BILAG 16.

S U M M O N S

BEFORE THE

TRIBUNAL D'ARRONDISSEMENT, LUXEMBOURG [Luxembourg]

BETWEEN:

1. Ms. Katalin Baranyi (PhD Scholar)
2. Mr. Herman J Berge (LLB)

Plaintiffs

- and -

Mr. Francis Kesseler (Notary)

Defendant

A. INTRODUCTORY and STATEMENT OF FACTS

1. Francis Kesseler operates as a notary in Esch-sur-Alzette. As Kesseler for some unknown reason refuses to provide us with any documents in this matter, we have to assume that sometime late January 2011 Danske Bank AS, Copenhagen, or Danske Bank International S.A. contacted him and instructed him to prepare and carry out a foreclosure on our house. The only document the bank provided Kesseler with was a Krediteröffnungsurkunde.

Exhibit # 1: Krediteröffnungsurkunde of January 15 2007.

2. Based on this document Kesseler started the preparations for the foreclosure and in this regard he contacted us with his letter of January 25 2011.

Exhibit # 2: Kesseler's letter of January 25 2011.

3. As this letter was written in French, a language of which we neither read nor understand, we were forced to translate it using the Google language tool. In our respond letter of January 27 2011 we petitioned Kesseler to provide us with all documents which he was building his foreclosure upon. In addition we informed Kesseler about the criminal activity of the bank, that all but one agreement between us and the bank was entered into in Norway (hence Norwegian law prevails and applies to the *merits* of the case), that we are not in any default, that the bank still carries out criminal financial activity abroad, that the Krediteröffnungsurkunde is null and void as it is a result of fraud, and that the bank had been sued in a € 53 million compensation claim.

Exhibit # 3: Our letter of January 27 2011.

4. Notary Kesseler refused to respond to our letter, hence we dispatched a reminder informing him that we would file a criminal complaint against him for harassment if he should not respond to us within February 11 2011.

Exhibit # 4: Our reminder of February 8 2011.

5. On February 9 2011 Kesseler called us and attempted to threaten and manipulate us to give in and accept his/the bank's demands. In this taped conversation, and despite our explicit request, Kesseler bluntly refused to provide us in writing anything of what he was about to say. Although we refused to receive his information and statements orally, he insisted.

Exhibit # 5: CD containing the preface of the said phone conversation in which Kesseler refuses to give us any information in writing.

6. During this conversation it became clear that it was not Danske Bank who had contacted and "hired" Kesseler as he though had stated in his letter of January 25 2011, but a lawyer; Mr. Alex Schmitt. From previous correspondence with this Schmitt it has become evident that the bank in question never formally hired him. Consequently Schmitt has not been furnished with a Power of Attorney and is thus not in any position to represent a third party or present claims on behalf of any such third parties. Schmitt himself has declared to us in his fax of December 2 2009 that he has not been furnished with a Power of Attorney.

Exhibit # 6: Alex Schmitt's fax of December 2 2009.

7. If this should be true, what Schmitt claims, that a lawyer or any other representative in Luxembourg can act at random – *without* an instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of principal – then the total anarchy in Luxembourg has finally been proved. It should, by obvious reasons, not be necessary to elaborate on the implications such a state of affairs will have on any society.

8. In our letter to Kesseler of February 14 2011 we informed him; that we – as a defendant to the foreclosure – are entitled to be granted access to all documents he is concealing; that he had failed to prove that we are in default; that the bank 1) manipulated us to believe, and we consequently thought, that the bank had granted us a house loan of which the bank today rejects the existence of, and 2) deliberately misled us to sign on a criminal investment scheme, similar to the numerous criminal investment schemes that this bank subsequently has "*pushed*" on retired northern Europeans with unencumbered properties in Spain; that the mortgage deed of January 15 2007 contradicted the notary deed of October 17 2006; that the mortgage deed was in violation with Article 19 (3) of Directive 2004/39/EC, and finally that the bank has deceived and defrauded us and that notary Camille Mines did, at best, nothing to stop this fraud.

Exhibit # 7: Letter to Kesseler of February 14 2011.

9. On February 16 2011 we filed a criminal complaint against the bank for having deceived us to sign the Krediteröffnungsurkunde and for having manipulated us to believe that we had been granted a house loan.

Exhibit # 8: Criminal complaint XXII of February 16 2011.

10. Early in the morning of February 18 2011, at 07:40 (well before normal office hours), a Josiane Gloden attempted to serve Kesseler's "Commandement", basically

shouting in a hostile tone that our house will be subject to a forced sale since we hadn't paid on our house loan.

Exhibit # 9: Commandement of February 18 2011.

11. In this non-served document of February 18 2011 Notary Francis Kesseler (and Josiane Gloden) claims that we failed to pay € 453.199,76 on October 4 2010, that we – by this failure to pay the bank in question – have defaulted a contract and that he pursuant to Article 879 of the "Nouveau code de procedure civile" thus are entitled to sell our house on behalf of the bank.

12. Kesseler (and Gloden) was at the time of the issuing positively aware of the fact that he had not seen nor was he in possession of:

- any contracts or agreements stating that we owe the bank the sum of €453.199,76.
- any document (a NOTICE) proving that we had been requested to pay the said sum within October 4 2010.
- any agreement or contract of which the aforementioned sum of €453.199,76 refers to and which stipulates interest rates, instalments or other statutes of which claims to be breached.
- any document proving that we have defaulted and thus are in breach of an agreement or contract.

