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**Synopsis:** In France, Civil law Notaries were anointed by the civil code, which erected them as guardian of legal certainty in family and land legal relations. However, their national legitimacy is now eroding simultaneously with the authority of the State, which obeys the “Europe of Trade.” Civil law Notaries should root themselves in the law of the European convention on human rights in order to give them supra-national legitimacy. The 111th French Notaries congress, which lead the profession in Strasbourg last May, appropriately showed them the way: Article 6§1 of the Convention can enable the civil law Notaries, privileged actors of preventive justice, to meet this “authentic challenge.”

## **The legitimation of civil law Notaries by the law of the European convention on human rights<sup>1</sup>**

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Civil law Notary

1. Europe, champion of liberalism and free-competition, has contributed in immersing civil law Notaries in doubt, if not in torment. Thus, the Court of Justice of the European Union (CJEU) decision of 24 May 2011, which decided that the notaries activity was not “directly and specifically connected with the exercise of official authority,”<sup>2</sup> has been hovering as a threat to deregulation and integration in interior market<sup>3</sup>. We could certainly not deduce from the decision what was not said since “nowhere is it stated that civil law Notaries did not receive a delegation of public authority, nowhere is it stated that the notarial deed is not authentic.”<sup>4</sup> European Parliament and Council Directive 2013/55/EU of 20 November

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<sup>1</sup> This is the English version of an article previously published in a French law review, Legal week notary edition 2015, Study 1147, p. 51 (French references : JCP éd. N, 2015, Etude 1147, p. 51). The translation was done by A. Swords-McDonnell and C. Dauchez.

<sup>2</sup> CJUE, *Commission c/ France*, 24 mai 2011, aff. C-50/08 : Jurisdata n°2011-032037 ; JCP N 2011, n°21, act. 482.- C. Nourissat, Fin de la clause de nationalité des notaires. Premières observations : JCP N 2011, n°22, act. 497.

<sup>3</sup> Cl. Brenner, Authenticité, droit de la famille : libres propos sur la déréglementation, *JCP N*, 201, n° 2,1297, n°2.

<sup>4</sup> Th. Gruel et C. Farenc, 111ème Congrès des notaires de France. Strasbourg, 10-13 mai 2015. La sécurité juridique, un défi authentique : rapport, p. 155, n°1327.

2013 has certainly marked a reassuring hesitation. In fact, considering that civil law Notaries should be excluded from the scope of the directive 2005/36/EC of 7 September 2005, it has refused to transpose, to the professional qualifications recognition, the principles applied by the 2011 decision to judge discriminatory the refusal of foreign access to the profession. The fact remains that the European Union law, which is always obsessed by the paradoxical concern to adapt to the United Kingdom's specific practices, which expresses with increasing insistence its will to leave, appears as a serious threat to the deligitimation of civil law Notaries.

2. The profession, which is still tense at the mention of the *Mazurek* decision<sup>5</sup>, doesn't seem to be fully aware that the other European law, the Council of Europe and Human Rights law, could on the contrary contribute to its legitimation. This study will try, in complete immodesty, to raise awareness of this opportunity.
3. It is worth recalling that the European Court of Human Rights (ECtHR) has consecrated the main role in a democratic society of another legal profession, which is also in the firing line of *Macron* law: that of bailiffs. In effect, by the little-known *Pini and Bertani and Manera and Atripaldi v. Romania* decision of 22 June 2004, the ECtHR proclaimed that they "work to ensure the proper administration of justice and thus represent a vital component of the rule of law."<sup>6</sup> Yet, it could one day be a *Pini and Bertani* decision for civil law Notaries, if it was established that they are a vital component of "the principle of the rule of law," declared for Bailiffs (1), at the same time and moreover the "watchdog" of authenticity (2).

