

Rudolf Elmer's Open Letter to Mr. Martin Graf, Zurich's Government Councillor

Switzerland, 7 April 2014

Regarding my complaint dated 3 December 2013 to the Department of Justice and Home Affairs of the Canton of Zurich in the legal proceedings of Bank Julius Baer v. Rudolf Elmer

Dear Government Councillor Graf,

Attorney Martin B rgisser, LL.B. replied to me with a letter dated March 17, 2014. It is a comprehensive response to the legal issues I raised in my complaint dated December 3rd, 2013, and I am grateful for his response.

However, while I do not agree with some of his answers, I see no purpose in dwelling on the details at this point, or in submitting additional complaints against members of the law enforcement agency. As such, I leave it to the Prosecutor's Office to decide which *ex officio* offenses should be pursued. According to Mr. B rgisser's letter, Zurich's authorities followed the law in my case; therefore, they need not fear public opinion.

I informed the authorities of my complaints on December 3rd, 2013. Now, four months into the investigation and having received Mr. B rgisser's response, I see the need to write an open letter in order to provide civil society with an understanding of my case. Because Cantonal Law (Section 90 of the VRG¹, subsections A and B) mandates that the Ombudsman cannot intervene or challenge the decisions of the responsible authorities—the Cantonal and judicially independent authorities—he or she cannot be of any help at the moment. As this is an ongoing case, an open letter is justifiable. I am of the opinion that this open letter is in good faith², and that presenting my view is in the interest of the public. Public interest outweighs the need for confidentiality of authorities because the reputation and the future of the Zurich financial center is at stake.

I took the liberty to focus on urgent issues that I believe to be important not for me, but for the future of Zurich as a financial center and for its judiciary system. These issues concern the **political dimension of *causa Elmer***, and are presented through the letters of people with which I have corresponded regarding my complaint dated 3 December 2013 and the many international discussions and meetings that I have had in the meantime.

The Holy Father Pope Francis, the President of the Council of the European Union Herman Van Rompuy, the President of European Parliament Martin Schulz, and Swiss citizens, including lawyers and national council officials, have offered their support in this matter. For confidentiality purposes, and to prevent misuse, I have attached only excerpts of the letters I

¹ *Verwaltungsrechtspflegegesetz*: The Administrative Judiciary Procedure Act

² European Court of Human Rights decision *Heinisch v. Germany* 2011: "Considerations of the motives of the whistleblower are involved in the ECHR's decision. This may only be restricted in exceptional cases: as long as the whistleblower is overall in good faith, believes that the argument put forward by his information is true (even if it is proven later on to have been in error), these considerations are to be accepted. In the specific case of Ms Heinisch, the Court has affirmed the good faith of the whistleblower, and in addition made it clear that it is irrelevant whether their action was additionally motivated by the improvement of their working conditions. "(ECHR 28274/08 of 21.07.2011)

received to this open letter. Many people have expressed their admiration of my responsible citizenship in their personal letters.

The personal words of the Holy Father Pope Francis have touched me deeply. Even though I am a Protestant, he has included me in his prayers, and asked for God's constant protection and his blessing for me and all those who are close to me. This has given my family and I the strength to endure the strife to which members of the financial industry and the Zurich authorities have subjected us. I remain willing to return to prison to endure the long course of justice or to take my case up to the European Court of Human Rights if necessary. I want to serve the civil society and the fight against poverty in the world alongside Cardinal Oscar Rodriguez Maradiaga, President of Caritas Internationalis, and Global Financial Integrity in Washington, D.C.

However, as a Swiss citizen, I feel it is my civic duty to inform the Swiss authorities, the Cantonal Council of Zürich, and the Swiss citizens first, as I put the welfare of my native country above all.

Patrick Moulette, Head of the Anti-Corruption Unit (OECD recipient of the complaint dated December 3, 2013 cc.) must have realized that corruption is not always related to money. There is another type of corruption: those in power make whistle-blowers and other witnesses of abusive practices in the Swiss private sector, particularly in the financial industry, outlaws and revoke their basic rights. The confrontation with the truth leads these "Bankbanditos" and the judiciary to countermeasures that are often illegitimate.

My actions have been somewhat limited: as I am a father and husband, I must protect my wife and daughter from the arbitrariness of the authorities. The Federal Court addressed the issue of judicial arbitrariness in a ruling on March 7, 2011, which reprimanded Zurich's Office of the Prosecutor, certain former Executive Board members of the Julius Baer Holding AG, the Private Detective Agency Ryffel AG, and the three judges of the Supreme Court of Zurich. Unfortunately, I must admit such arbitrariness persists in my case.

