COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

AFFAIRE DALBAN c. ROUMANIE

CASE OF DALBAN v. ROMANIA

(*Requête n°/Application no. 28114/95*)

ARRÊT/JUDGMENT

STRASBOURG

28 septembre/September 1999

In the case of Dalban v. Romania,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. FERRARI BRAVO,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mrs R. BEŞTELIU, ad hoc *judge*,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 8 January, 24 June and 9 September 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, as established under former Article 19 of the Convention[3], by the European Commission of Human Rights ("the Commission") on 27 April 1998 and by Mrs Elena Dalban (the widow of the applicant, who died on 13 March 1998) on 5 May 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 28114/95) against

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

3. Since the entry into force of Protocol No. 11, which amended Article 19, the Court has functioned on a permanent basis.

Romania lodged with the Commission under former Article 25 by Mr Ionel Dalban, a Romanian national, on 20 April 1995.

For practical reasons, Mr Dalban will continue to be called "the applicant" in this judgment, although Mrs Dalban is now to be regarded as such (see the Ahmet Sadık v. Greece judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1641, § 3).

The Commission's request referred to former Articles 44 and 48, as amended by Protocol No. 9[1], which Romania had ratified, and to the declaration whereby Romania recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request and of the applicant's application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 and Article 10 of the Convention.

2. Mrs Dalban designated Mr I. Popa, of the Bacău Bar, as the lawyer who would represent her (Rule 31 § 1 of former Rules of Court B[2]). The lawyer was given leave by the then Vice-President of the Court, Mr Thór Vilhjálmsson, to use the Romanian language in the written procedure.

3. As President of the Chamber which had originally been constituted (former Article 43 of the Convention and former Rule 21) in order to deal, in particular, with procedural matters that might arise before the entry into force of Protocol No. 11, Mr Thór Vilhjálmsson, acting through the Registrar, consulted Mr A. Ciobanu-Dordea, the Agent of the Romanian Government ("the Government"), the applicant's lawyer and Mr C. Bîrsan, the Delegate of the Commission, on the organisation of the written procedure. Pursuant to the order made in consequence, the Registrar received memorials from the Government on 30 July 1998 and the applicant on 31 August 1998.

4. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mr Bîrsan, the judge elected in respect of Romania (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova. (Rule 24 § 3 and

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Notes by the Registry

1. Protocol No. 9 came into force on 1 October 1994 and was repealed by Protocol No. 11.

2. Rules of Court B, which came into force on 2 October 1994, applied until 31 October 1998 to all cases concerning States bound by Protocol No. 9.

Rule 100 § 4) Subsequently Mr Bîrsan, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28) and the Government appointed Mrs R. Beşteliu to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The President decided that it was not necessary to invite the Commission to delegate one of its members to take part in the proceedings before the Grand Chamber (Rule 99).

6. After consulting the Agent of the Government and Mrs Dalban's lawyer, the Grand Chamber decided that it was not necessary to hold a hearing.

7. The Registrar received additional observations from the applicant on 16 December 1998 and from the Government on 22 December 1998. The Government requested the Court to stay the case pending a judgment from the Supreme Court of Justice, to which the Procurator-General had made an extraordinary application to have the applicant's conviction, and the appeal judgment upholding that conviction, quashed.

8. Later Mr E. Levits, substitute judge, replaced Mr Bonello, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

9. On 8 January 1999 the Grand Chamber decided to stay the case.

10. On 21 May 1999 the Registry received a copy of the Supreme Court of Justice's judgment of 2 March 1999 from the Government, acting through their new Agent, Mr C.-L. Popescu. At the President's request, the applicant and the Government each submitted observations on that judgment, on 6 May and 1 June 1999 respectively.

11. Subsequently Mr L. Ferrari Bravo, substitute judge, replaced Mrs Palm, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. Mr Ionel Dalban was a journalist who ran a local weekly magazine called *Cronica Romaşcană*. He lived in the town of Roman until his death on 13 March 1998.

13. On 23 September 1992 an article by the applicant, headlined "Roman IAS defrauded of tens of millions", appeared in issue no. 90/1992 of his magazine. The article exposed a series of frauds allegedly committed by G.S., the chief executive of a State-owned agricultural company, FASTROM of Roman (previously known as the Roman IAS or State farm).