## **I. Civil law Notaries as a vital component of the rule of law**

4. Bailiffs are considered by the *Pini and Bertani* decision as a vital component of the rule of law because of their position of public authority in execution of the final court decisions<sup>7</sup>. Civil law Notaries should also be considered as a vital component of the rule of law because of the particular role they play, and which they should play more, in order "to ensure respect for the rule of law in individual relations of private law"<sup>8</sup> by preventing the court decision necessity<sup>9</sup>. If civil law Notaries must have, prior to the court

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<sup>5</sup> J-M. Delperier, 111ème Congrès des notaires de France. Strasbourg, 10-13 mai 2015. La sécurité juridique, un défi authentique, *op. cit.*, propos introductif, XII, n°4.

<sup>6</sup> CEDH, *Pini et Bertani et Manera et Atripaldi c/ Roumanie*, 22 juin 2004, req. n°78028/01 et 78030/01, § 183.

<sup>7</sup> CEDH, *Pini et Bertani et Manera et Atripaldi c/ Roumanie*, *op. cit.* §183 et 187.

<sup>8</sup> *L'authenticité*, dir. L. Aynès, La documentation française, 2013, p. 96, n°64 à 66 et p. 103, n°73.

<sup>9</sup> M. Mekki, *Le « dernier acte » de la tragédie du Notariat français. L'acte authentique malmené par « Bercy » !*: *JCP N* 2014, 1287, n°19 et 20.

decision, the same European legitimacy that bailiffs have after the court decision, it is due to the extension of the scope of the legal certainty principle, critical component of the rule of law<sup>10</sup>, (A) that makes them play a privileged role in preventive legal certainty (B).

### A. The extension of the scope of the legal certainty principle

5. A *Brumarescu v. Romania* decision of 28 October 1999 declared that: “One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question”<sup>11</sup>. Through using the terms “*inter alia*”<sup>12</sup>, the ECtHR explicitly states that legal certainty, as a critical component of the rule of law, has to be interpreted in regard to the right to a fair trial, guaranteed by Article 6§1 of the European Convention on Human Rights (the Convention), does not limit to the recognition of the *res judicata* principle. For a long time, the ECtHR admitted that legal certainty could be searched and established in the name of the rule of law, “part of the common heritage of the Contracting States”<sup>13</sup>, independently and prior to the sole activity of the courts. Perhaps, the importance has not been emphasised enough of the perspective change operated by the *Brumarescu* decision compared with the *Marckx* decision which, in § 58, has discreetly driven legal certainty on conventional stage in these terms: “The principle of legal certainty, which is necessarily inherent in the law of the Convention as in Community Law, dispenses the Belgian State from re-opening legal acts or situations that antedate the delivery of the present judgment”<sup>14</sup>. In order to fully understand, the *Marckx* decision terms have to be placed in their context. The solution was, in effect, intended to limit the chaotic consequences of the ECtHR decision and place Belgium State beyond the reach of the abyssal difficulty which consists in calling into question all the decisions that enshrined unequal distributions of estates to the detriment of « illegitimate » children. Therefore it was essential to protect the national decisions *res judicata* against the threat of European disruptions. Following the *Brumarescu* decision, the court has extended this rule, which stemmed from a concern for self-limitation of its own decisions, to the protection of authority of court decisions in the face of purely national threats, since the

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<sup>10</sup> CEDH, *Pini et Bertani et Manera et Atripaldi c/ Roumanie*, *op.cit.* §187.

<sup>11</sup> CEDH, *Brumarescu c/ Roumanie*, 28 oct. 1999, req. n°28342/95, §61, CEDH, *Popea c/ Roumanie*, 5 oct. 2006, n°6248/03, § 34.

<sup>12</sup> We underline.

<sup>13</sup> CEDH, *Brumarescu c/ Roumanie*, 28 oct. 1999, req. n°28342/95, §61, CEDH, *Popea c/ Roumanie*, 5 oct. 2006, n°6248/03, § 34.