My wife and my daughter have dual citizenship; therefore, I may be forced to contact the appropriate embassy or leaders in their country for assistance. I believe this is legitimate, and I am sure you can understand my duty as a father.

It also seems the Cantonal Government of Zürich is unaware of the political dimension of *causa Elmer*. There is substantial international press and attention on illicit finance, and a powerful foreign government could accuse Zurich of facilitating financial crimes, including protecting criminal money, supporting tax evasion, and facilitating terrorist financing. For instance, the Zurich judiciary has protected the funds of companies based in London, the Bin Laden Family Construction Group (in the Guardian UK's "Rare glimpse into offshore world of big money and low taxes", February 13, 2009 published in connection with Julius Baer) and drug lord Arturo Acosta Chapparo (also published in the Guardian UK's "Isle of Plenty", February 13, 2009 in connection with Julius Baer), as well as many other dubious shell companies and trusts by ignoring and failing to investigate these transactions until *causa Elmer* started in 2005. Furthermore, the Swiss citizen Mr. J.G., is still living in the Canton of Zurich—even after his Ponzi scheme was revealed through WikiLeaks—which is unreasonable and unlawful.

Article 102 of the Swiss Criminal Code "Corporate Criminal Liability" and Swiss Civil Code Article 2, section 2, which states "the obvious abuse of a right is not protected by law," are empty words in *causa Elmer* regarding shell companies and trusts (for example, the settlor is also the sole beneficiary of the Trusts and Investment Funds that are still actively managed.) Though these abusive practices are illegal under Anglo-Saxon law, they are legal under Zurich law and are protected through a lack of investigation. Puzzlingly, the Zurich judiciary requested an expensive legal opinion at the Institute for Comparative Law in Lausanne in order understand violations of the Confidentiality Law in the Caymans. This second opinion, which has been pending for more than two years, should clarify rulings in Anglo-Saxon countries regarding violations of the Cayman Confidentiality Law to the courts. The Director of the Institute stated that they were required to go back to the year 1725 in order to analyze court rulings. This approach, however, ignores the articles Article 6 § 2 of the Code of Criminal Procedure:

"It examines the incriminating and exonerating circumstances equally with the same care"

to collect and use evidence. The judges, as assessed by experts, have to consider the validity of these offshore trusts, even though the suspicion of illegality is already there from data that has already been examined and reviewed. This would be sufficient grounds to start an investigation against Julius Baer.

First, the biased lawyers at Bank Julius Baer & Co. AG., Zurich, and the party plaintiffs were believed without reservation. Their statements are not challenged! Lawyer Christoph Hiestand has repeatedly lied and claimed that the bank never did anything unlawful against the Elmer family in connection with the assault and harassment of the family. This lawyer lied not only the police but also the public prosecutor and the judges. One result was the aforementioned complaint (using arbitrariness) by the Federal Court of 7 March 2011. The conclusions of the investigation carried out by the prosecution office clearly proved without a doubt that the actions of the Bank had been illegal (see attached ruling of 24 October 2011). The accused persons of Swiss economic history such as Dr. Raymond J. Baer , Rudolf E. Bear, Michael Bear were not paid any compensation and satisfaction money based on the time spent with prosecutions. However, all of them were reported to the Office of Criminal Record (VOSTRA.) The multilingual and international website Liberté Info has made it clear that the strong suspicion of abuse should have led to an investigation of the data of Julius Baer & Trust Co. Ltd., Cayman Islands (http://www.liberte-info.net/campaigns/elmer/support_rudolf_elmer_campaign.html.)

On this webpage, you can read more about the needs of the investigation. Furthermore, the judges of the Zurich Supreme Court are aware of this issue, as the president of the international organization Liberté Info has written to Head Judge Peter Marti (updated November 23, 2013, 4:30 PM on the website). Here is a link to the letter: http://www.liberte-info.net/docs/Letter_to_judges_FINAL_wa.pdf.

Despite strong suspicions of various offenses, according to the websites Liberté Info and WikiLeaks, as well as implicated in files that authorities have confiscated following *causa Elmer*, a criminal investigation was not opened by the Prosecution Office of Zurich, the Financial Crimes Prosecution Office III (experts in white collar crime) and the Prosecution Office of Winterthur/Unterland against the Bank Julius Baer until today.

Ultimately, people like my family and myself seek to enlighten others are patronized and forced to cover up the wrongdoings within the Julius Baer Bank of Switzerland. Indeed, as a whistleblower, I was defamed by the judicial system, pathologized, criminalized and forced into solitary confinement for a total of 217 days.

