



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

THIRD SECTION

**CASE OF GALLIANI v. ROMANIA**

*(Application no. 69273/01)*

JUDGMENT

STRASBOURG

10 June 2008

**FINAL**

*10/09/2008*

*This judgment may be subject to editorial revision.*



**In the case of Galliani v. Romania,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 20 May 2008,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 69273/01) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mrs Paola Galliani (“the applicant”), on 29 August 2000.

2. The applicant, who had been granted legal aid, was represented by Mr Alessandro Lorenzi, a lawyer practising in Carcare. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

The Italian Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings.

3. On 22 November 2005 the Court decided to communicate the complaints raised under Article 5 §§ 1 (f), 2 and 4, Article 10 of the Convention and Article 1 of Protocol No. 7 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Savona, Italy.

5. On 19 January 1998 the applicant entered Romania with a tourist visa valid until 2 February 1998 and started business activities. In

February 1998, when the applicant requested extension of the visa, the authorities asked for proof of residence in Romania that she could not provide.

#### **A. The applicant's version of the facts**

##### *1. The applicant's first questioning*

6. In February-March 1999 the authorities refused the applicant's request for extension of her visa as out of time. They told her that she needed to "know people" who could help her receive a new visa.

7. On 29 April 2000 the applicant was questioned by two officers from the Bucharest police to whom she claims she gave a bribe of 100,000 Old Romanian Lei (ROL) to let her go.

##### *2. The events of 4 May 2000*

8. On 4 May 2000 at 8.30 a.m. the applicant was again stopped by officers from the Bucharest police when she was on her way to the Italian consulate. The officers took her identity papers and verified her data. After a one-hour wait the applicant was taken to Police Precinct no. 19 for additional checks.

9. From Precinct no. 19 she was taken by three officers to the Passport Bureau, where she explained that her visa had not been extended before its expiry because she had not had a valid residential tenancy contract. The person in charge asked her to return the next day to have her situation regularised.

10. The applicant was made to wait in the police car with one of the officers while the other two officers checked her passport. After the check they returned to Precinct no. 19, where after a one-hour wait the applicant was taken to the basement and body-searched by a female police officer while her bag was searched by another officer. She was informed that that was the standard procedure for any person who entered the police headquarters.

11. After the search, the applicant was questioned by two officers from the Passport Bureau and then taken again to their headquarters. Her fingerprints and photograph were taken and she was put in a room where the commander of Precinct no. 19 was writing on a paper that he was hiding from the applicant with his hands.

12. The commander informed the applicant, who requested an explanation, that she was not allowed to ask questions, to read or to know anything, and that she had to sit in a corner and wait. He then told her to stop crying, because the treatment she was subjected to was not even comparable to that inflicted on Romanians arrested by the Italian police.

The applicant replied that, unlike the great majority of Romanians in Italy, she had come to invest money in Romania and not to steal or commit crimes. She also said that the Italian police respected procedures, human rights and in particular the presumption of innocence, which was not the case in Romania, where foreigners were badly treated.

13. The applicant's bag was searched again by another officer who entered the room. He took ROL 750,000 from her purse, the cost of a visa stamp that was applied on the applicant's passport valid from 5 to 12 May 2000. He made an inventory of the bag and reported that the applicant had a mobile phone and ROL 2,250,000.

14. At around 4.30 p.m. the same day the applicant was taken for questioning to a different passport bureau. After a one-hour wait in the police car outside the building, she was informed that the questioning could not take place as the person in charge was absent, but that she would be taken to a hotel in Otopeni for the night.

### *3. The applicant's arrest and repatriation*

15. Instead of being taken to a hotel as informed the applicant was placed in police custody. Her fingerprints were taken again and her money confiscated by the police officers, except for ROL 500,000 that she was allowed to keep for personal expenses.

16. The wardens informed her that she was to be repatriated the next day because she did not have a valid residence permit, but that since she had not committed any crimes in Romania she was free to return immediately.

17. On 5 May 2000 at 12 midday the applicant called the Italian consulate in Bucharest to ask the reasons for her arrest. The consulate was not aware of her situation. Later that day someone from the consulate staff informed the applicant that she was going to be repatriated to Italy on 7 May by the 9.10 a.m. Tarom flight but that they still did not know the reason for her arrest.

18. On 7 May 2000 the applicant was taken by a police officer to the airport where she was taken on to the flight by a Romanian intelligence officer who accompanied her throughout her journey to Italy. Asked by the applicant about the reasons for her repatriation, the officer told her that if she had not committed a crime it must be because of a quarrel with the police. He confirmed that the incident with the commander of the passport police team could have been the real reason for her repatriation. He also informed the applicant that she was under a prohibition on returning to Romania for two years.

