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The Legal Professional Privilege and the European Convention on Human Rights

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1. First of all, thank you very much for this invitation to celebrate with all of you the tenth anniversary of this prestigious and marvellous association. Having had the honour and responsibility to serve as judge at the European Court of Human Rights, I am always happy to intervene and to discuss about human rights which are our common heritage (*notre patrimoine commun*). Thank you for that, Maître de Bandt.

2. The subject-matter that you have chosen is highly topical and of crucial importance today on the national, European and international scene. In the light of the fundamental rights, and more precisely the rights of the European Convention on Human Rights, I shall strive to show the rationale (2), the requirements (3), the limits of the legal professional privilege (4) but also the risk of weakening, even erosion we observe today (5). Lawyer's secrecy "entre peau de chagrin et Fort Chabrol", as the chairman of the Brussels Bar Association Jean Cruyplants already wrote in 2006[1]. First of all, however, I think that these questions must be put in perspective and, therefore, I will start by recalling the basics (1).

[1] J. Cruyplants, "Le secret de la défense entre peau de chagrin et Fort Chabrol", in P. Corvilain et *al.*, *La déontologie : les nouvelles règles du jeu*, Brussels, Editions du Jeune barreau de Bruxelles, 2006, pp. 9 et seq.

The basics (*les fondamentaux*)

3. Lawyers and human rights defenders share a common ideal of values: freedom, justice and the rule of law (*l'Etat de droit*). Much could be said today about the rule of law (maybe the topic of a future conference?) which is not, as certain politicians argue today, a "legal quibbling" (*une "argutie juridique"*), but the cornerstone of democracy and of the European construction. In a nutshell, the European model of the rule of law laid down in 1950 in the European Convention on Human Rights and enshrined in international[2] as well as in European Union law is characterised by two features: the right to the Law (*droit au droit*) and the right to justice (*droit au juge*). From a substantive viewpoint, the rule of law implies a denial and an obligation: the denial of arbitrary actions and the abuse of power, and the obligation on all State bodies, public and also private authorities, to respect human rights. From a procedural viewpoint, the right to justice expresses the need for a judicial intervention and remedy, before an independent and impartial tribunal, who must be the "guardian of promises". At all levels of power and of citizenship, the rule of law must be constantly respected and strengthened[3].

4. Lawyers have a major role to play in the protection and development of human rights. On the European scene, these are the rights guaranteed by the European Convention on Human Rights of 1950, as they are "interpreted and applied" by the European Court of Human Rights, and also the rights enshrined in the Charter of Fundamental Rights of the European Union of 2000, which acquired full legally binding nature with the entry into

[2]. See *L'Etat de droit en droit international*, Paris, Pedone, 2009.
[3]. See D. Kochenov and L Pech, "Renforcer le respect de l'Etat de droit dans l'UE: Regards critiques sur les nouveaux mécanismes proposés par la Commission et le Conseil", *Fondation Robert Schuman / Questions d'Europe*, no. 356, 11 May 2015.

force of the Treaty of Lisbon on 1st December 2009. The Charter of Fundamental Rights has become "the compass of all policies decided at EU level" and its incorporation into the Treaties marks a significant step in the constitutional order of the European Union. All these rights have to be "taken seriously" to borrow Dworkin's expression[4].

5. It is precisely because lawyers are key actors of human rights that the European Court of Human Rights confers on them a specific status distinct from other independent professions[5]. The Grand Chamber judgment of 23 April 2015 in the case of *Morice v. France* elaborated on this theme. The specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts[6], even if, of course, this status is not limited to judicial proceedings[7]. This is the reason why the Court is particularly firm when lawyers are subject to infringements of their freedom of expression[8], intimidations, reprisals and ill-treatments[9], including unjustified taking into police custody[10], or even persecutions[11]. But, let it be clear, this is not an exceptional status, outside the scope of ordinary law, but a status to the extent of the lawyer's core mission. Extended rights and freedoms, but also duties and responsibilities. To that extent – and to that extent only – lawyers, who are held to be free and independent, enjoy a special protection, even a privileged treatment, under the Convention.