Citing Fraud Squad reports as the source of his information, the applicant wrote, in particular:

> "... a new fraud of incredible proportions has been discovered within the Roman company FASTROM S.A. (the former State farm), the prime suspect being a privileged member of the local communist *nomenklatura*, Mr G.S. The losses caused by him ... amount, according to Fraud Squad and other expert estimates, to over 23,000,000 lei! The fraud was committed by entering stock in the inventory of [FASTROM of Roman's] central warehouse – stock that does not appear anywhere in the inventories of the undertakings under its control. It has been established that much of this stock was replaced by goods required by Mr G.S. and his friends and family, or exchanged for cash, which was then shared out in fraternal fashion. It makes one think of the highwaymen of old, who flouted the law both of God and of the land (*Jaf ca-n codru*)! ...
>
> The people of Roman are asking how this could have happened. Perhaps Senator R.T., who, hitherto, has been the State representative on the board of FASTROM of Roman, will give us an explanation. He was paid hundreds of thousands of lei every month in that capacity. Now we know why – or, to put it another way, how – he has been protecting the State's interests ..."

14. In an article in issue no. 104/1993 of the magazine, published on 6 January 1993, the applicant wrote:

> "A Dacia estate car [belonging to the FASTROM company] was 'made over' to Senator R.T. every weekend for a year and a half to take him to and from Bacău Airport (driven by R.M.). This practice may have stopped but it has not been forgotten."

15. G.S. and R.T. laid an information against the applicant under Article 206 of the Criminal Code on the basis that what he had written was defamatory.

16. On 24 June 1994 the Roman Court of First Instance (*judecătoria*) convicted the applicant of criminal libel, giving him a suspended sentence of three months' imprisonment and ordering him to pay 300,000 lei (ROL) to R.T. and G.S., who were claiming damages in the same proceedings. Further, the applicant was banned from practising his profession for an indefinite period.

17. The court found that, although two criminal investigations had been held into G.S.'s conduct, the public prosecutor's office had decided on 7 September 1990 and 10 December 1992 that he had no case to answer in relation to charges of misappropriation of corporate assets or causing harm to the public interest in the course of his duties as a civil servant (*abuzul în serviciu contra intereselor obşteşti*), an offence under Article 248 of the Criminal Code.

With regard to R.T., the court found that between June 1991 and July 1992 the salary he had received in his capacity as a member of the board of State representatives had been ROL 55,000 – not "hundreds of thousands" of lei. It also found that, under the Senate's Standing Orders, "prefects [were to] place a means of transport and a secretary at the disposal

of senators in order to facilitate the performance of their duties" and that, in a letter (ref. no. 4849/1991), the prefect's office in the county of Neamţ had requested FASTROM of Roman to make a car available to the office of the senator for Roman. The court concluded that the applicant's allegations did not correspond to reality.

18. The applicant appealed against this judgment. According to him, the Fraud Squad reports on the basis of which G.S. had been charged, reports by Ministry of Finance inspectors of 19 and 26 June and 18 December 1992 and statements by members of the board of directors of, and of the trade union operating within, FASTROM of Roman all contained evidence of illegal accounting operations attributed to the chief executive, G.S. According to those documents, the sums involved amounted to more than ROL 23,000,000.

19. As regards R.T., the applicant pointed to the fact that the Court of First Instance had acknowledged in its judgment of 24 June 1994 that R.T. had used a car belonging to FASTROM of Roman. He argued that his assertions concerning the salary received by R.T. had not been defamatory, despite the admitted error as to its amount.

20. In a judgment of 7 December 1994 the Neamţ County Court (*tribunalul judeţean*) decided by two votes to one to uphold the judgment of 24 June 1994 as regards both the sentence of imprisonment and the compensation order. Noting that the public prosecutor's office had decided on two occasions not to press charges against G.S., the court found – without examining the police reports produced by the applicant in support of his allegations – that those allegations did not correspond to reality. With regard to Senator R.T., the court found that his use of the car had been lawful.

However, the court did set aside the ban on the applicant working as a journalist, "because of the praiseworthy way in which he had conducted himself during the proceedings".

21. The dissenting judge, M.C., delivered a minority judgment in which he concluded:

> "... Revealing the truth is a *sine qua non* if shortcomings are to be eliminated and the interests of society defended. Those interests take priority over the defence – at any price – of our reputations. As the active conscience of the nation, a journalist has both the right and the duty to question institutions and those who run them, so as to monitor whether they are working satisfactorily, whether they deserve the authority with which they have been vested and whether the prestige which surrounds them is deserved or not. No one is infallible and no one can claim to be.
>
> It appears to me unjust to convict the journalist Ionel Dalban when all he has done is to fulfil his duty as a journalist in an objective manner, with the aim of contributing to creating a healthier moral climate in the town in which he lives and works ..."

