

The droit local alsacien-mosellan

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The most interesting legal feature of the neighbourhood is the local law of Alsace-Moselle, the *droit local alsacien-mosellan*. When Alsace and part of Lorraine returned to France in 1918, the French state did not simply introduce the French legislation that had come into force since 1871. Two laws of 1 June 1924 introduced French civil and commercial law in the three departments of Bas-Rhin, Haut-Rhin and Moselle, while maintaining a list of German and local provisions in force. Some of these had been adopted by the German Empire, some by the *Reichsland* and some even dated from the French period before 1871 and had been kept by the Germans.¹ The result is a legal enclave in which German-origin rules continue to apply a century later, often in French translation. The Institut du droit local alsacien-mosellan in Strasbourg documents and studies this body of law.²

The land register is the part of the local law that matters most for Basel clients. In the rest of France, the transfer of real property is published through the *service de la publicité foncière*, which records deeds and does not guarantee title. In Alsace and Moselle, the *Livre foncier* follows the German model of the *Grundbuch*. It is kept by the courts, where a land registry judge makes each entry after a check of legality.³ Registration in the *Livre foncier* is required for the effectiveness of rights in rem against third parties and enjoys a presumption of accuracy, which gives purchasers and lenders a high level of security. Since the early 2000s, the land register has been fully computerised and is managed by a public body, the *Établissement public d'exploitation du livre foncier informatisé* (EPELFI). A Basel practitioner who is familiar with the Swiss *Grundbuch* will recognise the logic of this system at once.⁴

Associations form a second field. In the rest of France, associations are governed by the law of 1 July 1901, which in principle prohibits the distribution of profits among members and grants legal capacity on the basis of a simple declaration. In Alsace-Moselle, associations are registered

with the local court under provisions derived from the German Civil Code of 1900. Since a law of 2003 these provisions have been incorporated into the Civil Code as it applies locally, as Articles 21 to 79-III.⁵ Local associations enjoy broad legal capacity, may acquire property freely and may, within limits, pursue economic activities. These features make them popular with sports clubs, cultural bodies and charitable organisations on the French side of the border.

The religious law of the region differs as well. Because Alsace and Moselle were German in 1905, the French law on the separation of church and state never came into force there. The Concordat of 1801 and the Organic Articles continue to govern the Catholic Church, the Lutheran and Reformed churches and the Jewish community. Their ministers are paid by the state, while religious education is part of the curriculum of public schools.⁶ Further local rules cover the protection of Sunday rest, two additional public holidays (Good Friday and 26 December), municipal law, hunting law, a supplementary local health insurance scheme and several provisions of commercial and insolvency law.⁷

The Conseil constitutionnel has given the local law a constitutional foundation. In the *Somodia* decision of 2011, it recognised a fundamental principle of the laws of the Republic according to which local provisions may remain in force until they are replaced by general French law, although they may not be extended or made more different from general law in the future.⁸ The local law is thus frozen in a state of gradual erosion, in which each harmonisation removes a further piece of the German legacy. For practitioners in Basel it remains a vivid demonstration that legal systems on the Upper Rhine have always overlapped. It also makes Alsace a region in which a lawyer trained in German and Swiss property law finds familiar concepts in French clothing.

1 Notes

1. Loi du 1er juin 1924 mettant en vigueur la législation civile française dans les départements du Bas-Rhin, du Haut-Rhin et de la Moselle, and loi du 1er juin 1924 mettant en vigueur la législation commerciale française dans ces départements. To be verified. ↩
2. On the Institut du droit local alsacien-mosellan in Strasbourg and its publications, including the *Revue du droit local*, see its website. To be verified. ↩
3. On the *Livre foncier* of Alsace-Moselle, kept by the land registry offices of the *tribunaux judiciaires* under the control of the *juge du livre*

foncier, see the law of 1 June 1924 (Articles 36 et seq.) and the decree no. 2009-1193 of 7 October 2009. To be verified. ↩

4. On the computerisation of the Livre foncier (system "Amalfi") and the establishment of EPELFI, see the law no. 2002-306 of 4 March 2002 and its implementing decrees. Dates and details to be verified. ↩
5. On the law of associations in Alsace-Moselle, governed by Articles 21 to 79-III of the local Civil Code (Code civil local), as amended by the law no. 2003-709 of 1 August 2003, and the registration of associations with the tribunal judiciaire, see the publications of the Institut du droit local. To be verified. ↩
6. On the Concordat of 1801, the Organic Articles of 1802 and the regime of the recognised religions in Alsace-Moselle, see the literature on local law and the Conseil constitutionnel, decision no. 2012-297 QPC of 21 February 2013 (Association pour la promotion et l'expansion de la laïcité). To be verified. ↩
7. On the local public holidays of Good Friday and St Stephen's Day, the local municipal code, local hunting law and the régime local d'assurance maladie in Alsace-Moselle, see the publications of the Institut du droit local. To be verified. ↩
8. Conseil constitutionnel, decision no. 2011-157 QPC of 5 August 2011 (Société SOMODIA), on Sunday rest in Alsace-Moselle and the principle of the maintenance of local law. To be verified. ↩

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