NAC only has competences in matters related to audiovisual content in accordance with the legal provisions applicable to the audiovisual field, without having the direct competence to analyze details such as the existence or absence of consent for broadcasting certain contents. People who consider themselves injured from the perspective of image damage can address the courts based on the provisions of the Civil Code.

C. Regarding the live uploaded on the Meritocrația Romania account, belonging to Mr. Laurențiu Primo, hosted on the Facebook platform, dated February 28, 2023, namely the video called "Război, tărașoi și un gherșoi", NAC did not receive any complaint from Bankwatch Romania. We would like to mention that in accordance with article 10 para. (5) of the Audiovisual Law no. 504/2002, verifications of the content and offer of programs are carried by NAC periodically or whenever necessary, including when complaints are received of non-compliance with the legislation or obligations by media service providers. Therefore, in this case, in the absence of any complaint, NAC did not initiate any specific intervention.

D. With respect to the codes of conduct for the Members of Parliament, the constitutional and regulatory framework of parliamentary conduct and discipline ensure the protection of dignity to all participants in parliamentary activities.

The Code of Conduct of Deputies and Senators was adopted by Decision of the Parliament of Romania no. 77/2017, republished in the Official Gazette of Romania, Part I, no. 1131 of December 14, 2023.

Also, according to article 157 of the Regulation of the Chamber of Deputies, approved by Decision of the Chamber of Deputies no. 8/1994, republished in the Official Gazette of Romania, Part I, no. 72 of January 26, 2024, as amended:

- (1) (...) uttering insults or slander both from the Chamber's tribune and from the meeting room of the plenary, commissions or other working bodies of the Parliament is prohibited.
- (3) In parliamentary debates, deputies do not adopt derogatory, racist or xenophobic behavior and language (...)

Also, according to article 248 para. (2) final thesis and article 254 of the same Decision, the sanctions applied by the Chamber of Deputies are published in the Official Gazette of Romania, Part II, and on the Chamber`s webpage.

According to the parliamentary discipline regime of the Chamber of Deputies, deviations from the regulatory or statutory provisions, are sanctioned as follows:

- a) Verbal warning;
- b) Call to order;
- c) Revocation of the word;
- d) Removal from the room during the session;
- e) Written warning;
- f) Decrease of the allowance by 10% for up to 3 months for violation of the conflict of interest legislation;
- g) Decrease of the allowance by 50% for up to 6 months for violation of the provisions of article 129 para. (2) or article 247;
- h) decrease of the time for taking the floor to less than 10 seconds per intervention for up to 3 months, during the meetings of the Chamber of Deputies (...);
- i) Withdrawal and placing at the disposal of the general secretary of the Chamber of Deputies for up to 6 months of the staff employed and the cars assigned to the parliamentary group

whose actions endanger the proper functioning and safety of the public authority, its dignitaries or employees within the Chamber of Deputies;

j) Withholding 1% of the deputy's gross monthly allowance in case of unmotivated absences.

The sanctions are regulated both in the Regulation of the Chamber of Deputies, republished, as amended, and in Law no. 96/2006 regarding the Statute of deputies and senators, republished in the Official Gazette of Romania, Part I, no. 49 of January 22, 2016, as amended.

Moreover, the Parliamentary Commission of Inquiry to establish the causes of substantial increase in natural gas and electricity prices was established by Decision of the Romanian Parliament no. 37/2021, published in the Official Gazette of Romania, Part I, no. 887 of September 15, 2021. Its activity is still not completed by submission of a report. According to article 2, letter b) of Decision no. 37/2021, one of the Commission's objectives is "the analysis of the degree of achievement of the investment programs which aim to put into operation new electricity production capacities and to exploit new natural gas deposits".

Given this objective, based on the provisions of article 8 para. (1) and (2) the Parliamentary Commission of Inquiry organized hearings to which it also invited the non-governmental organization Bankwatch Romania, given its experience in the field of environmental protection regarding the commissioning of new capacities of electricity production and not for the purpose of harassing or persecuting her as indicated in the letter.

The invitation to participate in a hearing before a parliamentary commission of inquiry cannot be considered harassment, sanctioning or persecution, because such commission "may invite any person who might have knowledge of an act or circumstance likely to serve to the finding of truth, in the case that forms the scope of the commission's activity and that accepts to be heard", according to the provisions of article 9 para. (5) thesis I of the Regulation of the joint activities of the Chamber of Deputies and the Senate, approved by Decision of the Parliament of Romania no. 4/1992, republished in the Official Gazette of Romania, Part I, no. 623 of July 7, 2023, as amended. Also, according to the provisions of article 9 para. (5) thesis II of the same normative act "the invited person can also respond in writing to the parliamentary commission of inquiry, providing the requested information, or can send by mail documents or other means of evidence that he/she possesses and which are useful to the commission of inquiry".

We would like to mention that according to article 9 para. (1) of the Regulation of the joint activities of the Chamber of Deputies and the Senate "in the situation in which it is considered necessary to clarify the causes and circumstances in which events or actions with negative effects occurred, as well as to establish the conclusions, responsibilities and required measures, at Parliament level, parliamentary commissions of inquiry can be established". Moreover, in order to defend this scope, article 9, para. (6) states that "the refusal of persons invited to the commission of inquiry to provide the requested information or to make available to it the documents or other means of evidence that he/she possesses and which are useful to the commission's activity, can be considered as obstruction or hindering the discovery of the truth and may constitute grounds for reporting to criminal prosecution bodies."

Thus, article 9 para. (6) is mentioned within the invitations sent by the Commission of Inquiry only for informative purpose, in order to highlight the importance of finding the truth within these parliamentary procedures and not admitting bad faith within them. The interpretation that these mentions are made in order to harass, persecute or threaten the persons invited to participate in the hearings cannot be accepted.

At the same time, the Parliamentary Commission of Inquiry does not have any prerogative to sanction the invited individuals or, as the case may be, the cited officials and employees, but only the possibility to notify the competent bodies in order to investigate and determine whether the refusal, made in bad faith, falls within the criminal acts that obstruct or hinder the discovery of the truth.

The role of the Commission of Inquiry and the Parliament is limited in this matter to assessing the opportunity to make a notification, after which it has no other prerogative.

E. Regarding the protest that took place on 7 July 2022, Oltenia Energy Complex was not involved in the protest.

Any measure due to the “inappropriate conduct of the workers” can be taken only in accordance with the Labor Code, the collective labor contract, the individual labor contract of each worker, the internal regulations of the company, and in the situation when the action of a worker represents a violation of the responsibilities/work tasks stated in the above-mentioned regulations, which was not the case regarding the protest from 7 July 2022.

The constitutional and fundamental right to protest is provided by article 39 of the Romanian Constitution, “Freedom of assembly”, which states that “public meetings, processions, demonstrations or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind whatsoever.”

Also, as mentioned in the European Parliament resolution of 14 February 2019 on the right to peaceful protest and the proportionate use of force (2019/2569(RSP)), whereas according to the case law of the ECtHR and the Court of Justice of the European Union all restrictions of fundamental rights and civil liberties must respect the principles of legality, necessity and proportionality, the European Parliament calls on the Member States to respect the rights of freedom of peaceful assembly, and freedom of expression.

According to article 9 of the Romanian Constitution, employers' associations shall be established and shall carry out their activity according to their statutes, according to the law. They shall contribute to the protection of rights and the promotion of their members' vocational, economic, and social interests.

During the protest that took place on 7 July 2022, the Ministry of Internal Affairs' structures ensured the public order and safety according to the legal provisions, and no civil sanctions were applied, nor any preparatory acts of criminal prosecution were drawn up.

F. The behavior and declarations of the members of the Government must also be in accordance with the law.

In 2017, the Code of Conduct of the members of the Romanian Government was adopted by Memorandum. The code regulates rules of conduct and ethics for ministers. The main objective of the Code of Conduct is to ensure the exercise of public dignity as a member of the Government under conditions of integrity, impartiality and transparency, as a means of promoting good governance, an important element of democracy.

The general principles that govern the conduct of members of the Government are the supremacy of the Constitution and the law, the priority of the public interest, professionalism, moral integrity and transparency in the exercise of public dignity. Any violation of the code must be presented to the prime minister through the General Secretariat of the Government.

In conclusion, we reaffirm the Romanian Government commitment for the Aarhus Convention implementation and to continue our efforts for the protection of environmental defenders.

Please accept the assurance of our highest consideration.

Minister

Mircea FECHET

A handwritten signature in blue ink, appearing to read 'Mircea Fechet', is written over the printed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.