It is clear to me that the Zurich's judiciary protects "the system," and not good, well-meaning Swiss citizens in financial matters. Swiss criminal law does not, and never has, penalized all breaches of the law - *Legalitätsprinzip*³ and ex officio proceedings notwithstanding. It is as I told a Swiss judge: that the criminal justice system investigates politically correct violations - or even more importantly - does not investigate those which are not. The latter is key because without such a policy, the financial industry would be in serious trouble.

Criminal investigations against renowned banking institutions in Switzerland are by no means opportune. On the other hand, the prosecution of people like me, who make or have made their insider knowledge public to the civilian body and Swiss tax authorities, is something of a "settlement."

The reason for this is simple: the financial center of Zurich cannot afford any criminal investigations, or even house searches, of Swiss banks. Where would such a search lead? First Julius Baer Bank, then UBS, or even Credit Suisse? Therefore, the whistleblower is victimized in order ensure the truth about the financial industry remains protected and does not become public knowledge.

I have learned from personal experience that prosecutors under the present laws in Switzerland have much room for interpretation and an ability to bend and stretch the law. The issues at hand related to the financial industry are complex and difficult for average citizens to follow or understand. Even prosecutors and the investigating police officer in *causa Elmer* do not sufficiently understand Anglo-Saxon trust and company business and laws, as the case of Bank Julius Baer demonstrates clearly. The examining Canton police officer can hardly speak English, and the English of certain prosecutors has created doubt as to whether they even know what the data represents and how it ought to be read. Yet 100 percent of the data of the Julius Baer & Trust Co. Ltd., Cayman Islands, as well as the entire trust business terminology, are in English. The responsible level of management should address this shortcoming of knowledge, and the aforementioned persons educated accordingly.

With that in mind, as well as the fact that global competition between financial centers have kindled a myriad of tactics used to spoil the reputations of financial centers such as Zurich, The Canton of Zurich, its political elite in particular, must take the lead in order to protect the reputation of Zurich and, more importantly, to run clean business through its financial institutions. As projects such as Zurich's becoming a global trading center for the yuan gain traction, more scandals must be avoided.

I thus appeal to your common sense and your political foresight. The global battle of offshore businesses is thriving, and we all know that there are banks in Switzerland who will not find it easy to survive, that Zurich jobs are at stake, and that the Swiss financial center and the Swiss franc is a thorn in the side of the Americans, the City of London and the financial

³ Legalitätsprinzip (principle of legality): Principle of Mandatory Prosecution of Offenses

center of Frankfurt. The Zurich financial center is under pressure due to present international tax disputes (OECD standards, Automatic information exchange, tax evasion as a predicate offense for money laundering, holding and lump-sum taxation, FATCA, group inquiries, investor protection and access to financial markets, whistleblower protection, hidden capital of Political Exposed People, etc.) and in particular by the criminal investigations in the U.S. This could create a situation where huge disadvantages could come about from continuing these kinds of transactions, and the emerging global tax war will not help Zurich's financial center. The Banking Industry in Zurich is under increasing pressure and is struggling to reinvent itself.

The *causa Elmer* is therefore being followed internationally. Newspapers such as *The New York Times*, *Der Spiegel*, *The Guardian UK*, *The Washington Post*; universities such as Columbia University in New York City, Queen's Belfast, Lancaster Southampton UK; and organizations such as the Tax Justice Network, are waiting for a public report of the judicial case *causa Elmer*, which would generate avenues for further attacks on the Zurich financial center. Again and again, the *causa Elmer* has come under international purview, since Swiss Banking Secrecy is applied extraterritorially in an imperialistic way. The source of the data, Julius Baer & Trust Co. Ltd., Cayman Islands (a Trust company is not a bank as the Zurich judiciary still erroneously states. It is a trust company and only a sister company of Bank Julius Baer & Co. Ltd., Zurich and thus not a branch of the Zurich bank. For your information the bank, Julius Baer Bank & Trust Co. Ltd., Cayman (JBBT) no longer holds trusts, because they were moved to Julius Baer Trust Co. Ltd., Cayman (JBTC) displaced before 1994, out of risk considerations) was applied in the Cayman Islands but has used Zurich's judicial authority to protect and promote criminals. WikiLeaks and the reports of the *UK Guardian* and *The New York Times* have made these criminal matters public through publications in 2008 and 2009. These facts will be used in reference to other dubious clients of Julius Baer & Trust Co. Ltd., Cayman Islands, and *causa Elmer* will remain a reference for the international media in the future.

I ask you, Mr. Government Councillor Graf, that you be aware of the political dimension of *causa Elmer*. This matter is now in its ninth year of criminal investigation and legal proceedings. The credibility of the Zurich justice system is at stake.