13. Hence we petitioned Gloden, in our letter of February 18 2011, to provide us with the said documents, i.e. proof of default.

Exhibit # 10: Letter of February 18 2011 to Gloden.

14. Gloden refused to respond to this petition, hence she failed to provide us with evidence of default and liabilities, consequently failing to prove the legal authority of her demand/claim. Gloden was thus fully aware of the fact that the defective "Commandement" could not be served.

15. On February 28 2011 we informed Kesseler that in addition to the fact that the "Commandement" was defective, there was no referral to Article 879 of the "Nouveau code de procedure civile" in the mortgage deed.

Exhibit # 11: Letter of February 28 2011 to Kesseler.

16. The said article clearly demands that such a referral is to be explicitly stated in the mortgage deed. As the author of this mortgage deed has failed to make this referral, Kesseler had no legal basis or authority issuing his "Commandement", nor had he any legal authority to execute the bank's instructions.

17. We also informed Kesseler in this letter that it is stated in the mortgage deed that we have ordered this deed. Yet again we are facing one of Danske Bank's numerous fraudulent acts. We have never ordered this document. We have never seen such a document before January 15 2007, and we had until that date never heard of this document or of its content (the bank consequently concealed this fraudulent document until the day we were to take over the house). In this regard we petitioned Kesseler to – within March 1 2011 – provide us with proof of such order. Kesseler has not responded to this petition, hence it has been established (which Kesseler obviously was aware of) that

this document has been produced as part of an investment scheme created to defraud the bank's clients.

18. Let us yet again remind the court that this mortgage deed, of which we later on have learned is a financial instrument, should – in accordance with Article 19 (3) of Directive 2004/39/EC – have been presented to us in good time before we actually were supposed to enter into it. Presenting such a document, in a language the bank knew we didn't understand, on the day we were taking over the house, demonstrates the bank's fraudulent motives.

19. On March 2 2011 we filed criminal complaints against both Gloden and Kesseler for carrying out preparations for a forced sale of our house based on fraudulent documents, and fabricated facts.

Exhibit # 12: Criminal complaint of March 2 2011 against Francis Kesseler

Exhibit # 13: Criminal complaint of March 2 2011 against Josiane Gloden.

B. STATEMENT OF CLAIM

20. **The "Commandement"** of February 18 2011: The Defendant, Kesseler, claims that we are obliged to pay the sum of € 453.199,76 to him or to his client. Furthermore he claims that we should have paid this amount at the latest on October 4 2010. On the other hand Kesseler has vigorously rejected to provide us with any documents that could prove his claim. It is thus a notorious fact that the offender issued a "Commandement" without the slightest piece of evidence of an agreement and a default of this agreement. Actually the offender had no documents in hand that could justify[1] his "Commandement". Nevertheless Kesseler claims that he is entitled to sell our home based on some vague and unverified assertions on breach of contract, which in turn makes him liable to any damages or economic loss caused by his actions. It goes without saying how serious it is when a notary starts fabricating a default (note that Kesseler has declared that the due date for the payment was October 4 2010 well aware of the fact that such due date does not exist) in order to fulfil his client's instructions.

21. **The Krediteröffnungsurkunde** (the mortgage deed) of January 15 2011: When we attended the meeting at notary Camille Mines' office on January 15 2007, we thought that we were to hand over the check, sign a notary deed and finalize the take-over of our new home. The meeting though seems to have ended up with us signing on a mortgage deed which sole purpose – we were explained – was to guarantee the due payment on the house loan we had been granted, nothing else.

22. As agreed upon on June 27 2003 all documents the bank produces for the purpose of our attention are to be authored in English.

Exhibit # 14: Agreement of June 23 2003.

23. The mortgage deed, which we saw for the first time on January 15 2007 at Mines office, is – in violation with the said agreement of June 27 2003 – written in German. Even though we informed notary Mines that we couldn't understand this document as we didn't read or talk the German language, notary Mines did not stop the process demanding the bank to furnish us with an authorised English print. On the contrary he did what – according to the Defendant's statement in the above mentioned phone conversation – is common practice among Luxembourg notaries: He tried to bend and get around the law by "*explaining*" the content of this document in English.

[1] A mortgage deed does not give evidence of a loan agreement, its statutes or of a default of any of its statutes. In this regard a mortgage deed does solely stipulate what will happen after a default has occurred.

24. His "explanation", for whatever that is worth in the light of the MIFID-Directive, did not alert us that this was anything more than a house mortgage. But even if we had been alerted that this was something else, we had no alternatives but signing it, as we already had paid some € 100.000 upfront on October 17 2006, and as the seller was entitled to make a forced sale of the house if we for any reason did not pay the remaining amount on that day. We were thus placed under duress by the bank as the latter failed to 1) provide us with the German document in due time before January 15 2007, and 2) inform us, at all, about its content.

25. A mortgage deed is a financial instrument, and the Commission Directive 2006/73/EC Articles 29 and 30, implementing Article 19 (3) of Directive 2004/39/EC, clearly stating that any relevant information is to be provided;

> *"...in a comprehensible form... so that they* (clients or potential clients) *are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis."*

26. As documented in criminal complaint XXII, this mortgage deed (or whatever it is) was presented to us for the first time just minutes before we were to get the keys to the house. It was not presented to us in a language we understand or in a language agreed upon nor in a comprehensible form. We were not able to understand what kind of document this was or the nature and the risk of what the bank presented and forced on us. Hence we were not at all in a position to take *"investment decisions on an informed basis"*.