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[4] R. Dworkin, *Taking rights seriously*, Cambridge, Harvard University Press, 1977.
[5]. Fr. Krenc and Fr. Tulkens, "L'avocat et la Convention européenne des droits de l'homme", *L'avocat – Liber amicorum Georges-Albert Dal*, Brussels, Larcier, 2013, pp. 372 et seq. See ECtHR (GC), *Kyprianou v. Cyprus* judgment of 15 December 2005, § 173.
[6]. ECtHR (GC), *Morice v. France* judgment of 23 April 2015, §§ 132 et seq., and the commentary of this judgment: M. Cadelli and J. Englebert, "Se taire, c'est mentir", *Rev. trim. dr. h.*, 2017, pp. 169 et seq. See also ECtHR, *Casado Coca v. Spain* judgment of 24 February 1994, § 54.
[7]. Ph. Marchandise and *al.*, *Déontologie et organisation générale de la profession de juriste d'entreprise*, IJE/IBJ, May 2017.
[8]. ECtHR (GC), *Morice v. France* judgment of 23 April 2015, § 135.
[9]. ECtHR, *Cazan v. Romania* judgment of 5 April 2016.
[10]. ECtHR, *François v. France* judgment of 23 April 2015.
[11]. ECtHR, *Elci and Others v. Turkey* judgment of 13 November 2003, § 669.

6. That is the reason why, in some legal systems, professional secrecy is seen as a part of the broader concept of legal privilege, being a fundamental principle of justice. Both approaches seek to achieve the same end: the protection of information generated within the lawyer-client relationship for the purpose of giving or receiving legal advice (in contentious and non-contentious matters) and/or representation in any type of legal proceedings.

What is the rationale of professional secrecy?

7. Professional secrecy is at the very core of the profession of lawyer[12]. It is the *foundation of the relationship of trust* that must exist between lawyers and their clients. Such relationship of trust – as the Belgian Constitutional Court pointed out – can only be established and upheld if defendants can be sure that what they confided to their lawyers will not be divulged[13]. In his seminal book on professional secrecy, Pierre Lambert recalls that, without a relationship of trust, there will be only a mock defence, preparing a parody of justice[14]. Clearly, professional secrecy is a fundamental guarantee in a democratic society and it can hardly be challenged that it relates to public order. Therefore, "undermining the confidentiality of lawyer-client communication ... means ... denying the rights of [the citizen] and ... compromising ... the democratic nature of the State"[15].

[12] See J.-P. Buyle and D. Van Gerven, "Le fondement et la portée du secret professionnel de l'avocat dans l'intérêt du client", *J.T.*, 2012, pp. 327 et seq.
[13] C.C., 23 January 2008, no. 10/2008, B.7.1; C.A., 13 July 2005, no. 126/2005, B.7.1.
[14] P. Lambert, *Secret professionnel*, Brussels, Nemesis, 1985, p. 211 : "sans une relation de confiance, "il n'y aura plus qu'un simulacre de défense, préparant un simulacre de justice".
[15]. Council of Bars and Law Societies of Europe, *CCBE recommendations: On the protection of client confidentiality within the context of surveillance activities*, Brussels, 2015, p. 5.

A two-faced principle

8. As Advocate General Poiares Maduro put it in the case of *O.B.F.G. v. the Council of Ministers*, in which the Court of Justice delivered a judgment on 26 June 2007, "[t]he protection of lawyers' professional secrecy is a principle with two aspects, one procedural, drawn from the fundamental right to a fair trial, the other substantive, drawn from the fundamental right to respect for private life"[16]. In the *Michaud v. France* judgment of the European Court of Human Rights of 6 December 2012, the Court explicitly recognized, for the first time, that the legal professional privilege is a component of the right guaranteed under Article 8 of the European Convention on Human Rights, in connection with the right to a fair trial guaranteed by Article 6 of the Convention[17].