<sup>14</sup> CEDH, *Marckx c/ Belgique*, 13 juin 1979, n° 6833/74, § 58.

case concerned the quashing of a final judgment which itself quashed a decree in a nationalisation context. It is therefore entirely legitimate that the examples of case law on legal certainty in the decisions of the ECtHR, rightly stated by the first commission on authentic legal certainty of the 111th congress of French civil law Notaries<sup>15</sup>, relate primarily to cases protecting the *res judicata* principle. The innovation was already so remarkable it overshadowed the importance of the terms “ *inter alia* “. It echoed the decision made a few months earlier against France. In effect the *Mantovanelli* decision of 18 March 1997<sup>16</sup>, without reference to the security of legal relations or to the rule of law, had the audacity to extend the adversarial requirements implied by Article 6§1 of the Convention to the technical expertise phase. Thus, a remarkable enrichment of the domain of Article 6§1 of the Convention came to be realised by an extension to the phase prior to the court decision<sup>17</sup>. The extension prior to and out of the court decision of the Article 6§1 influence is therefore engaged for a long time.

6. The *Brumarescu* decision, embedded in the mass of conventional applications of the legal certainty principle, deserves to be highlighted as a basis for the European promotion of preventive legal certainty that is inconceivable without civil law Notaries.

### **B. Civil law Notaries as privileged actors of preventive legal certainty**

7. The preventive legal certainty is not just a matter of self-interest legal certainty: it is also a matter of economic development and certainty. It contributes to economic certainty as Anglo-Saxon studies attest having established that if the preventive role of civil law Notaries could have been exercised in the USA, the subprime crisis would have been avoided if not at least greatly attenuated<sup>18</sup>.
8. The preventive legal certainty is also a factor in economic development because contrary to certain misconceptions influenced by experts exclusively selected according to the single thought sole criteria<sup>19</sup>, it reduces costs and generates competitive margins.

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<sup>15</sup> Th. Gruel et C. Farenc, *in* 111ème Congrès des notaires de France, *op. cit.*, p. 62 à 64, n°1110 à 1113.

<sup>16</sup> CEDH, *Mantovanelli c/ France*, 18 mars 1997, req. n°21497/93.

<sup>17</sup> Cf. *RTDCiv.* 1997, 1007 obs. J-P. Marguénaud.

<sup>18</sup> Robert J. Shiller, université Yale, *The subprime solution: how today's global financial crisis happened, and what to do about it*, Princeton Univ. Press, 2008, 134 ; Peter L. Murray, université Harvard, « *French notaries and the American mortgage crisis* », *Zeitschrift für Zivilprozess International*, 16. Band, 2011, p. 209 et s., not. p. 215.

<sup>19</sup> For an overall criticism of the economic analysis which founded the Macron law, B. Deffains et M. Mekki, L'analyse économique-juridique du Notariat. « Bercy » au pays des merveilles : *D.* 2014, p. 2312.

9. In effect, the preventive legal certainty would prevent disputes, which place an inordinate burden on taxpayers who finance the public service justice, on economic agents whose deployment strategies are paralysed pending the outcome of the trial, on the parties who must pay very high title insurance fees due to the fragility of their real estate property title<sup>20</sup>. The economic benefit of preventive legal certainty still feeds on the effectiveness of benefits in kind, while a title insurance system only allows the ousted owner to obtain a sum of money<sup>21</sup>. In reality, it is likely that the economic arguments for softening or removing the role of civil law Notaries affording preventive legal certainty are completely reversible. Under these conditions, the principle of legal certainty and rule of law, whose fundamental nature has been stressed by the Convention, should tip the balance in favour of maintaining and strengthening the preventive legal certainty. Yet, this economically and legally appropriate consolidation can only be obtained through a public officer.
10. The public officer is, in effect, required to conduct a review of the legality of the deeds he draws up. This is the reason why we often present “ authenticity as a securitisation instrument in legal relations and a mean to avoid disputes”, and not only as an attribute of the legal deeds which does not affect its substance<sup>22</sup>. This authentication assignment, central to legal certainty is closely related to the advisory duty<sup>23</sup>. Yet, this advisory duty is inseparable from the guarantees of impartiality that a public officer can only provide.
11. It is due to this impartiality that the irreplaceable role of civil law Notaries was affirmed by the very important *Consorts Richet and Le Ber v. France* decision<sup>24</sup>. This decision found a violation of Article 1 of Protocol No. 1 in a famous case in which the former owners of the Porquerolles Island were refused building permits, paralysing their right to build on their few plots of land reserved by the deeds of sale concluded with the State before the Var prefect. The *Consorts Richet and Le Ber* decision has contributed powerfully in highlighting the advisory role that civil law Notaries also play on behalf of the parties in establishing that “ the deeds of sale concluded in