27. We trusted the bank and we had no reason not to trust notary Mines. Nevertheless we were deliberately deceived by both, hence we were not given the slightest chance to take a sound investment decision on January 15 2007 as we actually were not able to understand the concept, the nature or the risks of the financial instrument (Krediteröffnungsurkunde) offered in disguise of a house mortgage *that day*.

28. The fact that our signatures appears on a document we obviously didn't (and still don't) understand the content of, taking into consideration the backdrop of this matter, will automatically render the document null and void, hence the document is of no legal value, lacking any form of legal force. The bank has deceived and defrauded us and Mr. Mines did, at best, nothing to stop this fraud. The said Krediteröffnungsurkunde is part of a criminal financial scheme and the only reason why our signatures appears on this document is the bank's fraudulently conduct.

* * *

29. As documented notary Kesseler was – at the latest on February 15 2011 – duly informed about the bank's criminal activity, that the bank's representative acted without a Power of Attorney, the criminal complaints against the bank and about the fact that if he continued to carry out the bank's instructions, he would be committing a crime.

30. Kesseler nevertheless refused to act upon the information he was provided with. Instead of acting duly upon our letters, petitions and complaints, Kesseler deliberately continued to carry out the illegal and unfounded preparations for a forced sale of our house. In this he planned how to avoid our petitions and complaints, concealing facts and documents, hence committing fraudulent concealment. Furthermore Kesseler deliberately chose to forgo information from us which immediately would have stopped the unauthorized and illegal preparations for a foreclosure. In turn this could have broken the chain of frauds and thus minimized our loss in particular and damages in general. Kesseler stated in the abovementioned phone conversation of February 9 2011 that he would never discuss the merits of the case with any other person than a lawyer, hence

depriving us of our right to defend ourselves and our home. Consequently Kesseler deliberately and unlawfully obstructed any chance we had to uncover the truth and stop the preparations of the foreclosure, hence inflicting huge economic loss on us.

31. Kesseler was at the latest in February 2011 duly informed that the bank in question, his client, provided its clients in Norway with illegal agreements. These agreements are illegal for at least two reasons: 1) The bank is not authorised to provide portfolio service to Norwegian clients in Norway, and 2) pursuant to §8 of the Norwegian Regulation F07.07.1994 nr 717 all agreements between a foreign financial institution and a Norwegian investor / client is subject to Norwegian law. This provision is to be *included* in any agreement. Danske bank International S.A. is nevertheless consistently misleading Norwegian clients to forfeit their rights protected by mandatory regulations on financial agreements and accept the bank's unlawful provisions which falsely and deceitfully states that the agreement is governed by Luxembourg law. The consequence of this is that Kesseler knew at this point that the agreements provided by the bank, in general, were illegal and that the legal as well as economic consequences of the continuation of such an unlawful business could be devastating not only to the bank but also to Kesseler and the Luxembourg Government.

32. It has been proven that Kesseler has not seen or been in possession of 1) any contracts or agreements stating that we owe the bank the sum of €453.199,76; 2) any document (a NOTICE) proving that we had been requested to pay the said sum within October 4 2010; 3) any agreement or contract of which the aforementioned sum of €453.199,76 refers to and which stipulates interest rates, instalments or other statutes of which claims to be breached, or 4) any document proving that we have defaulted and thus are in breach of an agreement or contract. Despite this serious lack of mandatory documents, Kesseler issued the said "Commandement", an act which under normal circumstances immediately should lead to his suspension and dismissal.

33. Kesseler has deliberately failed to react upon the information and documents he received concerning the bank's fraudulent cross-border activity and in particular the bank's deceitful and fraudulent activity where they succeeded in having us to sign a fraudulent document on January 15 2007 of which was a part of a criminal financial scheme. This demonstrates beyond any doubt that Kesseler not only protects the bank but that he all the more is acting unconditionally upon this criminal organization's instructions. Kesseler has no intention and shows no will of carrying out any conduct which could safeguard his public activity.

34. Kesseler's misconduct is hence regarded at best as gross negligence. We will though argue and prove that Kesseler is guilty of wilful misconduct motivated by the financial industry and the Governments interest in protecting the financial business against any probe / investigation / legal claims / litigation or its like. One direct product of this misconduct is that bailiff Josiane Gloden illegally attempted to serve Kesseler's "Commandement" without the slightest proof of default or breach of any contracts/agreements. This would never had happened were it not for Kesseler's decayed moral and thus his ability to accept any assignments regardless of its legality, as long as he gets paid.

C. Liability – Compensatory damages

35. It goes without saying that the numerous actions the authorities has launched against us the last few years – accepting international illegal attacks against us and in this regard depriving us of our right to contradict allegations, depriving us of our right to protection, depriving us of our right to defend ourselves against crimes, depriving us of our right to a fair hearing, holding secret hearings, passing secret decisions etc, all this as a consequence of CSSF's, the public prosecutor's, the bailiffs'/notaries' and the courts' misconduct – which stands as blatant violations of the Charter of Fundamental Rights Art. 47 and ECHR Art. 6, has come costly. The mere fact that it is nevertheless necessary,

before a court of law, to point out these actions as actual violations of the Charter and the ECHR, is in itself a proof of the seriously underdeveloped legal / judicial system in Luxembourg.

36. If a public officer deliberately does an act which he knows is unlawful and will cause economic loss to a party to – let's say; a court case, there is no reason in principle why this party should identify a legal right which is being infringed or a particular duty owed to him/her, beyond the right not to be damaged or injured by a deliberate abuse of power by a public officer.