Respect for private life

9. The most important decisions taken by the European Court of Human Rights in relation to the protection of confidentiality in the lawyer-client relation are based on Article 8 of the Convention. In the light of this provision, respect due to professional secrecy is part of respect of the lawyer's private life, which also covers professional activities[18]. Article 8 also guarantees respect for the home and correspondence. As referred to by this provision, the "home" includes the lawyer's office[19]. As to "correspondence", it also covers professional exchanges[20], including electronic exchanges, as the Court specified in the *Robathin v. Austria* judgment in 2012[21].

10. In this respect, the European Court of Human Rights has developed a constant case-law concerning confidentiality of lawyer-client relations and the risk of interception of

[16] *Ordre des Barreaux francophones et germanophones v. the Council of Ministers*, case C-305/05, Opinion of Advocate General Poiares Maduro, 14 December 2006, § 44.
[17] ECtHR, *Michaud v. France* judgment of 6 December 2012, §§ 118-119.
[18] ECtHR, *Niemietz v. Germany* judgment of 16 December 1992, § 29. In its judgment in the case of *Bigaeva v. Greece* of 28 May 2009, the Court reaffirmed that "there is no reason of principle why the notion of 'private life' should be taken to exclude professional activities … Professional life is … part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of 'private life'"(§ 23).
[19] ECtHR, *Niemietz v. Germany* judgment of 16 December 1992, § 30.
[20] *Ibid.*, § 32.
[21] ECtHR, *Robathin v. Austria* judgment of 3 July 2012, § 39.

exchanges which unquestionably undermines professional secrecy[22]. The Court is referring successively to the usefulness of assistance by a lawyer, the need to guarantee rights that are practical and effective[23], the direct impact on the rights of the defence[24] or the lack of sufficient guarantees in the context of secret surveillance of legal consultations[25].

11. The European Court of Human Rights has similarly held, on several occasions, that searches and seizures made in a lawyer's office, and even home[26], including the search and seizure of electronic data[27], are contrary to Article 8 of the Convention. For example, in the *Xavier Da Silveira v. France* judgment in 2012, the Court noted that searches and seizures at the premises of a lawyer undoubtedly breach professional secrecy, which is the basis of the relationship of trust existing between a lawyer and his client[28]. Therefore, although domestic law may make provision for searches of the practices of lawyers, it is essential that such searches are accompanied by particular safeguards[29], amongst which the existence of a warrant delineating the subject and scope of the search. Outlining these guarantees, the chairman of the Brussels Bar Association Georges-Albert Dal also highlighted their importance, and I quote: "without strict protection, lawyers' premises would become ideal databases" *("sans une protection stricte, les cabinets d'avocats deviendraient des banques de données idéales"*)[30].

12. Applying the same principle, the judgment *Vinci Construction and GTM Génie Civil and Services v. France* of 2 April 2015 concerned the search and seizure by national competition authorities, in the companies' premises, of the entire contents of email accounts, including email exchanges between lawyers and their clients[31]. In the same vein,

