



## A disciplinary visit by the Chair of the Bar Council to a lawyer's office did not breach the Convention

In its decision in the case of [Tuheiava v. France](#) (application no. 25038/13) the European Court of Human Rights has unanimously declared the application inadmissible. The case concerned a lawyer who complained about a visit by the Chair of the Bar Council to his professional premises during his absence. The decision is final.

The Court reiterated that, while lawyers must have particular protection in discharging their professional duties, it was legitimate for standards of conduct to be required of them, under the monitoring and supervisory powers vested in Bar councils. In the light of the case file, there was nothing to suggest that the right to a fair hearing had not been upheld.

### Principal facts

The applicant, Richard Tuheiava, is a French national who was born in 1974 and lives in Arue (French Polynesia). A lawyer by profession, he served as senator from 21 September 2008 to 30 September 2014.

On 11 September 2008 the Papeete Bar Council decided to open disciplinary proceedings against Mr Tuheiava. On 25 September 2009 Mr Tuheiava was referred to the disciplinary board. On 13 November 2009 he was debarred, by a decision of the Council, from legal practice for a period of two years, one of which was suspended. The Council took the view that Mr Tuheiava had continually failed to fulfil his tax and social security obligations together with his civil obligations under his professional lease. It also found Mr Tuheiava guilty of serious negligence and misconduct in his relations with his clients, in addition to breaching the principles of confraternity and respect towards the Chair of the Bar Council and other members of the Bar.

Mr Tuheiava appealed on points of law, complaining in particular about the visit by the Chair of the Bar Council to his professional premises during his absence. The Court of Cassation dismissed his appeal and found that the Court of Appeal had rightly held that this measure, far from being reprehensible, had constituted “a mandatory duty” for the Chair of the Bar Council, and that “the ethical investigation having been lawful, it could not have invalidated the disciplinary proceedings”.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 April 2013.

Relying on Article 8 (right to respect for private and family life), the applicant argued that the visit by the Chair of the Bar Council to the premises of his law firm during his absence had breached his right to respect for his home. Relying on Article 6 § 1 (right to a fair hearing), he complained about the use, during the disciplinary proceedings, of observations made during that visit.

The decision was given by a Committee of three judges, composed as follows:

Mārtiņš Mits (Latvia), *President*,  
André Potocki (France),  
Lado Chanturia (Georgia),

and also Milan Blaško, *Deputy Registrar*.

## Decision of the Court

### Article 8

The Court observed that the Chair of the Bar Council had entered the premises of Mr Tuheiava's law firm in his absence and had consulted his social security, tax and accounting documents. The visit had certainly been an act of a public authority, as it had taken place in accordance with the disciplinary powers conferred by law on the Chair of the Bar Council and had pursued a public-interest aim, namely compliance with ethical requirements. The visit had constituted an interference, but it was "in accordance with the law" and pursued a "legitimate aim", namely the prevention of disorder or crime and the protection of the rights and freedoms of others.

As to the "necessity" of that interference, it was the Chair of the Bar Council himself who had taken the initiative of the visit, acting in the context of an ethical investigation. The Court found that there had been no breach of professional secrecy in the case. Rather than an interference by an authority outside the profession, the visit had, on the contrary, been conducted by the Chair of the Bar Council, himself a lawyer and bound by the professional secrecy that it was his role to defend, in the interest of all members of the Bar. The Court noted that the visit had taken place in connection with the need to preserve the relationship of trust between lawyers and their clients. It reiterated that the special status of lawyers gave them a central position in the administration of justice as intermediaries between the public and the courts. As a result, while lawyers must be granted particular protection in discharging their professional duties, it was legitimate for standards of conduct to be required of them, under the monitoring and supervisory powers vested in Bar councils.

The Court also took note of the specific context in which the visit had taken place. The Bar Council had received many complaints from clients and had also been informed of eviction proceedings brought by the landlord of the premises against Mr Tuheiava, who no longer had a telephone or fax machine and could not be contacted by email. The Court found, like the Court of Cassation, that it had been a mandatory duty of the Chair of the Bar Council to verify the situation of the practice. As guarantor of compliance with ethical standards and of the Bar as a whole, it was his task to protect clients from any difficulties caused by the management problems and critical situation in Mr Tuheiava's law firm. The Court found that the interference in question had not therefore been disproportionate and that a fair balance had been struck.

The complaint of failure to respect the applicant's home was thus ill-founded and had to be rejected.

### Article 6 § 1

The Court observed that, following his visit, the Chair of the Bar Council had drafted an initial report. On the same day he had met Mr Tuheiava and had asked him to provide certain supporting documents. He had then drafted a second report. Mr P., a lawyer appointed by the Bar Council as rapporteur to assist the Chair, had conducted a full disciplinary investigation during which he had interviewed Mr Tuheiava. He had then submitted two reports personally. Mr Tuheiava had been referred to the disciplinary board on the basis of the reports drafted and signed by P. Moreover, during the proceedings, all the material collected had been notified and submitted to him, before being subject to adversarial debate at the hearing before the Bar Council during which Mr Tuheiava had been present, with the assistance of a lawyer.

The complaint of an unfair hearing was thus ill-founded and had to be rejected.

*The decision is available only in French.*

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