37. As a notary and a doctor in law, Kesseler knows the law, hence he knew that the described actions are unlawful and would be regarded as crime if committed, and that his actions – carrying out a forced sale of our home without any documentation or legal authority – most likely would cause substantial economic loss to us. Kesseler calculated the risk and potential consequences of being caught, and decided nevertheless to carry out the crime. Kesseler has consequently demonstrated a serious contempt for the laws of which he is set to serve and obey, indicating a totally corrupt and demoralized notary. Liability has thus been determined for Kesseler and consequently for the state of Luxembourg as he is appointed by the Grand Duke.

38. The Minister of Justice, François BILTGEN, as well as the Prime Minister, Jean-Claude Juncker, was at the latest by our letter of January 26 2010 notified of how the most powerful institutions in Luxembourg are protecting and nurturing the financial industry's criminal activity. The financial crimes were duly documented with conclusive evidence as were the institutions' protection of these crimes. Biltgen and Juncker calculated the risk of not paying any attention to these crimes, and decided – after calculating the probability of incurring economic loss to us – to let the institutions carry out their protection of financial crimes, hence clearing the way for these crimes to thrive. The Minister of Justice as well as the Prime Minister have thus demonstrated their total indifference to law and order in their country as well as a naked contempt to our rights of which are protected by law. If Biltgen and Juncker had acted and reacted against this disclosed protective system, the chances of being defrauded by the bank would be minimized, and the institutions mentioned above would have protected our rights against these perpetrators and their crimes. Liability has thus been determined for Biltgen, his superior; Jean-Claude Juncker and the state of Luxembourg.

39. The principal amount that is to be compensated correlates with the amount that Kesseler allegedly has ordered us to pay to the Danske Bank International S.A. i.e. € 453.200. of which at present has increased to **€ 480.000**. Furthermore due to the Defendant's misconduct we have been forced to protect our interest and investigate the matter. This has been a full time job for Mr. Berge for 30 months, which we claim to be reimbursed by Kesseler in whole as it has been proven that he engaged in this crime with open eyes and thus is an accomplice of Danske Bank. Mr. Berge claims to be reimbursed: € 300,- an hour, 9 hours a day, 5 days a week for 30 months (5.400 hours) = **€ 1. 620.000.**

C. Pain-and-suffering damages

40. These actions which we have been exposed to have caused us pain and suffering. As argued above, the said actions have been committed with the intent to defraud and harm, which was successful achieved. We have been fighting the bank in question, Luxembourg law-enforcement, the courts, the financial regulator, bailiffs and notaries for more than two years. During this struggle not even once have the relevant Luxembourg authorities allowed us to defend ourselves, or pursue our rights. Well aware of this anarchic state of affairs, Kesseler nevertheless engaged himself in the continuation of this crime. It goes without saying that this struggle has come costly. The amount that should redress some of our pain and suffering is assessed at **€ 11 million**.

D. Recovery of lost opportunities – opportunity cost

41. Our total savings of approximately € 1 million was by deceit channelled into the bank for the sole purpose of defrauding us of that entire amount. This amount has in fact been seized by the bank since it was deposited, and at the latest since October 16 2006 when the bank deceived us to take up a house loan (for the purpose of buying a house in Luxembourg), of which later on turned out not to be a house loan but rather the bank's fraudulent investment-scheme applied on – among others – the aforementioned pensioners defrauded in Spain. Wealth Manager Anne Kaupang Leighton's fraudulent declaration to us in the midst of the crisis in 2008 is quite telling:

- There is no crisis (for you). Listen now; there is no crisis, just so you know it!

42. cf. lunch meeting with the bank on September 29 2008 (taped and transcribed). The crisis had already struck us and the total amount was seized, but for deceitful and fraudulent reasons Leighton and the bank concealed this fact by her declaration. Our opportunity cost is estimated to **€ 11 million.**

E. Punitive damages (exemplary damages)

43. The Defendant knows the law. The Defendant has nevertheless calculated the risk of violating the law and decided to proceed with not only protecting the bank but also acting as the bank's debt collector, hence becoming an accomplice to the massive fraud of the bank's clients.

44. A substantial punitive damages verdict is necessary to punish and deter the Defendant, and notaries in general, from acting this way in the future.

45. If the Court finds from the evidence that the Defendant are guilty of wanton, wilful, malicious or reckless conduct that shows an indifference to the rights of the Plaintiffs, then we ask the Court to make an award of punitive (exemplary) damages in this case.

46. In order for the conduct of the Defendant to constitute wilfulness or wantonness, his acts must be done under circumstances which show that he was aware from his knowledge of existing conditions that it was probable that injury/damage would result from his acts and omissions, and nevertheless proceeded with reckless indifference as to the consequences and without care for the rights of the Plaintiffs.

47. The Court must find that the harm to the Plaintiffs was the foreseeable and probable effect of the Defendant's behaviour, but it is not necessary to find that the Defendant deliberately intended to injure the Plaintiffs. It is sufficient if the Plaintiffs prove by the greater weight of the evidence that the Defendant intentionally acted in such a way that the natural and probable consequence of his act was injury to the Plaintiffs. This has been proven. The conditions for inflicting punitive damages are fulfilled, and we thus request the Court to make an award of punitive damages in order to prevent the reoccurrence of such conduct by the said notary.

48. The amount of punitive damages which will have a deterrent effect on the Defendant in the light of the Defendant's financial conditions, and the seriousness of the said conduct, and of which the Court is asked to award, is set to **€ 50 million**.