Please be aware that the case threatens the business model of private and universal banks, family offices, and independent asset managers in Switzerland. If these offshore vehicles such as Trusts and Companies are linked to Swiss bank accounts, Swiss safes and other real assets that control organisations outside of Switzerland will be denounced by other governments. These matters are now subject to due process of a court trial related to the *causa Elmer*, and are therefore public. For the moment, not much has been said by the Swiss, legal and natural persons who used these offshore vehicles. However, it should be noted that due to the police records of the *causa*, Swiss tax authorities have issued a few fines.

Ultimately, I have three comments on the reply of Attorney Martin B rgisser, LL.B., which I offer as examples of why I do not agree with many findings of the Supreme Public Prosecutor.

Firstly, to my statement that there was a "shoddy indictment" before: the statement of reasons is as follows:

- The Supreme Court has criticized the 17 November 2011 decision thus:

- *With the files provided by the prosecution it is not possible to say whether the data are related only to Julius Baer Bank & Trust Company Ltd or also to Julius Baer Bank & Co. AG, Zürich*
- *There are indications that the accused is the author and sender of the mail in question. However, the existing evidence is not sufficient to consider the accused guilty*
- Incorrect email addresses were present in the indictment (on Liberté Info's webpage http://www.liberte-info.net/docs/Letter_to_judges_FINAL_wa.pdf)
- The chronology of the departure and arrival time of the e-mails is not displayed clearly, or it is not the departure time at the crime scene (local time) even though the IP address of the computer and the input time were clearly stated on the receiving computer (see webpage of Liberté Info)
- As a supplement to the indictment, a list of bank accounts of the Julius Baer Bank, New York *was* provided as evidence of an alleged Swiss bank secrecy violation. However, not a single Swiss Bank Account or its account numbers in the original indictment of 25 June 2010 is mentioned.
- Due to the decision of the Supreme Court, the prosecution had to arrange follow-up investigation from 2011 to today and completed a total of 20 large folders with several reports, which is why the indictment had to be supplemented, revised and re-issued and dated with December 10, 2013.

Secondly, the statement by Attorney Dr. Giger "for the sake of your family and to avoid the attention of the neighbours regarding the prosecution " when he asked my 11 year old daughter to let him, the Senior Prosecutor Susanne Leu, and the Policeman Bertram Müller into the house, is simply a defensive statement. These people may have waited discreetly in a car outside the house in order to ensure my wife had not entered the house before them. The insinuation that my attorney may have illegally advanced information to my wife regarding the third house search is simply another sickening protective claim. After consultation with psychologists, this approach is not the first time that Zurich law enforcement has entered a house where a child was home alone. The prosecutors and the police officer took the deliberate risk of causing another trauma to my daughter, a defenseless 11-year-old child, whom had already been repeatedly harassed by the private detectives of Julius Baer. I firmly believe that the law requires to disclose the order for a house search to an adult resident before the house search begins. Precisely for this reason, the prosecution demanded that my wife to return home from work immediately, which she did.

Thirdly: It was said to Peer Steinbrück that I am known as an expert in the offshore business and my expertise may be made available to everyone. One should perhaps consider that my letter might have no connection to Switzerland and there are other matters I wanted to address with Peer Steinbrück. I cannot say more because of the ongoing proceedings.

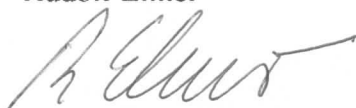
These comments are important to you, Mr. Councillor Graf, because they reveal critical errors on the part of the in the Zurich justice system in *causa Elmer*, and its actions could be disqualified as part of what is now a well-known rogue system to which many Swiss bankers belong. It is your political responsibility, Mr. Government Councillor Graf, to prevent this and politically protect Zurich's financial center against criminal bankers. The past has become a burden for Zurich's banks, and the present and the future may continue to become a similarly heavy burden regarding the integrity and reputation of both Zurich's banks and judicial system.

Certainly, the political responsibility for the financial center of Zurich also resides within the Government of the Zurich Canton; however, the judiciary must be assessed when it comes to the question of whether Zurich should be an internationally recognized financial center or not.

Finally, I note that my documentary "The Leak in Paradise" has won the famous MIPDOC Film Festival at the Grand Hyatt in Cannes (France) on April 6, 2014, a highly competitive honor. This documentary is almost finished and will air, at the very least, in Europe.

I now see my civic duty as a Swiss citizen fulfilled with this open letter, and remain yours sincerely.

Rudolf Elmer

A handwritten signature in dark ink, appearing to read 'R Elmer', with a stylized, flowing script.