19. In Rome the applicant was taken to the Italian police, who were not aware of her arrival. The police returned her passport and released her.

20. On 16 May 2000 the applicant's husband, who was living in Romania in the same situation as the applicant, returned to Italy of his own free will.

## **B. The Government's version of the facts**

21. The applicant's residence permit was granted for the periods 29 April-29 October 1993 and 2 August 1997-2 February 1998.

22. According to the official records, the applicant was not arrested or remanded in police custody between 4 and 7 May 2000.

23. On 4 May 2000 the applicant was stopped by officers from Police Precinct no. 19 and taken to the Office for Foreigners in the Ministry of Interior, which was aware of the applicant's irregular situation.

24. The Office for Foreigners filled in a standard form on the applicant's situation under Law no. 25/1969. It recorded therein the dates of validity of her visa, the fact that she had been unlawfully resident for two years and three months and that she could not give reasons for her situation. It also noted that she was not married to a Romanian national nor did she have children of Romanian nationality and that she owned a company in Romania which had ceased trading. The Office for Foreigners recorded on the standard form that the applicant was not under criminal investigation in Romania, that no expulsion order had been made against her and that she had not asked for asylum. It also noted that the applicant had ROL 2,250,000 at her disposal. For these reasons, the Office decided that the applicant should be placed in the Otopeni Centre for Reception, Selection and Accommodation for Foreigners ("the Otopeni Centre") with a view to her repatriation on the next flight to Rome. It ordered the purchase of a ticket to that end, at the authorities' expense, and issued a prohibition on the applicant entering Romania for two years. It stamped on the applicant's passport an exit visa valid from 5 to 12 May 2000.

25. She arrived at the Otopeni Centre on 4 May 2000 at 5 p.m. On arrival she was body-searched and the record indicated that she had ROL 1,160,000 at her disposal.

26. On 7 May 2000 the applicant was repatriated. An employee from the Airport Security Service accompanied her throughout her journey. This measure was taken in order to ensure security on the flight, given the applicant's aggressive behaviour and her continual refusals to embark on the aeroplane.

## **C. The applicant's complaints against the Romanian authorities**

27. On 8 June 2000 the applicant sent a letter to the Chamber of Deputies of the Romanian Parliament protesting against her repatriation. The letter was transmitted to the Border Police Department which informed the Chamber of Deputies of the irregularity of the applicant's stay in Romania and the decision to repatriate her and the prohibition on her entering Romania for two years under Law no. 25/1969.

28. On 21 August 2000 the applicant sent a similar letter to the border police.

29. On 10 December 2001 the Romanian embassy in Rome, answering a letter sent by the applicant, congratulated her on her good command of the Romanian language, expressed regret for her distress, informed her that the prohibition had been lifted and advised her to contact the Italian embassy in Bucharest to assist her with the formalities in Romania.

## II. RELEVANT DOMESTIC LAW

30. The relevant provisions of Law no. 29/1990 on administrative litigation at the date of the facts are described in *Sabin Popescu v. Romania*, no. 48102/99, § 46, 2 March 2004.

31. Law 25/1969 on the status of foreigners provides as follows:

### Article 19

“(1) A foreigner who resides temporarily in Romania has the obligation to leave the country when the residence permit expires.

(2) The residence permit can be extended by the Ministry of Interior. A request for extension shall be made at least 24 hours before the expiry of the permit...”

### Article 20

“The Minister of Interior may cancel or limit the right to reside in Romania to a foreigner who has breached Romanian law...”

### Article 21

“(1) A foreigner temporarily residing in Romania whose right of residence has been cancelled shall leave the country within 48 hours of the time when the interdiction is communicated to him...”

(3) If he does not comply with the obligation above, he may be expelled by order of the Minister of Interior.”

32. The legislation has changed several times since 2001. Nowadays, under Emergency Ordinance no. 194/2002 as amended by Law no. 56/2007 and Emergency Ordinance no. 55/2007, a decision to expel a foreigner drafted in Romanian and in an international language is served on the person concerned, who may appeal against it before the court of appeal; the expulsion is suspended during the proceedings (see *Hussain v. Romania*, no. 12338/02, §§ 51-55, 14 February 2008).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. Under Articles 5 and 6 of the Convention, the applicant complained that she had been unlawfully arrested and placed in custody from 4 to 7 May 2000, as no expulsion proceedings had been pending against her at that time. She also complained that she had not been informed of the reasons for her arrest and that she had not had access to a court that would examine the lawfulness of her arrest, given the absence of information and of time to prepare her defence.