F. PROCEDURAL ISSUES: CONVENTIONAL RIGHTS – SELF-REPRESENTATION AND SERVICE OF JUDICIAL DOCUMENTS

49. **Introduction:** Luxembourg courts as well as their bailiffs have consistently rejected to serve judicial documents from our hand, arguing that we are not represented by a lawyer, hence obstructing our right to access to court. This position, or view, has no

support whatsoever in relevant international treaties of which Luxembourg has signed and ratified.

50. Although it is beside the point here, it has to be noted that there are no lawyers in Luxembourg that would touch this or similar cases, a stand which has nothing to do with the case's merits. Quite on the contrary, it is rather a matter of safeguarding their very existence as lawyers in this country. Holder of claims as described in this writ have thus no actual access to Luxembourg courts, regardless of whether the plaintiff is represented by a lawyer or not.

51. **Self-representation in court** and **Service of judicial documents in the EU – Facts in short:** 1) Danske Bank International S.A. has in collaboration with CSSF, the Public Prosecutor, the commercial court and the Minister of Justice and Finance defrauded us of all our savings.[2] 2) We have been sued by the bank. 3) We wish to defend ourselves against the perpetrators, and get back our savings and whatever we according to law are entitled of in compensation. 4) We also see the need to file claims for damages against some of the perpetrators for their wilful misconduct and criminal acts, deliberately depriving us of our rights. 5) We do not speak the French language. 6) The bailiffs in Luxembourg refuse to serve our writ of summons, appeals and other judicial documents arguing that we are not represented by a lawyer, and 7) The bailiffs furthermore refuses to serve documents to us in a language which we understand, hence depriving us of our right to know, understand and to defend ourselves.

52. **The Law – Conventions guaranteeing fair and public hearing:** The United Nations UNIVERSAL DECLARATION OF HUMAN RIGHTS Art. 10 reads as follows:

> *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

53. ECHR Art. 6 (1) reads as follows:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

54. EU-Charter Art. 47 reads as follows:

> *"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*
>
> *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*
>
> *Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."*

55. The variety of the different guarantees comprised under the umbrella term of "fair trial" is extensive. In this certain matter there are at least four guarantees which are relevant:

- Access to court
- Fairness - Equality of arms

[2] This fact has been duly documented in previous correspondence with the said institutions.

- Public hearing
- The principle of self-representation – be advised, defended and represented

56. **The guarantees of a fair trial – "Access to Court":** So, what is "access to court"? What does that mean?

57. Access to a court is a basic precondition of a fair legal process, and requires not only that a court is existing, but that such a court is *in fact* accessible for the plaintiff pursuant to the standards developed by the European Court of Human Rights with regard to Article 6 (1). This understanding is also adopted by the European Court of Justice.

58. Right of access to court was for the first time recognized by the ECHR in the case Golder v. United Kingdom, (21 February 1975):

> *"It would be inconceivable that Article 6 (1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings."*

59. In the Ashingdane case (Series A no. 93) the ECHR stated that, although limitations may be imposed:

> *"it must...be established that, the **degree of access** afforded under the national legislation was **sufficient** to secure the individual's right to a court; having regard to the Rule of Law in a democratic society...the limitations applied **must not** restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired...Furthermore, a limitation will not be compatible with Article 6 (1) if it does not pursue a **legitimate aim** and if there is not a reasonable relationship of **proportionality** between the means employed and the aim sought to be achieved."*

60. If a plaintiff chooses to present his/her case in person, and the authorities rejects his/her attempts of going to court arguing that he/she must be represented by a lawyer, then the plaintiff has de facto no access to court and the Government is facing complaints for violating the above mentioned provisions.

61. If a party to a legal dispute does not understand or speak the language of the court of which he/she wants to present the matter to in person, then this party obviously have no chance of filing a lawsuit to try his/her rights. Depending on the party's economical stand, this problem can be redressed by the court, offering the party an interpreter. Should the court refuse to comply with a request for an interpreter, then we are left with the conclusion that the party has no access to court, and the provisions mentioned above has been violated.

62. The *degree of access* to the court in Luxembourg was in our case against *Remesch, Hilgert, Biltgen and others,*[3] none-existing and was thus not sufficient to secure our privilege to have our rights tried in a court of law. Furthermore the Government has through its instructions to its judges restricted and reduced the access left to us in such a way and to such an extent that the very essence of the right to access to a court is not only impaired but has actually evaporated. In this regard it should be

[3] Writ of summons, claims for damages against the judges and others for having carried out a secret hearing and passed a secret decision ordering us to pay the bank in question almost ½ million Euro, filed to the Court of First Instance on November 16 2010.

mentioned that the Government of Luxembourg has never indicated any valid or legitimate aim for its extensive limitations of access to court.

63. One can conclude that we will never be – at least not under the present regime – granted any judicial proceedings in Luxembourg as long as we maintain our conventional rights. Consequently we have in fact no access to court and the fair, public and expeditious characteristics of judicial proceedings are of no value at all.

64. **Fairness - Equality of arms:** The case law of the European Court of Human Rights regards the principle of equality of arms as part of the guarantee of a fair trial and has reiterated with respect to the adversarial nature of civil procedure, that it requires a just balance between the parties, even when one of the parties is the State. Thus, the European Court has ruled that:

> "*...every party to a case must be afforded a reasonable opportunity to present his or her case under conditions that do not place the party at a substantial disadvantage vis-à-vis the opponent.*" See in this respect, ECHR, Kaufman v. Belgium, N° 5362/72, 42 CD 145 (1972) and Bendenoun v. France, A 284, para. 52 (1994).

