



## Home visit to inspect building work in the occupier's absence and without his permission breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Halabi v. France](#) (application no. 66554/14) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8** of the European Convention on Human Rights.

The case concerns the compatibility of a home visit under the Planning Code with the right to respect for the home as secured under Article 8 of the Convention.

In March 2009 two officials from the Grasse Town Planning Department conducted a visit to a property development to inspect building work that had been carried out. The officials drew up a report noting a number of constructions which were at variance with the building permit and prior declaration of work. The visits took place without prior permission from and in the absence of the owner or occupier of the premises.

The Court concluded that in the absence of the occupier's consent – or, failing that, judicial authorisation – and of an effective remedy, the home visit by the planning officials could not be said to have been proportionate to the legitimate aims pursued.

### Principal facts

The applicant, Mr Simon Halabi, is a British national who was born in 1958 and lives in London (United Kingdom).

On 19 March 2009 two officials from the Grasse Town Planning Department conducted a visit to a property development belonging to the ImmoFra company, under Article L. 461 1 of the Planning Code, to inspect building work that had been carried out. The officials drew up a report noting a number of constructions which were at variance with the building permit and prior declaration of work. The visits took place without prior permission from and in the absence of the owner or occupier of the premises.

On 31 January 2013 Mr Halabi, the occupier, was placed under formal investigation by the investigating judge for offences including building without planning permission and improper performance of work subject to a prior declaration. On 8 July 2013 Mr Halabi applied to have the offence report of 19 March 2009 and the entire proceedings declared null and void. The Investigation Division of the Aix-en-Provence Court of Appeal dismissed his application. Mr Halabi appealed on points of law. The Court of Cassation dismissed the appeal, finding that the authorities had not “used any coercion”.

On 26 January 2017 the Grasse Criminal Court fined the applicant 5,000 euros (EUR) in respect of the offences noted during the visit in question and for other infringements of the Planning Code.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

The applicant alleged that the visit by the planning officials on 19 March 2009 had infringed his right to respect for his home as set forth in Article 8 of the Convention.

The application was lodged with the European Court of Human Rights on 26 September 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
André **Potocki** (France),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

### Article 8

The Court observed that it was not disputed that the property in question belonged to the Immofra company. Mr Halabi had, however, explained to the investigating judge that all his family's property was registered in the name of companies such as this one. As a businessman resident in London, he used this property as a second home for holidays or for receiving business contacts.

The Court observed that the national authorities had, moreover, considered Mr Halabi to be the occupier of the property by convicting him in that capacity in the criminal proceedings. It further noted that the visit had taken place on premises that were inseparable from the property known as the "Château des Bois Murés", of which they were an outbuilding, and that while work on some of the rooms had still been in progress, others had already been completed. By accessing these furnished rooms, the planning officials had entered a physically defined space where the applicant's private and family life was developing. The Court therefore held that the property forming the subject of the visit in question was to be regarded as the applicant's "home" for the purposes of Article 8 of the Convention.

The Court noted that Article L. 461-1 of the Planning Code allowed planning officials to visit building projects not only while they were in progress, but also up to three years after their completion, in order to carry out any checks they deemed appropriate and to inspect all technical documents relating to the completion of the buildings. The Court found that this right to visit and inspect premises entailed less serious interference than a search but nevertheless considered it necessary to ensure that the applicant had been afforded sufficient and effective safeguards against abuse. The visits provided for in Article L. 461-1 could be carried out at a person's home at any time and without a senior police officer being present, no explicit reference being made to the need for the occupier's agreement or to prior authorisation by a judge. The obligation to obtain the occupier's consent was not laid down in Article L. 461-1. The Court further considered that the possibility for the occupier to object to a visit of this kind was purely theoretical, given that such a refusal in itself amounted to a criminal offence (Article 480-12 of the Planning Code).

The Court observed that in the present case, officials authorised to deal with planning matters had entered Mr Halabi's home in his absence and without his permission. The Court had already held that the lack of prior judicial authorisation could only be offset by an effective subsequent judicial review of the lawfulness and necessity of the measure in question. However, the application by Mr

Halabi to the Investigation Division to declare null and void the report of 19 March 2009, which had been drawn up without his consent, had been deprived of all useful effect.

The Court therefore concluded that in the absence of the occupier's consent – or, failing that, judicial authorisation – and of an effective remedy, the visit carried out on 19 March 2009 by the planning officials could not be said to have been proportionate to the legitimate aims pursued.

There had therefore been a violation of Article 8 of the Convention.

#### **Just satisfaction (Article 41)**

The Court held that France was to pay the applicant EUR 16,000 in respect of costs and expenses.

*The judgment is available only in French.*

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#### **Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.