34. The Court considers that the complaint falls within the scope of Article 5 §§ 1 (f), 2 and 4 of the Convention, which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

#### **A. Lawfulness of the applicant’s arrest**

35. The Court will examine under Article 5 § 1 (f) the applicant’s allegations that she was unlawfully arrested and placed in custody.

### *1. Admissibility*

36. The Government raised a plea of non-exhaustion of domestic remedies in so far as this complaint is concerned. In their view, the applicant should have lodged a complaint against the exit visa under Law no. 29/1990. They contended that such a remedy was accessible, adequate and sufficient and therefore should have been made use of.

37. The applicant claimed that she had had no knowledge of the existence of this appeal.

38. The Court considers that the Government's plea of inadmissibility is closely linked to the merits of the complaint under examination. Therefore it joins the preliminary objection to the merits of this complaint.

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

#### **(a) The parties' submissions**

40. The Government averred that the applicant's detention in the Otopeni Centre had been provided for by Law no. 25/1969 and had not been arbitrary. They contended that similar centres and procedures existed in other countries as measures to prevent illegal immigration. They also claimed that the applicant's stay in the Otopeni Centre had been very short and had only been effected for the repatriation formalities to be carried out.

41. The applicant contended that although the Romanian authorities had been aware for a long time before her arrest that she had not had a valid residence permit, they had done nothing to put an end to that situation. She also alleged that she had been treated like a criminal in the Otopeni Centre.

#### **(b) The Court's assessment**

42. The Court notes that, although the applicant averred that no expulsion proceedings had been pending against her at that date, it is not disputed that from 4 May to 7 May 2000 the applicant was detained in the Otopeni Centre "with a view to deportation", within the meaning of Article 5 § 1 (f). It falls to the Court to examine whether the applicant's detention was "lawful" (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1862, § 112).

43. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any

deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see, among other authorities, *Bozano v. France*, judgment of 18 December 1986, Series A no. 111, p. 23, § 54; *Chahal*, cited above, p. 1864, § 118; and *Čonka v. Belgium*, no. 51564/99, §§ 38-39, ECHR 2002-I).

44. In this connection the Court reiterates that, in laying down that any deprivation of liberty must be effected “in accordance with a procedure prescribed by law”, Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law; they also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise in order to avoid all risk of arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, pp. 850-51, § 50, and *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II).

45. Lastly, the Court reiterates that although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, p. 753, § 41).

46. In the instant case, it appears that the applicant’s detention was based on the standard form filled in by the Office for Foreigners in the Ministry of Interior. It is not clear whether this form was the Minister’s “order” required by Article 21 of Law no. 25/1969 (see paragraph 31 above). However, in any event, the applicant was never given the choice to leave the country of her own free will after the exit visa had been applied to her passport as is envisaged by that provision. Furthermore, the domestic courts were never called on to assess the regularity of the applicant’s detention, either before the measure was taken or after, as no appeal against the order was provided by law.

47. The Court also notes that Law no. 29/1990 indicated by the Government sets forth the general complaint mechanism against administrative acts, which consists of two phases: a preliminary administrative complaint followed by an action with the courts that respects the general procedural requirements, including ordinary time-limits. The Court fails to see how such an action would have been effective in the present case, given the particular requirements of urgency dictated by the applicant’s situation, as she was facing imminent expulsion. Furthermore, it notes that the Government could not indicate any appeal procedure that was specially geared to persons taken into custody with a view to repatriation.

Therefore, it concludes that the remedy does not relate to the breaches alleged and is not sufficiently certain in practice, lacking thus the requisite accessibility and effectiveness; the applicant was therefore dispensed from making use of it (see, among other authorities, *Navarra v. France*, judgment of 23 November 1993, Series A no. 273-B, p. 27, § 24, and *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

48. The foregoing considerations are sufficient to enable the Court to dismiss the Government's preliminary objection and to conclude that the applicant's detention failed to comply with the "lawfulness" requirement.

There has accordingly been a violation of Article 5 § 1 (f) of the Convention.

## **B. Obligation to inform of the reasons for the arrest**

49. The Court will examine under Article 5 § 2 the applicant's allegations that she was not informed of the reasons for her arrest.

### *1. Admissibility*

50. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

51. The Government contended that the applicant had been informed on 4 May 2000 that she was going to be taken into custody. They argued that the reasons for that measure had been communicated to her upon arrival at the Otopeni Centre. In addition, the exit visa stamp applied to her passport represented communication of the measure.

52. The applicant asserted that she had never been provided with an interpreter or a lawyer to allow her to understand the accusations.

53. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its particular features (see, *mutatis mutandis*, *Murray*

*v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 31, § 72).