65. Accordingly, the ECHR considers this principle to include the idea of "a just balance" between the parties. Thus, the ECHR has held that the principle of equality of arms equates to the right to present the case to a court in equal conditions.

66. In light of this situation, the European Court of Human Rights found that:

> "*...according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case in conditions that do not place him at a disadvantage vis-à-vis his opponent.*" Cf. ECHR, Foucher v. France, (March 18 1997, para. 34).

67. In Ruiz Mateos v. Spain the ECHR found that:

> "*...the principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that proceedings should be adversarial.*"

68. The Court went on to add that:

> "*...within the context of proceedings on a civil right to which persons belonging to that circle are a party, those persons must as a rule be guaranteed free access to the observations of the other participants in these proceedings and a genuine opportunity to comment on those observations.*" Cf. ECHR, Ruiz Mateos v. Spain, (23 June 1993, paras. 15, 61, 63 and 65).

69. ECHR has indicated that the principle of "equality of arms" requires that parties in judicial proceedings be able to examine the witnesses of the opponent, be informed of the reasons for administrative decisions, be able to appeal them, and have the right to challenge decisions on equal terms. See, in this respect, ECHR, X v. Austria, N° 5362/72, 42 CD 145 (1972). v. Harris, D. J., O´Boyle, M. O. and Warbrick, C., cit., p. 209; ECHR, Heinrich v. France, A 269-A, para. 56 (1994).

70. It is a fact that Danske Bank International S.A. has acted deceitfully and has defrauded us and numerous other persons in Europe, and that CSSF, the public prosecutor as well as the ministers of Justice and Finance along with the notaries and courts are protecting the crimes that led to this writ of summons. The bank and the said institutions have thus succeeded in their aim; deceiving and defrauding clients / investors

to obtain highest possible turnover, concealing and protecting the activity and subsequently making it impossible for the clients / investors to seek any legal assistance or redress.

71. In addition to the many economic problems occurring in the wake of bank-fraud cases – e.g. defrauded and drained clients being forced to liquidation – a protective system has been established to obstruct any attempts from deprived parties (who still wants to fight for their rights) to go to court and have their rights tried.

> A few words needs to be said about one particular situation of which the banks in Luxembourg take great advantage of: It is a fact that most of the funds that are placed in Luxembourg banks originate from tax evasive actions in different countries. The Government as well as the banks are fully aware of this, and they know that should the banks' financial service violate any law, the clients / investors will nevertheless find it hard or even impossible to instigate litigations against the banks as this – at the end of the day – would mean to reveal their secrets and liabilities to the tax authorities. The Government and the banks exploit this situation for all it's worth.

72. Firstly this has been done by instructing the public prosecutor to shelve all criminal complaints against institutions, firms and well known persons in Luxembourg. Furthermore anyone whose rights have been violated is advised (by the public prosecutor) to contact a Luxembourg lawyer with his/her grievances.[4] As far as we know there are no lawyers in Luxembourg who would think of attacking or even criticising this unlawful, unconstitutional and non-conventional crime-protective system. Anyone who attempts to make public even the smallest illegality in the Government, faces serious reprisals, which the case Roemen and Schmidt v Luxembourg (51772/99, ECHR) is a perfect example of.[5]

73. Secondly all court officers have been instructed that anyone that wants to have their rights tried in a court in Luxembourg, shall be forced to do so through a Luxembourg lawyer, only (who obviously is servile to the system), and that this has to be carried out in French. Since close to all documents in a conventional bank-fraud case in Luxembourg are drawn in English, the client is forced to pay for the translation into the French language, which obviously is costly although totally unnecessary.

74. As a rule one is by the above mentioned provisions guaranteed free access to the adversaries' observations and a genuine opportunity to comment on these observations. So far so good, but what if these observations are drawn in a language which the defendant doesn't understand? In that case the observations would be of no value, the same would go for the guarantees of free access to observations and the opportunity to comment on them. The only way to redress this problem is to translate the documents, or to provide the defendant with an interpreter, cf. ECHR Art. 6 (3), litra e. Luxembourg authorities has vigorously rejected all our requests of translating judicial documents, hence leaving us in a legal vacuum totally deprived of our right to defend ourselves.

75. We have not been afforded the opportunity to present our case under such conditions that do not place us at a substantial disadvantage vis-à-vis the opponent in this matter. On the contrary; unlike the adversaries in this matter we are not afforded

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[4] Hence it is put in the hands of the lawyers in Luxembourg (not the police / prosecutor) to assess whether the matter is of criminal nature or not.

[5] A minister of the Government had been fined for tax fraud. A Luxembourg journalist published and article about the matter. In fact the Minister in question instructed a judge to have the police to raid both the journalist's office and home as well as his lawyer's office, in search for any evidence which could take down the journalist and his representative, Anne-Marie Schmidt. This is exactly what happens in Luxembourg if anyone dares to shed light on crimes within the administration.

any opportunities at all to present our case, thus facing a totally unbalanced litigation which clearly gives the adversaries / the offenders an advantage you will (hopefully) not find in many other constitutional states. It goes without saying that such said litigation is a blatant violation of the principle of equality of arms.