22. Despite his conviction, the applicant continued to publish information concerning the fraud allegedly committed by G.S.

Moreover, he did not pay the damages awarded to G.S. and R.T.

23. As a result of his revelations, the Romanian parliament's Committee for the Investigation of Abuses requested the Neamţ public prosecutor's office to look into the matter.

24. A non-governmental organisation, the "Democratic League for Justice", also took up the revelations, with the result that on 20 July 1994 the Roman public prosecutor's office opened a new judicial investigation into G.S.'s conduct.

25. Following the applicant's conviction, other newspapers, including the mass-circulation national daily *Adevărul*, published articles about the alleged fraud.

26. Many newspapers described the applicant's conviction as an "attempt to intimidate" the press.

27. On 24 April 1998 the Procurator-General applied to the Supreme Court of Justice to have the applicant's conviction at first instance and on appeal quashed on the grounds that the offence of criminal libel had not been made out.

28. In a judgment of 2 March 1999 the Supreme Court of Justice 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 on 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.

II. RELEVANT DOMESTIC LAW

29. The relevant provisions of the Criminal Code are as follows.

Article 206

"Anyone who makes any statement or allegation in public concerning a particular person which, if true, would render that person liable to a criminal, administrative or disciplinary penalty or expose them to public opprobrium, shall be liable to imprisonment for between three months and one year or to a fine."

Article 207

"Evidence of the truth of such a statement or allegation is admissible where the statement or allegation was made in order to protect a legitimate interest. Where the truth of the statement or allegation is proved, no offence of insult or defamation will have been committed."

30. The relevant provisions of the Code of Criminal Procedure read:

Article 385-9

"An appeal shall lie in the following circumstances:

...

(10) where the judgment does not deal either with all the charges made against the accused in the committal order, with all the evidence taken or with all applications that are of essential importance to a party in that they may safeguard that party's rights or have an effect on the outcome of the trial;

... "

Article 504

"Anyone who has been finally convicted is entitled to compensation from the State for any loss or damage suffered where it is held in a fresh judgment against which no appeal lies that he did not commit the offence in question or that the offence was not committed.

…

A person who, at any time during the investigative or trial stage of the case, acting with clear intent and in a gravely culpable manner, hindered or sought to hinder the establishment of the truth shall not be entitled to any such compensation.

Any person designated in sub-paragraphs 1 or 2 above who was in employment at the time of his arrest shall be treated, for the purposes of all allowances and benefits linked to length or continuity of service, as if he had been continuously employed during the period of his imprisonment or penal labour."

Article 505

"Proceedings under Article 504 for compensation for loss or damage may be brought by any person who has suffered such loss or damage or, after his death, may be brought or pursued by his dependants.

Such proceedings must be commenced within one year of the date of the final acquittal or order discontinuing the proceedings."

PROCEEDINGS BEFORE THE COMMISSION

31. Mr Dalban applied to the Commission on 20 April 1995. Relying on Articles 6 § 1 and 10 of the Convention, he complained that he had not been given a fair trial and that his right to freedom of expression had been infringed.

32. The Commission declared the application (no. 28114/95) admissible on 9 September 1996. In its report of 22 January 1998 (former Article 31 of the Convention), 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 also been a violation of Article 6 § 1 (thirty-one votes to one). The

full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

33. Mrs Dalban's lawyer asked the Court to find that there had been a violation of Article 10 of the Convention and to award his client just satisfaction in the form of ROL 250,000,000 for pecuniary and non-pecuniary damage.

34. The Government requested the Court to strike the case out of its list since, according to them, the applicant's widow was no longer asserting a personal interest in pursuing the proceedings. In the alternative, they stated that they did not dispute that there had been a violation of Article 10 of the Convention but asked the Court to strike the case out of its list on the ground that the Supreme Court of Justice's judgment of 2 March 1999 had redressed that violation. With regard to the complaint under Article 6 § 1, the Government requested the Court to find that there had been no violation. Lastly, they submitted that Mrs Dalban's claims under Article 41 should be dismissed.

THE LAW

I. SCOPE OF THE CASE

35. In a letter of 16 December 1998 to the Court, Mr Popa complained that his office had been broken into and certain documents relating to the case stolen. He also alleged that two letters from him to the Court had been intercepted by persons unknown.

36. The Government submitted that these complaints were irrelevant "to the subject matter of the application".

37. Since the complaints in question were not raised before the Commission when the admissibility of the application was being examined, they are not part of the case referred to the Court (see, among other authorities and *mutatis mutandis*, *Janowski v. Poland* [GC], no. 25716/94, § 19, ECHR 1999-I).