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<sup>20</sup> For quantified data, P. Lorot, *Le Notariat européen en danger*, Les notes stratégiques de l’Institut Choiseul, oct. 2012, p. 15 et 18.

<sup>21</sup> *In L’authenticité, op. cit.*, p. 144, n°113, see for Quebec, Fr. Brochu, La protection des droits par la publicité foncière, in *Un ordre juridique nouveau ? Dialogues avec Louis Josseland*, Mare et Martin, 2014, p. 133.

<sup>22</sup> *In L’authenticité, op. cit.*, n°57.

<sup>23</sup> M. Latina, Le notaire et la sécurité juridique : *JCP N* 2010, 1325, n° 10.

<sup>24</sup> CEDH, *Consorts Richet et Le Ber c/ France*, 18 nov. 2010, req. n°18990/07 et 22905/07, *Nul ne peut être notaire et partie : émergence d’un nouvel adage européen ?*, J.-P. Marguénaud et B. Dauchez : *JCP N*, 2011, 1209.

an administrative form before the Var prefect, as authorised by the State Domain Code, and not before a notary as it is provided for a sale agreement between private parties, the applicants didn't benefit from the notary advice on the eventual legal validity of the contractual clauses in the deeds of sale, but they relied on the prefect, representative of the State. " This is ultimately a tribute to the impartiality of civil law Notaries, who are the only ones able to advise both the parties since, unlike the prefect but also and especially the lawyers, civil law Notaries are equidistant from both. Thus, the idea is consolidated that " the notary affords a genuine public service of advice which is inherent in the achievement of his mission and differentiates him from the lawyer who has to advise only his client. "25 Yet, due to this duty of impartiality, which prevents him from promoting one of the parties, the civil law notary is a contractual relations peacemaker26.

12. It is through impartiality, which requires the civil law notary to " systematically search in all circumstances contract balance after hearing the parties, and ensure that each party has a good comprehension of the legal problems at stake, "27 that the civil law notary, as already said by Domat, is Justice of the Peace28. Thus, it has long been recognised that impartiality, which must be shown in exercising his duty, makes the civil law notary an authentic organ of preventive justice. The use of the law of the European Convention on Human Rights, expressed by the *Consorts Richet and Le Ber* decision, establishes that, only the civil law, notary public officer, is able to offer to all parties preventive legal certainty or justice without impartiality. By the inherent impartiality in adversary duty, essential for authentication on which the preventive legal certainty of legal relations, the Notary appears therefore, as much as the bailiff, as an essential element of the rule of law. The European law on Human Rights succeeds in legitimising both of these legal professions.

13. However, impartiality is not the only major precept of public notarial ethics. Two others exist: integrity and independence29, which the civil law Notaries can share with other professions, but which, under the European law on Human Rights, help to increase their legitimacy as « watchdog » of authenticity.

## II. Civil law Notaries, as « watchdog » of authenticity

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<sup>25</sup> J-F. Sagaut et M. Latina, *Déontologie notariale* : Defrénois, 2<sup>ème</sup> éd., 2014, p. 119 n°277.

<sup>26</sup> J-F. Sagaut et M. Latina, *ibid.*

<sup>27</sup> J-F. Sagaut et M. Latina, *op. cit.*, p. 15 n°30.

