

Press release issued by the Registrar

JUDGMENT IN THE CASE OF DALBAN v. ROMANIA

In a judgment delivered at Strasbourg on 28 September 1999 in the case of *Dalban v. Romania* (application no. 28114/95), the European Court of Human Rights held unanimously that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights and that it was not necessary to examine the case under Article 6 § 1 (fair hearing). Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant's widow 20,000 French francs for non-pecuniary damage.

1. Principal facts

The case concerned an application lodged with the European Commission of Human Rights by a Romanian national, Mr Ionel Dalban, who was born in 1928 and lived in Roman (Romania). Mr Dalban was a journalist and ran a local weekly magazine, *Cronica Romaşcană*. He died on 13 March 1998.

In September 1992 Mr Dalban published an article in his magazine about a series of frauds allegedly committed by Mr G.S., the chief executive of a State-owned agricultural company, FASTROM of Roman. The article, and a later one, also cast suspicion on Senator R.T. in that connection. The applicant claimed that the information published was based on Fraud Squad reports. The Romanian courts found Mr Dalban guilty of criminal libel and sentenced him to three months' imprisonment (suspended). He was also ordered to pay G.S. and R.T. 300,000 Romanian lei. Despite his conviction, the applicant continued to publish information concerning the alleged fraud.

In April 1998 the Procurator-General applied to the Supreme Court of Justice to have the applicant's conviction quashed on the grounds that the offence of criminal libel had not been made out. In a judgment of 2 March 1999 the Supreme Court allowed the application. With regard to the applicant's conviction for libelling G.S., it acquitted the applicant on the ground that he had acted in good faith. In respect of the libel of R.T., the court quashed the conviction and, while holding that the applicant had been rightly convicted, decided to discontinue the proceedings in view of his death.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 20 April 1995. Having found the application admissible, the Commission adopted a report on 22 January 1998 in which it expressed the opinion that there had been a violation of Article 10 (unanimously) and that it was not necessary to examine whether there had been a violation of Article 6 § 1 (thirty-one votes to one). It referred the case to the Court on 27 April 1998. The applicant's widow also brought the case before the Court, on 5 May 1998.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was referred to the Grand Chamber of the European Court of Human Rights on 1 November 1998, the date on which the Protocol entered into force. Judgment was given by the Grand Chamber composed of 17 judges, namely:

Luzius **Wildhaber** (Swiss), *President*,
Antonio **Pastor Ridruejo** (Spanish),
Luigi **Ferrari Bravo**¹ (Italian),
Jerzy **Makarczyk** (Polish),
Pranas **Kūris** (Lithuanian),
Rıza **Türmen** (Turkish),
Jean-Paul **Costa** (French),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian),
Marc **Fischbach** (Luxemburger),
Volodymyr **Butkevych** (Ukrainian),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Egils **Levits** (Latvian),
Snejana **Botoucharova** (Bulgarian), *Judges*,
Raluca **Beșteliu**, *ad hoc Judge*,

and of Paul **Mahoney**, *Deputy Registrar*.

3. Summary of the judgment²

Complaints

The applicant complained that his freedom of expression under Article 10 of the Convention had been violated. He also submitted that he had not been given a fair trial, contrary to Article 6 of the Convention, in that the courts had not examined the police documents on which his articles had been based.

Decision of the Court

The Court noted, first, that the applicant had been convicted by the Romanian courts of libel through the press. It considered that Mr Dalban's widow had a legitimate interest in obtaining a ruling that her late husband's conviction had constituted a breach of his right to freedom of expression.

The Court consequently held that Mrs Dalban had standing to continue the proceedings in the applicant's stead.

¹ Elected as the judge in respect of San Marino.

² This summary by the Registry does not bind the Court.

Article 10 of the Convention

A. Loss of “victim” status

The Court dismissed the Government’s argument that the applicant had ceased to be a “victim” as a result of the Supreme Court of Justice’s decision, which the Government saw as having been in his favour.

The Court reiterated that a decision or measure favourable to an applicant was not in principle sufficient to deprive him of his status as a “victim” unless the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention.

The Court concluded that the applicant’s widow could therefore claim to be a “victim” for the purposes of Article 34 of the Convention.

B. Merits of the complaint

It was not disputed before the Court that the applicant’s conviction had constituted “interference by public authority” or that it had been “prescribed by law” and had pursued a legitimate aim (“the protection of the reputation ... of others”).

The Court noted that the articles in issue concerned a matter of public interest: the management of State assets and the manner in which politicians fulfil their mandate.

In cases such as the present one, the national margin of appreciation is circumscribed by the interest of democratic society in enabling the press to exercise its essential role of “public watchdog” and to impart information of serious public concern. It would be unacceptable for a journalist to be debarred from expressing critical value judgments unless he or she could prove their truth.

In the instant case there was no proof that the description of events given in the articles was totally untrue and was designed to fuel a defamation campaign against G.S. and Senator R.T.

The Government did not challenge the Commission’s conclusion that even having regard to the duties and responsibilities incumbent on a journalist who avails himself of the right set out in Article 10 of the Convention, the applicant’s conviction could not be considered as “necessary in a democratic society”.

The Court took notice of that and decided that, in relation to the legitimate aim pursued, convicting Mr Dalban of a criminal offence and sentencing him to imprisonment had amounted to disproportionate interference with the exercise of his freedom of expression as a journalist.

There had accordingly been a violation of Article 10.

Article 6 § 1 of the Convention

Having regard to the conclusion reached by it in respect of the complaint brought under Article 10 of the Convention, the Court did not consider it necessary to examine the case under Article 6 § 1 also.

Article 41 of the Convention

A. Damage

Mrs Dalban sought an award of 250,000,000 Romanian lei in respect of non-pecuniary damage, namely loss of reputation resulting from her late husband's conviction, and of pecuniary damage in the form of losses allegedly resulting from the closure of *Cronica Romașcană*.

The Court found no causal link between the complaints and the pecuniary damage allegedly suffered. In respect of non-pecuniary damage, however, it considered that the applicant and his widow had suffered such damage and that this could not be sufficiently redressed by the mere finding that there had been a violation. Having regard to the high rate of inflation in Romania, the Court expressed the sum to be awarded in French francs (FRF), to be converted into Romanian lei at the rate applicable at the date of settlement. It awarded Mrs Dalban FRF 20,000.

B. Costs and expenses

The applicant had been granted legal aid both by the Commission and the Court and his widow did not seek to be reimbursed for any additional costs or expenses.

The Court's judgments are available on the day of delivery on the Court's Internet site (www.echr.coe.int).

Registry of the European Court of Human Rights
F – 67075 Strasbourg Cedex

Press contacts: tel: +33 3 90 21 42 08
Emma Hellyer: tel: + 33 3 90 21 42 15

The European Court of Human Rights was set up in 1959 in Strasbourg to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.