76. The observer will notice that the Government is in full control over the (all too few) bank clients who are not willing to obey to this crime-protective system. On March 4 2010 it was announced in the world media that a commercial court in Luxembourg had turned down a lawsuit against UBS and Ernst & Young of which was based on gross negligence in connection with the "Luxembourg-Madoff fraud". The consequences of this court decision are far-reaching: Thousands of clients have hence been deprived of their lawful right to sue anyone who has acted to the detriment of their interest. The rule of law is, so to speak, ruled out in Luxembourg.

77. Anyhow, we can now clearly see the outline of an unfair preparation for an unfair trial. The Government, its institutions and what the country bases its existence on - the numerous foreign companies - can with ease rely on the five primary obstacles: CSSF, the public prosecutor, the courts, the language and the lawyers/bailiffs/notaries, which makes any legal process against any perpetrators linked to this "social set" of people quite unfair.

78. In short this is the unfair regime we are living under in Luxembourg: The authorities have; refused to investigate obvious crimes in spite of conclusive evidence; shelved close to 30 criminal complaints in this regard; concealed documents and voice recordings proving the crimes; put us under continuous covert surveillance; instigated illegal court proceedings; carried out secret court proceedings; obstructed any attempts of ours to challenge these proceedings, hence obstructed any attempts of defence, etc. This means that we have been given no chance whatsoever to examine witnesses or documents of the adversaries, to be informed of the reasons for any decisions, to be able to appeal these decisions, or the right to challenge these decisions. In fact we have been left tied up in the dark quarter of this crime-protective system, without any possibility to defend ourselves. If fairness and equality of arms have ever existed within the legal system of Luxembourg, it has surely vaporised long time ago.

79. **Public hearing:** This requirement, that the court be open to the parties, in the sense of ensuring the personal presence of the parties or their representatives, is the focal point at which all the strands of a sensible conception of the public hearing requirement come together and from which all the other aspects derive their full power and meaning, cf. ANSELM FEUERBACH, Betrachtung über die Öffentlichkeit und Mündlichkeit der Gerechtigkeitspflege, Gießen, 1821&1825, para.i, at 96.

80. If a party to a court case does not understand or speak the language of the court, and the court ignores his/her requests for an interpreter and his complaints of unfair trial, the conditions of "public hearing" have not been met. If this is the case, the court is obliged to redress this problem by offering the party an interpreter. Should the court refuse to comply with this demand, then we are left with the conclusion that the party has no access to court, thus there are no public hearing and the provisions mentioned above has been violated.

81. **The principle of self-representation - be advised, defended and represented:** According to the above mentioned provisions everyone is entitled to have his/her rights tried by a court of law.[6] It goes without saying that a holder of legal rights has a right to defend these rights, in person, whether inside or outside court.

[6] Please note that the said provisions do not narrow down this right to: "...through a legal representative."

82. In regards to criminal cases this has been more explicitly stated in ECHR Art. 6 (3) litra c. For the Court's information, this – that it *seems* that this is a conventional right only for the accused – does obviously not mean that a defendant or a plaintiff in civil matters has lost this right.

83. According to the EU-charter Art. 47 (2), second sentence, a party is guaranteed a right to be advised, defended and represented. This means that a party to a lawsuit is guaranteed a right to defend himself in person, and if he so choose he has the right to be advised, defended and represented as well. Self-representation in the courts is a worldwide recognized principle. Any party to a court case has thus the right to defend his/her rights in person or through legal representation of own choosing.

84. A problem occurs when a party to a court case does not speak or understand the language of the court. This will, as stated earlier, easily be redressed by providing the party with an interpreter. Authorities in Luxembourg have instead of complying with international treaties traditionally obstructed any such attempts by demanding the party to have a Luxembourg lawyer representing the party's interests in court.

85. **Conclusion and demands:** In conclusion this means that we are – in accordance with the aforementioned provisions – entitled to be granted access to courts in Luxembourg. Furthermore we are entitled to present our case in court, in person. In this context we would like to inform the Court that Mr. Berge is a jurist, he has been acting as an in-house lawyer for many years, he has won several cases in the ECHR (Strasbourg), and he is fully capable of taking care of our rights and interests in court.

86. The bailiffs' argument that our writ of summons can not be served as long as we are not represented by a lawyer is a violation of all of the above mentioned provisions. Furthermore, the bailiffs in Luxembourg are not judges but merely – besides standing as by far the largest organization of debt-collectors in the country – messengers of the court where their duty is to serve the court and the parties, or rather; the users of the court. The bailiffs are thus in no position to decide upon whether a writ of summons is admissible or not.

87. As the bailiffs in Luxembourg are ordered to not serve our judicial documents we petition the Court to serve this writ of summons without further due and to grant us access to court, in person, as self-representatives.

88. **Oral hearing:** The Defendant has wilfully kept documents secret. Furthermore the Defendant has refused to comply with our petition for discovery, hence essential facts have still not been revealed. According to the ECHR and the EU-Charter we are entitled to an oral public hearing before an independent and impartial court of law. The Luxembourg Court of First Instance and its officers have, previously, wilfully and effectively deprived us of this right. Should the judges of the Court of First Instance still believe that European citizens have no conventional rights in Luxembourg, we would then like to remind the Court that this is not so.[7] We will thus claim that we have a conventional right to an oral hearing, of which shall take place in the Court of First Instance.