<sup>28</sup> J. Domat, *Le droit public, suite des lois civiles dans leur ordre naturel*, t. V, P. Emery, Paris, 1701, p. 136.

<sup>29</sup> J-F. Sagaut et M. Latina, *op. cit.*, p. 15 n°30.

14. The « watchdog » qualification is sometimes attributed to civil law Notaries in a pejorative sense to denounce the aggressiveness contrary to the image of an impartial public officer<sup>30</sup>. In the language of the ECtHR, the expression « watchdog », constantly used since the *Observer and Guardian v. United Kingdom* decision of 26 November 1991<sup>31</sup>, is in fact, quite the reverse, positive: it justifies the privileged protection of the right to freedom of expression, of whom the journalists are the most prominent example, contributing to the general interest debate. Like the journalists who fuel the debate, the civil law Notaries guard the authenticity of the deeds. Others, like registrars, judicial auctioneers, bailiffs and clerks of the court contribute to the authentication of the deeds, which is dominated more by general interest than by private interest, since “a correct application of the rules in social relations”<sup>32</sup> depends on it.
15. However, civil law Notaries deserve to be established as the “watchdog” of authenticity, because among all participants to authentication, they appear the most similar to the judge. It is recognised without extensive discussion since Cujas, that the civil law Notaries are judges out-of-court<sup>33</sup> and, generally speaking, the judge of application of the rules in social relations prior to the court decision. The assimilation has already been consecrated in a spectacular manner by a decision, relatively well known<sup>34</sup>, *Estima Jorge v. Portugal* of 21 April 1998<sup>35</sup>, following which, whatever the nature of the enforcement order, **judgement or notarial deed**<sup>36</sup>, Article 6§1 applies to its enforcement. Yet, from a European law on Human Rights point of view, assimilation of the civil law notary to a guardian judge of authentic deeds provides noteworthy perspectives. In reference to Article 6§1, we can envisage a right to a fair notary (B), which can be considered as an extension of the *Estima Jorge* decision. Article 6§1 includes, since the famous *Golder v. United Kingdom* decision of 21 February 1975<sup>37</sup>, a right of access to a court, without the guarantee provided by Article 6§1 would not be applicable, which could have a right of access to a civil law Notary as a counterpart, thus it is logically and chronologically necessary to begin here (A).

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<sup>30</sup> M. Burgan, « Au bord du gouffre, prenons du recul », in 51ème Congrès du syndicat national des notaires, 19-23 sept. 2013, p. 200.

<sup>31</sup> CEDH, *Observer et Guardian c/ Royaume-Uni*, 26 nov. 1991, req. n°13585/88.

<sup>32</sup> In *L'authenticité*, op. cit., p. 94, n°63.

<sup>33</sup> Entretien, L. Aynès, *JCP éd. N*, 2013, act. 1004.

<sup>34</sup> M. Grimaldi, *Des statuts de service public*, 1069, n°2, Ph. Théry, « Des missions de services public », 1067, n°4.

<sup>35</sup> CEDH, *Estima Jorge c/ Portugal*, 21 avr. 1998, n°24550/94.

<sup>36</sup> We underline.

<sup>37</sup> CEDH, *Golder c/ Royaume-Uni*, 21 févr. 1975, n°4451/70.