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[22] ECtHR, *Pruteanu v. Romania* judgment of 3 February 2015.
[23] ECtHR, *S. v. Switzerland* judgment of 28 November 1991.
[24] ECtHR, *Kopp v. Switzerland* judgment of 25 March 1998.
[25] ECtHR, *R.E. v. the United Kingdom* judgment of 27 October 2015.
[26] For an overview of this case-law, see F. Krenc, "Les perquisitions et saisies chez l'avocat au crible de la Convention européenne des droits de l'homme", *Pourquoi Antigone ? Liber amicorum Edouard Jakhian*, *op. cit*., pp. 283 et seq.
[27] ECtHR, *Petri Sallinen and Others v. Finland* judgment of 27 September 2005.
[28] ECtHR, *Xavier Da Silveira v. France* judgment of 21 January 2010, § 36; ECtHR, *André and another v. France* judgment of 24 July 2008, § 41.
[29] *Ibid.*, § 37 et § 42 respectively. See, concerning this requirement, F. Krenc, "Les perquisitions et saisies chez l'avocat au crible de la Convention européenne des droits de l'homme", *op. cit*., pp. 298 et seq.
[30] G.-A Dal, "Des perquisitions et saisies chez les avocats", *J.T*., 2010, p. 313.
[31] ECtHR, *Vinci Construction and GTM Génie Civil and Services v. France* of 2 April 2015.

the judgment *Brito Ferrinho Bexiga Villa-Nova v. Portugal* of 1 December 2015 was related to the access to lawyer's bank account[32]. By contrast, in the *Sérvulo & Associados v. Portugal* judgment of 3 September 2015, the Court found that the seizure of computer records in the offices of the law firm had been compensated for by procedural safeguards to prevent abuse and arbitrariness and to protect legal professional secrecy[33].

Fairness of proceedings

13. Respect for professional secrecy is also part of the fairness of proceedings and of a proper administration of justice and I would like to add the integrity of it. It falls, in this respect, within the scope of Article 6 of the European Convention on Human Rights. It is, indeed, a fundamental element of the rights of the defence and, in particular, "the corollary of the right of a lawyer's client not to incriminate himself"[34]. Or, to put it simply, "without professional secrecy, there would be no fair trial" (*"sans secret professionnel, il n'y aurait pas de procès équitable"*)[35]. In fact, both in the civil and in criminal field, the European Court of Human Rights has for long maintained, and again repeated it in recent judgments, that the assistance of a lawyer, which ensures effective access to the courts, is an element / a component of the right to a fair trial guaranteed by Article 6 of the Convention[36].

14. The case of *M. v. the Netherlands* concerned a former member of the Netherlands secret service, the AIVD (*Algemene Inlichtingen- en Veiligheidsdienst*) where he was employed as an audio editor and interpreter. In this capacity, he had access to classified information which he was under strict instruction not to divulge. This duty of secrecy continued even after he left the service. The applicant had been charged with leaking State secrets to unauthorised persons, including terrorist suspects. In its judgment of 25 July 2017, the Court held that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention,

[32] ECtHR, *Brito Ferrinho Bexiga Villa-Nova v. Portugal* of 1 December 2015.
[33] ECtHR, *Sérvulo & Associados - Sociedade de Advogados, Rl v. Portugal* judgment of 3 September 2015.
[34] ECtHR, *André and another v. France* judgment of 24 July 2008, § 41.
[35] D. Spielmann, "Le secret professionnel de l'avocat dans la jurisprudence de la Cour européenne des droits de l'homme", in *Pourquoi Antigone ? Liber amicorum Edouard Jakhian*, *op. cit*., 2010, p. 455.
[36] ECtHR, *Golder v. the United Kingdom* judgment of 21 February 1975, §§ 36 and 40; ECtHR, *Airey v. Ireland* judgment of 9 October 1979, § 26; ECtHR (GC), *Salduz v. Turkey* judgment of 27 November 2008, § 55. See also ECtHR, *A.T. v. Luxembourg* judgment of 9 April 2015, and M.-A. Beernaert, "Clarifications diverses quant au droit à l'assistance d'un avocat lors de l'enquête pénale", *Rev. trim. dr. h.*, 2015, pp. 1089 et seq.; ECtHR (GC), *Dvorski v. Croatia* judgment of 20 October 2015.

finding that as a result of the threat of prosecution should the applicant divulge State secrets to his lawyers, communication between him and his counsel was not free and unrestricted as to its content, thus irretrievably compromising the fairness of the proceedings against him[37]. In the present case, the applicant was put in a situation obliging him to decide, without the benefit of counsel's advice, whether to disclose facts that may have explained his conduct but which could put him at risk of further prosecution.