54. The Court notes that the applicant was informed of the reasons for her detention on arrival at the Otopeni Centre (see paragraph 16 above), and the information was confirmed by the Italian consulate the next day. While it is true that she was not assisted by an interpreter or counsel when the reasons were communicated to her, the Court notes that the applicant could engage in dialogue with the police officers and had no difficulty in understanding what was said to her and expected from her (see, for example, paragraphs 9-12 and 29 above).

55. Therefore, the Court considers that the information thus provided to the applicant satisfied the requirements of Article 5 § 2 of the Convention.

Consequently, there has been no violation of that provision.

### **C. Right to appeal against arrest**

56. The Court will examine under Article 5 § 4 the applicant's allegations that she had no access to a court that would examine the lawfulness of her arrest.

#### *1. Admissibility*

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### *2. Merits*

58. The Government contended that the applicant could have lodged an appeal under Law no. 29/1990 (see paragraph 36 above) and that she could have asked to be represented by a lawyer, but she had failed to do so.

59. The applicant claimed that she had not been allowed to contact anyone while she had been in the Otopeni Centre.

60. The Court reiterates that the existence of a remedy under Article 5 § 4 of the Convention must be sufficiently certain to give the individual concerned adequate protection against arbitrary deprivation of liberty (see *E. v. Norway*, judgment of 29 August 1990, Series A no. 181-A, pp. 25-26, § 60). Furthermore, in guaranteeing to persons arrested or detained a right to institute proceedings, Article 5 § 4 also proclaims their right, following the institution of such proceedings, to a speedy judicial decision terminating their deprivation of liberty if it proves unlawful (*Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, p. 14, § 35).

61. The Court notes that in the instant case the Government's submissions on this point are the same as those on which they relied in support of their plea of inadmissibility raised in respect of the complaint under Article 5 § 1 above. It reiterates that it has concluded that an appeal under Law no. 29/1990 at the date of the facts would not have been adequate in the applicant's particular situation, in particular concerning the time that it would have taken (see paragraph 47 above).

62. This appeal being the only one available to the applicant at that time, the Court concludes that she did not have access to a court that would decide speedily on the lawfulness of her detention.

There has accordingly been a violation of Article 5 § 4 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. The applicant complained that the real reason for her repatriation was the quarrel that she had had with the commander of Police Precinct no. 19, in violation of her right to freedom of expression guaranteed by Article 10 of the Convention. Under Article 1 of Protocol No. 7 to the Convention the applicant complained that she had been expelled from Romania although she had been granted a temporary visa valid from 5 to 12 May 2000 and that her expulsion had taken place before she had had the opportunity to challenge the measure.

Lastly, in a letter of 3 May 2001, the applicant complained under Article 3 of the Convention about her arrest and about the conditions of detention in the Otopeni Centre.

64. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed, in respect of pecuniary damage, 20,000 euros (EUR) for her investments in her companies in Romania that she could not recover after her repatriation and EUR 20,000 for the impossibility of running her business in Romania.

She also claimed EUR 20,000 for non-pecuniary damage caused by her arrest and expulsion and EUR 20,000 for the anguish and anxiety caused to her and her husband by the fact that for three days he did not have any news of the applicant's fate.

67. The Government contended that the claims in respect of pecuniary damage were not justified and that there was no causal link between the complaints raised before the Court and the alleged damage. They considered that the claims in respect of non-pecuniary damage were excessive.

68. The Court reiterates that it has found a violation of Article 5 §§ 1 (f) and 4, in connection with the applicant's arrest and detention in the Otopeni Centre awaiting her repatriation in Italy.

Even assuming that there was a causal link between the violation found and the pecuniary damage alleged, the Court notes that the applicant did not substantiate her claims under this head.

69. Furthermore, in the circumstances of the case, the Court considers that the finding of a violation constitutes in itself a sufficient just satisfaction for any non-pecuniary damage, which could have been sustained by the applicant (see, *mutatis mutandis*, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 87-89, 29 January 2008; *Zeciri v. Italy*, no. 55764/00, § 56, 4 August 2005; *Salapa v. Poland*, no. 35489/97, § 107, 19 December 2002; *Włoch v. Poland*, no. 27785/95, § 157, ECHR 2000-XI; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II).

#### B. Costs and expenses

70. The applicant did not make a claim for costs and expenses.

71. Therefore, the Court will make no award under this head.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits and *dismisses* the Government's preliminary objection of non-exhaustion of domestic remedies in so far as Article 5 § 1 (f) is concerned;
2. *Declares* the complaints concerning Article 5 §§ 1 (f), 2 and 4 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;
4. *Holds* that there has been no violation of Article 5 § 2 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
6. *Holds* that finding a violation of Article 5 §§ 1 (f) and 4 of the Convention constitutes sufficient just satisfaction for non-pecuniary damage;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Deputy Registrar

Josep Casadevall  
President