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

II. APPLICATION TO STRIKE THE CASE OUT OF THE LIST

38. In their observations of 1 June 1999 the Government submitted that the case should be struck out of the list on the ground that the applicant's widow, in her memorial of 31 August 1998, no longer asserted (as she had in her notice of 5 May 1998 stating her intention of continuing the proceedings) a personal interest in pursuing the case, but merely referred to her late husband's interest.

39. The Court notes, first, that the applicant was convicted by the Romanian courts of libel through the press. It considers that Mr Dalban's widow has a legitimate interest in obtaining a ruling that her late husband's conviction constituted a breach of the right to freedom of expression, on which he had relied in the Commission proceedings.

Consequently, the Government's application for the case to be struck out should be dismissed. The Court holds that Mrs Dalban has standing to continue the present proceedings in the applicant's stead.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

40. According to the applicant, his conviction for libel infringed his right to freedom of expression as guaranteed by Article 10 of the Convention, which provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Loss of "victim" status

41. The Court notes that the Supreme Court of Justice, in its judgment of 2 March 1999, allowing the Procurator-General's extraordinary application, quashed the conviction (both at first instance and on appeal) on which the applicant's complaint under Article 10 was based (see paragraph 28 above).

42. In their observations of 1 June 1999 the Government pointed to the fact that the Supreme Court of Justice had acquitted the applicant on the charge of libelling G.S. on the ground that he (the applicant) had acted in

good faith. That outcome, combined with the fact that the applicant's widow could recover any loss by way of civil proceedings, constituted, according to the Government, an acknowledgment "in substance of the violation of the Convention alleged and open[ed] the way for full redress to be made within the domestic legal system". They consequently asked the Court to dismiss the application on the ground that there was no longer a "victim".

With regard to the conviction for libelling Senator R.T., the Government emphasised that the Supreme Court had quashed the two court decisions challenged by the Procurator-General "and, after fresh proceedings, ordered the prosecution to be discontinued in view of the defendant's death". The Government submitted that this had remedied the alleged violation of Article 10 and "left the matter to the discretion of the Court".

43. Mrs Dalban's lawyer described the Supreme Court's judgment as "a veritable indictment" of the late applicant and "an explicit justification of the conduct of R.T.".

44. In its judgment of 25 June 1996 in the case of Amuur v. France the Court reiterated that "a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a 'victim' unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (*Reports of Judgments and Decisions* 1996-III, p. 846, § 36).

In the instant case, even if the Supreme Court's quashing of the applicant's conviction on the ground that he had acted in good faith and on the basis of official documents concerning G.S. (see paragraph 28 above) could be seen as an acknowledgment, in substance, that the "right to freedom of expression" had been unjustifiably restricted, the Court considers that it did not provide adequate redress as required by the Court's case-law. In the first place, although the Government have pointed to Articles 998 and 999 of the Civil Code and Article 505 of the Code of Criminal Procedure (see paragraph 30 above), it is not clear whether, or how, Mrs Dalban would be able to obtain any compensation whatsoever. In an action under the Civil Code – which, Mrs Dalban asserted, and the Government did not dispute, would entail substantial court costs – liability depends on proof of fault. As to an action under the Code of Criminal Procedure, it would not be reasonable – after criminal proceedings ending in a conviction upheld on appeal, an extraordinary application by the Procurator-General and a judgment of the Supreme Court of Justice – to require Mrs Dalban to commence fresh proceedings whose outcome would be, to say the least, uncertain.

With regard to the finding in the judgment of 2 March 1999 on the charge relating to Senator R.T., the Court notes that the Supreme Court held that the applicant had been rightly convicted, since he had intended to cause prejudice to R.T. without verifying his information before publishing the articles (see paragraph 28 above). The decision to discontinue the

proceedings was due solely to Mr Dalban's death. Clearly, this did not constitute any acknowledgment, whether explicit or implicit, on the part of the national authorities that there had been a violation of Article 10.

45. In conclusion, the Court holds that the applicant's widow may claim to be a "victim" for the purposes of Article 34 of the Convention.

B. Merits of the complaint

46. It was not disputed before the Court that the applicant's conviction constituted "interference by public authority" with the applicant's right to freedom of expression under the first paragraph of Article 10. It was likewise common ground that the interference had been "prescribed by law" and had pursued a legitimate aim, "the protection of the reputation … of others", thus fulfilling two of the requirements for it to be regarded as justified under the second paragraph of Article 10. The Court, like the Commission before it, finds accordingly.