The limits of professional secrecy

15. The question here is the following one: do we accept or not that the principle of the inviolability of the professional secrecy and legal privilege? I don't think so. But the exceptions / restrictions on Article 8 of the Convention must be narrowly / restrictively interpreted and Article 6 of the Convention may lawfully be restricted only "for good cause"[38]. So today, more than ever, a great vigilance is necessary. In this respect, I will quote two recent cases which, to my mind, raise a number of questions.

16. In the *Michaud v. France* judgment of 6 December 2012, the Court was called upon to decide on the obligation incumbent on lawyers "to report suspicions" in the area of money laundering. As is well known, this obligation prompted strong reactions within the Bar and some Bar chairpersons have not hesitated to call it a "dangerous shift" *("dangereuse dérive"*)[39]. Beyond solemnly recognizing that "legal professional privilege … is specifically protected by … Article [8]"[40], at the end of a well-reasoned judgment, the Court rejected that claim, finding that the obligation for lawyers to report suspicions did "not constitute disproportionate interference with the professional privilege of lawyers"[41] because it did not "go to the very essence of the lawyer's defence role"[42]. But, what does it mean the very essence of the lawyer's defence role? It is a variable-geometry metaphysical concept.

[37] ECtHR, *M. v. the Netherlands* judgment of 25 July 2017, § 97.
[38] ECtHR, *Brennan v. the United Kingdom* judgment of 16 October 2001, § 58.
[39] G.-A. Dal et J. Stevens, "Les avocats et la prévention du blanchiment de capitaux : une dangereuse dérive", *J.T.*, 2004, pp. 485 et seq.
[40] ECtHR, *Michaud v. France* judgment of 6 December 2012, § 119.
[41] *Ibid.*, § 131.
[42] *Ibid.*, § 128. Here, lawyers are exempt from reporting suspicions concerning information received or obtained in performing their task of defending or representing clients in judicial proceedings, as well as information received or obtained as part of a legal consultation.

17. Moreover, the Court observed in that connection that the European Directives at the origin of the obligation to report suspicions of which the applicant complained formed part of a series of international instruments intended to prevent criminal activities linked to drug trafficking or terrorism activities which constituted a serious threat to democracy[43]. As such, this argument seems to me extremely dangerous. Security with respect for human rights is a guarantee of efficiency; conversely, security at the expense of human rights is an illusion. Ultimately, threats against democracy should not be conducted against the law but with the law.

18. As far as telephone communications are concerned, in the *Versini-Campinchi and Crasnianski v. France* judgment of 16 June 2016, the European Court of Human Rights held that there had been no violation of Article 8 of the European Convention on Human Rights on account of the interception, transcription and use of a telephone conversation between a lawyer and her client giving rise to the presumption that the lawyer had participated in an offence. The interference in question was not disproportionate to the legitimate aim pursued – "prevention of disorder" – and could be regarded as "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention. Some argue that this decision is dubious because it makes it possible to monitor, first, and legitimize, thereafter, a transcription by the suspicion of an offence in respect of the lawyer[44].

Professional privilege under pressure

19. "Despite the protective measures prescribed by the European Court of Human Rights in its case-law, ... the recent tendency in Europe in relation to the confidentiality of lawyer-client communications is towards erosion of the protection"[45]. This erosion has serious consequences not only at the level of individual rights but for the administration of justice as a whole. The emphasis put on the fight against terrorism, organised crime and trans-border crimes is largely responsible for this trend, strengthened by a certain "distrust"

[43] *Ibid.*, § 123.
[44] A. Portmann, "Le secret de l'avocat n'est pas intangible selon la CEDH", *Dalloz Actualité*, 17 June 2016.
[45] T. Spronken and J. Fermon, "Protection of attorney-client privilege in Europe", *Penn State International Law Review*, vol. 27, no. 2, 2008, p. 457.