## A. The right of access to a civil law Notary

16. Already, from the constitutional perspective, the notary assignment has been assimilated to “a jurisdiction assignment, an authentication assignment, the out-of-court and preventive jurisdiction, exercised on behalf of the State.”<sup>38</sup> The access to a civil law notary, who has been delegated the state seal, has accordingly been envisaged regarding the right of access to a court, notarial authentication required by the law as well as simply wished by the parties<sup>39</sup>. For the same reasons that the preventive justice is assimilated to the contentious justice, the right of access to a civil law Notary can be justified by the Convention, transposing the right of access to a court as defined by Article 6§1<sup>40</sup>.
17. In this respect, it should be clarified that the conventional right of access to a civil law Notary is not, as envisaged by *Macron* law, a right to exercise the profession, but a Human Right of access to the authentic deeds which the citizens, awaiting preventive legal certainty, could benefit from. In regard to article 6§1, the number of civil law Notaries is not an end in itself, but a question of means sufficiently deployed on the whole territory to allow general access to authentic deeds, when required by the law or wished for by the citizens. Article 6§1 could be translated as a positive obligation to put in place a sufficient number of civil law Notaries, as veritable judges of authenticity, and would resist the idea of multiplication of the number of civil law Notaries, in order to attain the break-even point of their offices, should have to diversify their activities at the price of a dilution of their fundamental authentication assignment<sup>41</sup>. From then on, the conventional right to access to civil law Notaries, whose number is already satisfactory in regard to the latest CEPEJ study<sup>42</sup>, should rather challenge the tariff uniqueness and the call for the redefinition of the authentication domain. Regarding the tariff question, which was and could be at the heart of discussions that tend to call into question the redistribution issue<sup>43</sup>, Article 6§1 authorised a warning.

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<sup>38</sup> Y. Gaudemet, Synthèse générale, in Dossier « Les professions juridiques. Service public et déréglementation ? », *op. cit.*, 1071, n°19.

<sup>39</sup> *Ibid.*, n°18 et s.

<sup>40</sup> We can also consider that the right of access to a civil law notary is part of the right of effective access to a court, P. Crocq, « Des missions de service public », in Dossier « Les professions juridiques. Service public et déréglementation ? », *op. cit.*, 1068, n°5.

<sup>41</sup> M. Burgan, Au bord du gouffre, prenons du recul, in 51ème Congrès du syndicat national des notaires, 19-23 sept. 2013, p. 131, *passim*.

<sup>42</sup> Étude CEPEJ, *Rapport sur les systèmes judiciaires européens. Édition 2014 (2012) : efficacité et qualité de la justice*, 2013, p. 455.

<sup>43</sup> Y. Gaudemet, *op. cit.*, n°29 à 33.

18. If the actual or future reforms should, more or less mechanically, increase, in particular by tariff based on time cost, the costs of the more modest acts, the situation could activate the application, in notary access subject, of the famous case law *Airey v. Ireland* of 9 October 1979<sup>44</sup> relative to the right of access to a civil court. This decision, affirming that the rights guaranteed by the Convention should be practical and effective and not theoretical or illusory, has in effect decided, to permit people without resources access to the civil court, that the States assume a positive obligation to provide a free legal aid only required by Article 6§3 in penal subject. To make the right of access to the judge of authenticity, who is the civil law notary, practical and effective, the positive conventional obligation to put in place material help adapted to circumstances is also perfectly foreseeable. Without doubt this quite unexpected perspective can come sooner as authenticity can be justified for deeds with little patrimonial stakes.

19. The question of the scope of the civil law Notaries monopoly in the authentication subject, as we see, is the one that provokes the most discussion and greed. Here it will be simply taken up in regard to the law of the European Convention on Human Rights. From this point of view, a very simple criterium should appear to lead: the public notarial monopoly of authenticity has in principle vocation to apply to all deeds necessary to the exercise of the rights guaranteed by the Convention and its additional protocols. Thus, the deeds relevant to the exercise of the right to peaceful enjoyment of property (transfers for a fee or for free of real estate, land registration...), right to marry and to found a family, right of respect of his private and family life (adoption, IVF, end of life...) should, when there is no intervention of the registrar, have in principle and *a priori*, be conserved or linked with the authentication activity of the « watchdog, » who is the civil law notary. The right of access to the civil law notary now justified, the inherent guarantees to the right to a fair civil law Notary can be concretely envisaged by confrontation with the requirements of the right to a fair court defined by Article 6§1.