47. On the issue whether the interference was necessary "in a democratic society", the Court reiterates its settled case-law that this depends on whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient (see, among other authorities, Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III). The Court's task is not to take the place of the national courts but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (ibid., § 60, and, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I).

48. The articles in issue concerned a matter of public interest: the management of State assets and the manner in which politicians fulfil their mandate. The first article provided information taken from the files of a criminal investigation carried out by the Fraud Squad into the running of FASTROM, of which G.S. was the chief executive and on whose board of directors R.T. sat as the representative of the State. The second article referred to the salary received by Senator R.T. in that capacity and his use of a vehicle put at his disposal by the company (see paragraphs 13 and 14 above).

49. One factor of particular importance for the Court's determination of the present case is therefore the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse

to a degree of exaggeration, or even provocation. 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 rightful role of "public watchdog" in imparting information of serious public concern (see Bladet Tromsø *and Stensaas* cited above, § 59). It would be unacceptable for a journalist to be debarred from expressing critical value judgments unless he or she could prove their truth (see the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 28, § 46).

50. In the instant case the Court, like the Commission, observes that there is 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. Mr Dalban did not write about aspects of R.T.'s private life, but about his behaviour and attitudes in his capacity as an elected representative of the people (see paragraphs 13 and 14 above). The manner in which the applicant expressed his opinion of the senator's practices and the way in which the latter was carrying out his duties as an elected representative was held by the national courts not to reflect reality and, therefore, to be defamatory. As regards G.S., the courts held that the fact that the public prosecutor's office had on two occasions decided that he had no case to answer was sufficient to establish that the information contained in the articles was false. The courts reached that conclusion without examining the evidence put forward by the applicant (see paragraphs 17 and 20 above).

51. 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 cannot be considered 'necessary in a democratic society' ".

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

Accordingly, there has been a violation of Article 10.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. The applicant complained that he had not been given a fair trial in that the national courts had failed to deal with the evidence which he had submitted in his defence, namely the official documents on which his articles had been based (see paragraphs 17 and 20 above). He relied on Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of … any criminal charge against him, everyone is entitled to a fair … hearing … by [a] … tribunal …"

54. The Government invited the Court to hold that there had been no violation of Article 6 § 1, on the basis that "the absence of an explicit reference to Mr Dalban's arguments" could not be construed as a failure to examine those arguments. On the contrary, the fact that the documents in question had been "placed in the file" raised a presumption that the national judges had perused the documentary evidence adduced by the applicant.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

57. 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 Romaşcană*. She stated that "this sum represent[ed] a minimal recompense, all of which [would] be used to start publishing the magazine again", not to enrich herself personally.

58. The Government submitted, first, that no causal link between the claims and the alleged pecuniary damage had been established and, secondly, that the amount sought would in any event be excessive. As to the non-pecuniary damage, they argued that a finding that Article 10 had been violated would in itself constitute sufficient just satisfaction. With respect to the damages which the applicant had been ordered to pay, the Government, reiterating that Mrs Dalban could recover those monies by way of civil proceedings, asserted that they had never been paid.

59. The Court agrees with the Government as regards the alleged pecuniary damage. However, in respect of non-pecuniary damage, it considers that the applicant did suffer, and his widow has suffered, such damage and that this cannot be sufficiently redressed by the mere finding that there has been a violation. In this case, Mr Dalban's death, coming as it did before the Procurator-General made the extraordinary application to the Supreme Court of Justice, is a factor to be taken into account in assessing the damage to be made good. Having regard to the high rate of inflation in

Romania, the Court will express 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 awards Mrs Dalban FRF 20,000. Lastly, with regard to the Government's third argument, the Court confines itself to observing that Mrs Dalban did not claim reimbursement of the damages in question since they were never paid (see paragraph 22 above).

B. Costs and expenses

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

C. Default interest

61. The Court deems it appropriate to adopt the statutory rate of interest applicable in France at the date of adoption of the present judgment, namely 3.47% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicant's widow and heir has standing to continue the present proceedings in the applicant's stead;

2. *Holds* that the applicant's widow may claim to be a "victim" for the purposes of Article 34 of the Convention;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that it is not necessary to examine the case under Article 6 § 1;

5. *Holds*
   (a) that the respondent State is to pay the applicant's widow, within three months, 20,000 (twenty thousand) French francs in respect of non-pecuniary damage, to be converted into Romanian lei at the rate applicable at the date of settlement;
   (b) that simple interest at an annual rate of 3.47% shall be payable on that sum from the expiry of the above-mentioned three months until settlement;
6. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 September 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar