

**Romania, ECtHR, Application no. 22231/05, Case Lavric c. Romania, Judgment of 14 January 2014 (Final Judgment:14 April 2014)**

## Member State

 Romania

## Topic

**Trust**

- Relationship with media;
- Doxing towards prosecutors

Unfortunately, even in 2020 there is no legal disposition in order to protect effectively prosecutors' reputation. I have had discussions with different prosecutors and they have complained about this legislative vacuum/ concrete intervention of authorities when articles are published regarding their pending activity in difficult cases

## Deciding Court Original Language

Judecătoria Călărași

Tribunalul Hunedoara

## Deciding Court English translation

Călărași District Court

Hunedoara County Court

## Registration N

22231/05

## Date Decision

3 November 2003 (C?l?ra?i District Court)

28 December 2004 (Hunedoara County Court)

14 January 2014 (Final: 14 April 2014; ECtHR)

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[ECLI \(if available\)](#)

ECLI:CE:ECHR:2014:0114JUD002223105

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[National Follow Up Of \(when relevant\)](#)

The national case is NOT the direct follow up of a CJEU or ECtHR decision.

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[EU legal sources and CJEU jurisprudence](#)

None

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[ECtHR Jurisprudence](#)

Dalban v. Romania ([GC], no. 28114/95, § 49, ECHR 1999-VI)

Timciuc v. Romania (no. 28999/03, §§ 95-97, 12 October 2010)

Odièvre v. France [GC], no. 42326/98, § 40, ECHR 2003-III

Dickson v. the United Kingdom [GC], no. 44362/04, § 70, ECHR 2007-XIII)

Pfeifer v. Austria, no. 12556/03, § 35, 15 November 2007;

Petrina v. Romania, no. 78060/01, 14 October 2008, §§ 27-29 and 34-36

A.v. Norway, no. 28070/06, § 64, 9 April 2009;

Mikolajová v. Slovakia, no. 4479/03, § 55, 18 January 2011;

Roberts and Roberts v. the United Kingdom, (dec.), no. 38681/08, §§ 40-41, 5 July 2011

Axel Springer AG v. Germany [GC], no. 39954/08, § 83, 7 February 2012

Tammer v. Estonia, no. 41205/98, §§ 66 and 68, ECHR 2001-I, and Von

Hannover v. Germany, no. 59320/00, § 60, ECHR 2004-VI

Lešník v. Slovakia, no. 35640/97, § 54, ECHR 2003-IV

MGN Limited v. the United Kingdom, no. 39401/04, §§ 150 and 155, 18 January 2011

Palomo Sánchez and Others v. Spain [GC], nos. 28955/06, 28957/06,

28959/06, 28964/06, § 57, 12 September 2011

Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012

Cumpănuș and Mazăre v. Romania [GC], no. 33348/96, § 98, ECHR 2004-XI

Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 76, ECHR 2004-XI;

Timpuș Info-Magazin and Anghel v. Moldova, no. 42864/05, § 37, 27 November 2007

Bladet Tromsø and Stensaas v. Norway ([GC], no. 21980/93, ECHR 1999-III

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### Subject Matter

Ms Lavric complained of a breach of her rights under Articles 8 § 1 of the Convention on account that her right to protect her good reputation had been infringed following the publication in February 2002 of two articles in a national newspaper Romania liber which raised serious allegations about her professional activity as a public prosecutor.

The applicant claimed a fair satisfaction for moral damages caused by journalists by publishing these defamatory articles.

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### Legal issue(s)

Relationship of the prosecutors with media: It has to be taken into consideration the contribution made by articles in the press to debates of general interest and the fact that impugned articles referred to the professional activity of the applicant as a prosecutor. Public prosecutors are civil servants, part of the judicial system, whose task it is to contribute to the proper administration of justice.

Doxing towards prosecutors: The criticism related to the administration of justice and the officials involved in it oversteps certain limits, as it is in the general interest that prosecutors, like judges, should enjoy public confidence, respectively their right to private life - right to reputation and dignity - guaranteed by article 8 of European Convention on Human Rights . It may therefore be necessary for the State to protect them from accusations that are unfounded, especially when articles in press are related to particular notorious cases of conviction.

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### Request for expedited/PPU procedures

NO

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### Interim Relief

The national court/applicant did NOT ask the CJEU/ECtHR for interim relief

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## National Law Sources

The relevant provisions of the Civil and Criminal Codes concerning insult and defamation and liability for paying damages in force at the material time.

Law no. 278/2006 which amended the Criminal Code in 2006 and repealed the articles on insult and defamation

Decision no. 62 of 18 January 2007 the Constitutional Court declared unconstitutional the removal of the Articles on insult and defamation from the Criminal Code.

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## Facts of the case

Ms. Lavric, as prosecutor at the prosecutor's office attached to the Neam? County Court, in 2000 and 2001, initiated two criminal proceedings against A.B. and filed an indictment proposing A.B.'s conviction in both sets of proceedings, followed by the conviction of A.B. for first indictment and discontinuance of the criminal proceedings for the second indictment, for disapproval of her chief prosecutor.

On 7 February 2002, disciplinary proceedings were initiated against Ms. Lavric following a complaint being lodged by A.B. On 6 March 2002 the prosecutor's office attached to the Supreme Court of Justice found that the applicant had not committed any disciplinary offence and closed the investigation.

On 13 and 20 February 2002, A.S., a journalist at the national newspaper Romania Liber?, wrote two articles concerning the applicant's professional activity in connection with the criminal proceedings against A.B.

The first article, published on 13 February 2002, entitled "Judicial corruption. Prosecutor L. falsified two indictments! An innocent person was sentenced to prison" had two sections: the first section, "Professional dross, confirmed by her superiors", referred to an allegedly "falsified" indictment and the second section, "Exclusion from the magistracy", was related to "the cheating prosecutor Lavric" who "did not manage to send A.B. before a court on the basis of her falsified indictment on this occasion. However she had already managed to send A.B. before a court of justice on the basis of another indictment, the product of scandalous falsification". As well, referring to the activity of prosecutor Lavric in the A.B. case, it was appreciated by the journalist that "it could result, besides criminal charges against her for abuse of position, in her rapid exclusion from the magistracy by the disciplinary board of the public prosecutor's office. By misleading her superiors, cheating prosecutor L. managed to send the defendant A.B.

before a court on 17 January 2000 for criminal damage and making false

declarations. The lies and the wilfully erroneous interpretation contained in

the ten pages of the second falsified indictment could fill a whole chapter in

'a real handbook of judicial corruption'. Not less important, in the following three sections of the

article it was mentioned a complaint of criminal damage lodged by “the mafia of crooked businessmen” against A.B. and allocated to “cheating prosecutor Lavric” who asked that A.B. to be sentenced to prison by lying to the courts with her “falsified indictment”.

The second article, published on 22 February 2002, was entitled “Elena Lavric, the prosecutor who falsifies indictments” and reiterated a number of further allegations against the applicant, insisting on the idea that A.B. was the victim of a direct indictment.

On 15 April 2002, Ms Lavric lodged a criminal complaint for defamation against A.S. and sought one million Romanian lei (ROL) in compensation for non-pecuniary damage.

By a judgment of 3 November 2003, the C?I?ra?i District Court found the journalist guilty of defamation and sentenced him to a criminal fine of 10,000,000 Romanian lei (ROL), the equivalent of EUR 270, concluding that in the two articles the journalist had overstepped the limits of acceptable speech provided by Article 10 of the Convention.

On 28 December 2004, the Hunedoara County Court, pronouncing the final national judgment of the case, allowed the appeal of the journalist, quashed the first-instance judgment and proceeded to rehear the case and acquitted the journalist of the defamation charge and dismissed the applicant’s request for damages, classifying the relevant statements of the journalists as value judgments and found that the expressions used were to be examined in connection with the function of the press in a democratic society to impart information and ideas on all matters of public interest, as was the case in respect of the matter before it, which concerned the administration of justice.

On 9 June 2005 Ms. Lavric complained to the European Court of Human Rights of a breach of her right to protection of her reputation and dignity as a result of what she submitted had been insulting and defamatory articles published in the Romania Liber? newspaper on 13 and 22 February 2002. She also complained about the dismissal by the court of last resort of her criminal complaint and civil claim in this respect.

On 27 January 2011 the application was communicated to the Government.

On 14 January 2014 the Strasbourg Court decided that Ms. Lavric’s right to reputation and dignity guaranteed by article 8 of the European Convention on Human Rights was violated, the journalist failing to prove that he had written the articles with the professional care required of journalists, therefore, it is not appropriate to make reference to the leeway generally permitted to journalists for provocation or exaggeration when articles concern public figures.

Superior Council of Magistracy had no intervention in the case, neither during the national procedures or afterwards. The effective protection of magistrates’ reputation still represents a sensitive issue in Romania.

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### Reasoning (role of the Charter or other EU, ECHR related legal basis)

European judges assessed that State’s positive obligations arising under Article 8 have to protect individuals against any arbitrary interference and to ensure effective respect for the applicant’s private life, in particular her right to protect her reputation - being recognised before by the Court that “private life” extends to aspects relating to personal identity and reputation - even in the sphere of the relations of individuals between themselves. In order for Article 8 to come into play,

the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life.

Regarding State's negative obligations, European Courts noted that it has to be kept the fair balance between the competing interests – in this case, Ms Lavric's right to protect her reputation and the right of the newspaper and A.S. to freedom of expression, being stressed the contribution made by articles in the press to debates of general public interest and the right to information of the society.

European judges specified that the impugned articles referred to the professional activity of the applicant as a prosecutor, who has essential contribution to the administration of justice. Being well-known that the extent of acceptable criticism is greater in respect of politicians or other public figures than in respect of private individuals, however, such criticism must not overstep certain limits, as it is in the general interest that prosecutors should enjoy public confidence. Consequently, State has the obligation to intervene and to protect prosecutors from accusations that are unfounded.

European judges underlined that the subjectivism of the national courts' when they interpreted the European Convention on Human rights and European Court of Human Rights case law offered totally different solutions: while the first-instance court found, after examining all the available evidence, that the journalist's statements were unsubstantiated, the court of last resort classified the relevant statements of the journalist as value judgments, ignoring that while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof.

Taking into consideration the judgment on 3 November 2003 of the the District Court which emphasized that there was no proof that the applicant had committed any disciplinary or criminal offence in connection with her professional activity, the European Court hadn't been persuaded that the statements made by journalist A.S. can be considered mere value judgments. The articles in question contained allegations of unlawful and improper conduct by Ms Lavric, not supported by relevant evidence and made while criminal procedure against A.B. and disciplinary procedure against Ms. Lavric were both pending : had abused her powers and unlawfully pressed charges against A.B. and had been involved in bribery and falsification of indictments concerning A.B., allegations with serious nature and capable of affecting her in the performance of her duties and of damaging her reputation.

Based on a careful examination of the two articles the Court considered that the journalist did not dissociate himself from the position expressed by A.B. in her complaints and did not make clear that his articles represented only a reproduction of A.B.'s allegations. The journalist reproduced the contents of the complaints lodged by A.B. and presented them as the objective truth, instead of they were – the statements of a party and did not check the accuracy of those seemingly partial statements and did not offer to the applicant the opportunity to respond to the accusations against her.

The European Court concluded that the journalist, failing to prove that he had written the articles with the professional care required of journalists, exceeded in his articles the acceptable limits of comment in relation to a debate of general interest. Taking into account the particular gravity of the allegations in the case, the Court appreciated that the reasons advanced by the domestic court of last resort to protect the newspaper and A.S.'s right to freedom of expression were insufficient to outweigh the applicant's right to protect her reputation.

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## Relation of the case to the EU Charter

The EU Charter was not invoked.

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## Relation between the EU Charter and ECHR

The protection granted through the EU Charter is mostly similar to that stemming from ECHR in the particular case. However, such similarity has not been mentioned during the proceeding and the EU Charter has not been invoked.

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## Use of Judicial Interaction technique(s)

The national courts did not use any judicial interaction techniques, beside the internal ones.

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## Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The national courts did not engage with an assessment of other national judgments.

There was no direct constitutionality review involved.

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## Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The national courts did not engage with an assessment of other national judgments. Moreover, the courts of appeal did evaluate the courts' of first instance judgments.

There was no direct constitutionality review involved.

Hunedoara Court County invoked ECtHR case law in order to explain the concepts of value judgments, referring to the judgment *Dalban v. Romania* ([GC], no. 28114/95, § 49, ECHR 1999?VI), noting that the journalist had had recourse to a certain degree of exaggeration and provocation.

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## Strategic use of judicial interaction technique (purpose aimed by the national court)

The national courts used judicial interaction techniques in virtue of the applicant's right to appeal.

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## Impact on Legislation / Policy

The legislation regarding incrimination of insult and defamation changed afterwards. However, this change was not a consequence of the judicial proceedings in the applicant's case.

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#### Notes on the national implementation of the preliminary ruling by the referring court

Not applicable.

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#### Impact on national case law from the same Member State or other Member States

Not applicable.

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(Link to) full text

<http://hudoc.echr.coe.int/eng?i=001-93648>

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#### Author

**Alina Gentimir, the National Association of Romanian Bars**

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Judgement of 3 November 2003 of the C?l?ra?i District Court (court of first instance) [criminal complaint for defamation against A.S; conviction of A.S. ];
2. Judgement of 28 December 2004 of the Hunedoara County Court (court of appeal) [allowed the A.S.'s appeal, quashed the first-instance judgment, acquitted A.S., dismissed Ms. lavric's request for damages];
3. Judgement of 14 January 2014 of the ECtHR.

More documents can be found here:

<https://globalfreedomofexpression.columbia.edu/cases/lavric-v-romania/>

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