

**DALBAN v. ROMANIA****Freedom of expression – violation****Article 10**

Journalist had been convicted of criminal libel. 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.

In a judgment delivered at Strasbourg on 28 September 1999 in the case of *Dalban v. Romania*, 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, Section 1 (fair hearing). Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant’s widow 20,000 French francs (FRF) 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 Romascana*. 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 (ROL). 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 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 been a violation of Article 10 (unanimously) and that it was not necessary to examine whether there had been a violation of Article 6, Section 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.

## **3. Summary of the judgment**

### **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.

#### *Article 10 of the Convention*

##### *A. Loss of "victim" status*

The Court dismissed the Government's argument that the applicant had ceased to