vis-à-vis lawyers and justice, in general. The rule of law that I mentioned in my opening remarks is undoubtedly undermined today. To criticise it is becoming acceptable, even trendy today. The checks and balances that were carefully built over the years established an equilibrium between safeguards necessary to guarantee respect for fundamental rights and the necessity of security measures. That balance is now sometimes disrupted. Repeated infringements of the professional secrecy become a reality, as shown by the motion relating to lawyer-client privilege adopted by Avocats.be on 18 May 2017[46].

20. Legislation permitting new and very intrusive investigative methods have been adopted or are in the process of being adopted in many European countries. Large-scale phone taps, secret searches of houses and premises, video and audio observation, infiltration in criminal groups or monitoring of email exchanges have become part of the daily reality of police forces. Such methods create a number of problems concerning the compatibility of the interference with the principles of professional secrecy and legal professional privilege and are of course facilitated by new technologies. As Gary T. Marx, a sociologist at the MIT, put it, we used to say before that where there is a will, there is a way; today, it is the other way around: where there is a way, there is a will...

21. In the field of Intelligence, mass surveillance is a constant temptation for States that view human rights as an obstacle to public safety. It severely undermines the rights of persons seeking legal advice and representation to have their communications with their lawyers to be kept confidential and the obligations upon lawyers to maintain such confidentiality. In recent years, numerous resolutions, recommendations, reports from, among others, the Council of Europe Parliamentary Assembly, the Commissioner for Human Rights and the Venice Commission, are hitting the same nail: high protection must be afforded to lawyer-client communication, including procedural safeguards and strong external oversight[47].

[46] See also the Declaration of the CCBE on professional secrecy of 19 May 2017 raising the question of the balance that should be made between the protection of whistleblowers and the professional secrecy.

[47] Resolution 2045 (2015) of the Council of Europe Parliamentary Assembly of 21 April 2015 on mass surveillance states that "surveillance practices disclosed so far endanger fundamental human rights", especially "when confidential communications with lawyers" are intercepted (§ 4). The 2015 Issue Paper by the Council of Europe Commissioner for Human Rights on "Democratic and effective oversight of national security services" states that "the interception of communications between lawyers and their clients ... can undermine the

22. The European Parliament Resolution of 29 October 2015 on the "follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens"[48] reiterated that "mass surveillance severely undermines the rights of EU citizens to be protected against any surveillance of confidential communications with their lawyers" and called on the European Commission to present a communication in this respect[49].

23. In this respect, the CCBE Recommendations on the protection of client confidentiality within the context of surveillance activities are particularly interesting, based on the philosophy that confidentiality is seen not only as the lawyer's privilege and duty but as a fundamental right of the client and a requirement of justice. I underline three main recommendations: need for legislative control; judicial and independent oversight; legal remedies and sanctions[50].

24. Two days ago, on the 7th of November 2017, the European Court of Human Rights held an important Chamber hearing in the cases of *Big Brother Watch and Others v. the United Kingdom*, *Bureau of Investigative Journalism and Alice Ross v. the United Kingdom* and *10 Human Rights Organisations and Others v. the United Kingdom*. The applicants complain about the bulk interception of external communications by the United Kingdom intelligence services and the sharing of intelligence between the United Kingdom and

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equality of arms and the right to a fair trial especially where security services are party to the litigation concerned" (p. 27). In 2015 the Venice Commission released an updated version of a previous report on the democratic oversight of the security services which acknowledges that high protection must be afforded to lawyer-client communications, including procedural safeguards and strong external oversight (Venice Commission, *Update of the 2007 Report on the Democratic Oversight of the Security Services and Report on the Democratic Oversight of Signals Intelligence Services*, 2015, §§ 18 and 106).

[48] European Parliament, Resolution on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, 12 March 2014, § 11. In that respect, recital 34 of Directive 2013/48/EU is problematic: "This Directive [2013/48/EU] should be without prejudice to a breach of confidentiality which is incidental to a lawful surveillance operation by competent authorities. This Directive should also be without prejudice to the work that is carried out, for example, by national intelligence services to safeguard national security in accordance with Article 4(2) of the Treaty on European Union (TEU) or that falls within the scope of Article 72 TFEU, pursuant to which Title V on an area of Freedom, Security and Justice must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security".

[49] European Parliament, Resolution on the "follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens", 29 October 2015, § 43.

[50] Council of Bars and Law Societies of Europe, *CCBE recommendations: On the protection of client confidentiality within the context of surveillance activities*, Brussels.

the United States of America[51]. One aspect of these cases concerns the implications of the Tempora and Prism programmes for the principle of legal professional privilege. It is argued that the protection afforded by the legal professional privilege is significantly undermined by the indiscriminate bulk interception of communications passing along transatlantic fibre optic cables and, potentially, by the receipt of intercepted communications from non-contracting States. In this respect, the Law Society of England and Wales, intervening as third-party, submitted that "legal professional privilege may attach not only to the content of confidential communications between a lawyer and client, but also to the metadata associated with those communications. For instance, it may in principle cover telephone numbers, email addresses and information about a client's whereabouts, where that information is itself confidential. The underlying rationale for legal professional privilege, namely, that a person should not be inhibited in seeking the aid of a lawyer, applies just as much in relation to information of these sorts as in relation to the content of legal advice itself". They rely on the *Digital Rights Ireland* case, where the EU Court of Justice held that the EU Data Retention Directive (Directive 2006/24/EC), which concerned the retention of communications data, was contrary to Articles 7 and 8 of the EU Charter of Fundamental Rights. They note that, in so finding, the Court referred, *inter alia*, to the absence of any exception in the Directive for persons "whose communications are subject, according to rules of national law, to the obligation of professional secrecy"[52], thereby acknowledging that communications data may in principle be subject to the same privilege as content data, and its confidentiality equally deserving of protection.

[51] The following organisations were granted leave to intervene in the written proceedings as third parties: Access Now, Bureau Brandeis, The Center For Democracy & Technology, The European Network of National Human Rights Institutions 'ENNHRI'/ Equality and Human Rights Commission, The Helsinki Foundation For Human Rights, The International Commission of Jurists, The Open Society Justice Initiative, Project Moore, The Law Society of England and Wales, and Human Rights Watch – in the case of *Big Brother Watch and Others*; The Center For Democracy & Technology, The Helsinki Foundation For Human Rights, The International Commission of Jurists, The National Union of Journalists, and The Media Lawyers Association – in the case of *The Bureau of Investigative Journalism and Alice Ross*; Article 19, The Electronic Privacy Information Center, and The European Network of National Human Rights Institutions 'ENNHRI'/ Equality and Human Rights Commission – in the case of *10 Human Rights Organisations and Others*.

[52] *Digital Rights Ireland*, case C-293/12, judgment of 8 April 2014, § 58.

Conclusion

25. To conclude I would like to repeat what my friend and successor at the European Court of Human Rights, Judge Paul Lemmens, has written in 2014, simply but strongly: "It is important that the Bar shows its commitment to human rights at both national and European level. Where human rights are no longer taken as self-evident, they must be defended" (*"Il est important que le barreau montre son attachement aux droits de l'homme tant au niveau national qu'au niveau européen. Dès lors que les droits de l'homme ne sont plus une évidence, ils doivent être défendus"*)[53]. These are the role and mission of lawyers, who are the first and last bastion of the rule of law.

[53]. P. Lemmens, "Conclusions", *Les droits de l'homme : une réalité quotidienne ?*, Limal, Anthemis, coll. du Jeune Barreau de Mons, 2014, p. 222.