## **B. The right to a fair civil law Notary**

20. Built on the model of the right to fair expertise<sup>45</sup>, which considered the extension of the guarantee provided by Article 6§1, prior to the intervention of the contentious judge, the right to a fair civil law notary would include a certain number of procedural conventional rights. At first it

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<sup>44</sup> CEDH, *Airey c/ Irlande*, 9 oct. 1979, n°6289/73.

<sup>45</sup> J-P. Marguénaud, *Le droit à l'expertise équitable* : D. 2000, p. 10.

would be the right to enforcement, already recognised by the *Estima Jorge* decision in the continuation of the right to enforcement of judicial decisions consecrated by the famous decision *Hornsby v. Greece*<sup>46</sup>; this decision which is besides absolutely incompatible with the CJEU affirmation following which the notaries activity is not directly and specifically connected with the exercise of official authority. It would also include the right to the respect of a reasonable delay in the liquidation of the matrimonial property and inheritance, also recognised by the decisions *Kanoun v. France* of 3 October 2000<sup>47</sup> and *Siegel v. France* of 28 November 2000<sup>48</sup>. Other transpositions of the requirements of the right to a fair trial are to be expected: they concern integrity, but above all independency and impartiality that Article 6§1 expects from the court. With regard to the independence requirement, it completely justifies that a civil law notary cannot draw up acts for members of his family and it could make unconventional partnerships between a civil law notary and other professions, which create links of economic dependence, direct or indirect, or statutory.

**21.** The independence requirements and integrity that is the corollary, should also trigger profound reforms in the profession organisation. Legitimation of the civil law Notaries by the law of European Convention on Human Rights in effect cannot be a one-way process. In order for this legitimation to maintain its strength and pertinence, the profession still has to be exemplary with regard to the requirements that are its basis. Thus, the disciplinary procedure against civil law Notaries, which for the moment is governed by the case *Le Compte, Van Leuven and de Meyere v. Belgium*<sup>49</sup>, which is satisfied by a purge of the defects of violations to the rules of a fair trial operated by the court of appeal, should be more inspired by the rules which prevail for the judges in front of the High Council of the Judiciary. Here it will be sufficient to remember that the disciplinary sanctions imposed by the civil law Notaries chambers are not published, as well as the decision immediately enforced they make when they are appealed to decide, in case of non-conciliation, a dispute between civil law Notaries.

**22.** At the cost of significant amendments to its internal organisation, the civil law Notaries profession should be considered as the « watchdog » of authenticity, fundamental element of the rule of law and find, on the side of the law of the European Convention on Human Rights, the European legitimacy that the law of European Union occasionally seems to contest. At

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<sup>46</sup> CEDH, 19 mars 1997, *Horsby c/ Grèce*, req. n°18357/91.

<sup>47</sup> CEDH, 3 oct. 2000, *Kanoun c/ France*, req. n°35589/97.

<sup>48</sup> CEDH, 28 nov. 2000, *Siegel c/ France*, req. n°36350/97.

<sup>49</sup> CEDH, 23 juin 1981, *Le Compte Van Leuven et de Meyere c/ Belgique*, rep. n°6878/75, 7238/75.

least, this European legitimacy recovered by the law of European Convention on Human Rights seems to be able to counterbalance the mistrust that emanates from the “Europe of Trade”. It would even be possible that it could contribute to its dissipation. From then on, to conclude, the efforts of the two Europes could be joined to achieve the dream of a European civil law Notary already expressed aloud by the professor Michel Grimaldi<sup>50</sup>, twelve years ago, which still echoes today<sup>51</sup>...

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<sup>50</sup> M. Grimaldi, Colloque du 9 mars 2003, Association du Notariat francophone, « L’efficacité des actes publics dans l’espace francophone en matière civile. Comment concilier souveraineté nationale et mondialisation ? », p. 161.

<sup>51</sup> Not. N. Laurent-Bonne, *L’avenir du Notariat est-il dans son histoire ? :Point de vue, D. 2014, p. 1771, J. Tarrade, Entretien, in Les cahiers de la fonction publique, avril 2014, p. 49 et 50.*