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[7] In case of Fischer v. Austria, Application no. 16922/90, 26 April 1995, the ECHR found that the plaintiff's right to a public hearing pursuant to the European Convention on Human Rights included a **right to an oral hearing**. In finding so, the ECHR considered, inter alia, the important factual issues that needed to be reviewed; Case of Axen v. Germany, Application no. 8273/78, 8 December 1983, where the ECHR writes at paragraph 25 that "...the public character of proceedings before the judicial bodies ... protects litigants ..."; and Case of Fredin v. Sweden (No. 2), Application no. 18928/91, 23 February 1994, where the ECHR found a violation of the plaintiff's right to a public hearing, partly based on the factual issues that needed to be addressed in the oral hearing that was requested by the plaintiff and subsequently denied. The ECHR noted that the right to a public hearing "may entail ... an 'oral hearing' " (para. 21), "...the Court is of the view that, in such circumstances at least, Article 6 para. 1 ...guarantees a right to an oral hearing" (para. 22).

G. Causes of action against Kesseler

89. As described in detail above and in the documentation enclosed, the Defendant has committed deceit and/or fraud and/or negligence and/or gross negligence in the course of fulfilling his duties as a notary in Luxembourg. His wrongful and/or grossly negligent acts have caused direct harm to the Plaintiffs, acts which have incurred substantial investigation costs and opportunity costs in addition to substantial economic and non-pecuniary loss. As a direct consequence of the Defendant's misconduct and his engagement in the ongoing deliberate miscarriage of justice, the Plaintiffs have not been able to establish a reasonable and secure livelihood, a situation which has come costly.

90. Had the Defendant conducted his duties in accordance with law (in a fair, impartial and professional manner), had he withheld his unlawful support to the bank, had he refrained from acting upon the bank's instructions hence refrained from acts which would make him an accomplice to fraud, and had he not committed negligence himself, Danske Bank International S.A. would not have been in a position to collect profit from its fraudulent activity, and the Plaintiffs would therefore not have been harmed. The Defendant is liable for the results of his tortious or quasi-tortious acts, and the Plaintiffs therefore seek judgment against the Defendant as compensation for the damages they have suffered.

91. On these grounds the Plaintiffs therefore request that this Court:

1. declare that this writ presents a valid claim;

2. declare that the Plaintiffs' claim against the Defendant is valid on the merits;

3. declare that the Plaintiffs - In accordance with The United Nations Universal Declaration of Human Rights Art. 10, the ECHR Art. 6 (1) and the EU-Charter Art. 47 – has a right to present their claim in court, in person;

4. appoints an interpreter;

5. declare that the Krediteröffnungsurkunde, the so called Mortgage deed of January 15 2007, has been produced, presented and utilized in violation with Article 19 (3) of Directive 2004/39/EC.

6. declare that the Krediteröffnungsurkunde, the so called Mortgage deed of January 15 2007, is a fraudulent document and is of no legal value.

7. declare that notary Francis Kesseler's "Commandement" of February 18 2011 is null and void.

8. award compensatory damages, by reason of the actions described above, in the amount of **€ 2.100.000** (Euro-two-one-zero-zero-zero-zero-zero) and order the Defendant to pay to the Plaintiffs the entire amount stated;

9. award Pain-and-suffering damages, by reason of the actions described above, in the amount of **€ 11.000.000** (Euro-one-one-zero-zero-zero-zero-zero-zero) and order the Defendant to pay to the Plaintiffs the entire amount stated;

10. award opportunity cost, by reason of the actions described above, in the amount of **€ 11.000.000** (Euro-one-one-zero-zero-zero-zero-zero-zero) and order the Defendant to pay to the Plaintiffs the entire amount stated;

11. award Punitive damages, by reason of the actions described above, in the amount of **€ 50.000.000** (Euro-five-zero-zero-zero-zero-zero-zero-zero) and order the Defendant to pay to the Plaintiffs the entire amount stated;

12. order the Defendant to pay all or part of the costs and expenses of these proceedings;

13. order the Defendant to pay interest up to and after the date of judgment in accordance with the terms of the applicable law;

14. award such further and other relief as the President may advise and that this Honourable Court may deem just.

The Plaintiffs expressly reserve their right to serve in due course any other legal or natural person who has acted under or on behalf of the Defendant. The Plaintiffs expressly reserve their right to assert other claims or causes of action.

Katalin Baranyi
PhD Scholar

Herman J Berge
LLB

DATED in Luxembourg this 18th day of March 2011; delivered by fax and mail by the Plaintiffs whose address for service is **Mr. Herman J Berge** and **Ms Katalin Baranyi**, 665 rue de Neudorf, L-2220 Luxembourg.

NOTICE

TO:

1. Mr. Francis Kesseler

You have been sued. You are a Defendant. You have as many days as the Luxembourg Civil Procedure act provides you with to file and serve a Statement of Defence. You or your lawyer must file your Statement of Defence in the office of the Clerk of the TRIBUNAL D'ARRONDISSEMENT DE LUXEMBOURG [LUXEMBOURG]. You or your lawyer must also leave a copy of your Statement of Defence at the address for service for the Plaintiffs named in this writ.

WARNING: If you do not do both things within the time given, you may automatically (by default judgment) lose the law suit. The Plaintiffs may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiffs, or do either thing late.

Address for Service of the Defendant will be:

1. **Mr. Francis Kesseler**: 5, rue Zenon Bernard, L-4030 Esch-sur-Alzette

Katalin Baranyi
PhD Scholar

Herman J Berge
LLB

DATED in Luxembourg this 18th day of March 2011; delivered by fax and mail by the Plaintiffs whose address for service is **Mr. Herman J Berge** and **Ms Katalin Baranyi**, 665 rue de Neudorf, L-2220 Luxembourg.