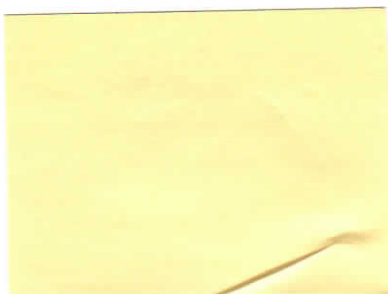


Liberté-info



European Court of Human  
Rights  
Mr. D. Rietiker  
Council of Europe  
67075 Strasbourg Cedex  
France

Wednesday, 19 September 2012

Subject: Complaint Nr. 25154/08 - Elmer vs. Switzerland

Dear Mr. Rietiker,

Rudolf Elmer is a Swiss citizen who seven years ago exposed alleged systemic money laundering and widespread tax evasion services provided by his former employer Bank Julius Baer, which counted among its clients high-profile international criminals.

Since his courageous and highly civic whistleblowing act, Mr. Elmer and his family (namely his wife and his daughter) have endured a vicious and sometimes life-threatening campaign intended to discourage him from attracting attention to the criminal practices he encountered and witnessed during his former job and which he disclosed to the authorities. The instigators of this harassment want to punish him for this courageous act.

A case of Swiss banking secrecy violation was opened against Mr. Elmer by the justice system of his country, Switzerland, on 27 September 2005 and he was jailed for 30 days. He has since met systematic harassment and repeated resistance by the authorities to fully and impartially investigate the matter and to look into the reality of his claims regarding his former employer's practices. The Swiss justice system has tried to silence him on several occasions, for instance when he was indicted in 2011 (after five and a half years of investigation) and jailed "preemptively" for six months in 2011 for an offence – i.e. a new violation of Swiss banking secrecy – that still remains unclear.

At the appeal of the case, on 17 November 2011, three Zurich High Court judges deemed the prosecution's work – and even that of the judge of the Lower Court – to have been "sloppy". They demanded that the case be conducted all over again due to the fact it is still not known what sort of data are really in question. The prosecutor had originally accused Rudolf Elmer without any evidence and therefore now needs to issue two requests for administrative assistance to the USA and Mauritius. The timeframe for these previously "forgotten" requests will take at least another six months. Consequently, the entire legal case will be reviewed at the High Court of Zurich some time in 2013, close to eight years after the investigation started on 27 September 2005.

The failure to properly handle this case has had a tremendous impact on Mr. Elmer and his family's lives as he lost, as a direct result of this long delay and his earlier imprisonment, three jobs and his entire investment in his company in Mauritius.

If true, Mr. Elmer's allegations (which he supported with evidence to the ECHR, including a CD with the names of convicted and jailed criminals who had received wealth management services from his former employer, Bank Julius Baer) are of great importance, not only because money-laundering constitutes a substantial form of support for international crime (drug trafficking, illegal arms dealing, high-level corporate and state corruption, etc) but also because tax evasion costs European states billions of Euros per year.

According to conservative estimates by the Tax Justice Network, an organisation recognised for its expertise in tax evasion issues, global offshore financial wealth amounts to \$21 trillion. A total ROI of 3% per year and a 30% marginal tax rate on this amount would generate \$189 billion of revenues for countries worldwide.

Europe is currently undergoing an acute crisis, one which threatens one of the foundations of the European Union's cohesion and very existence, i.e. the common currency, and consequently the political and social stability of the whole region. More than ever, fighting tax evasion and recovering past and future escaped duties should be among the highest priorities of all European institutions, including the European Court of Human Rights. European citizens, who are increasingly aware of the true cost of tax evasion and avoidance, expect nothing less from their directly and indirectly elected representatives and institutions.

Tax evasion and avoidance by high net worth individuals means they do not perform their civic duty towards society, and consequently violate the rights of all other citizens by forcing them to make up for this deficit by working harder, accumulating more debt and generally enjoying a lot less of the fruits of their labour. Some countries such as France, Britain, Germany, Austria and the United States have taken steps towards recovering taxes that have escaped them in Switzerland; however, this leaves dozens of other countries' peoples still vastly defrauded of the wealth they worked to create.

In Mr. Elmer's case, the violation of his rights and those of his family originate in the institutionalised protection of tax evasion and related practices within a European country, Switzerland, which is also a member of the Council of Europe. Indeed, the Swiss banking secrecy law discourages potential whistleblowers from exposing the banking malpractice and crimes they witness, and exposes them to severe "punishment": up to three years of imprisonment and a CHF 250.000 fine (since 1 January 2009).

Not only does this law violate the freedom of expression rights of Mr. Elmer and any other potential whistleblower, but it is also applied in an arbitrary fashion by Swiss authorities in order to protect evasion and avoidance of other countries' tax duties. This is seen as being in the "national interest" although it gravely harms the peoples of those

other countries, including fellow European countries. For example, a Head Prosecutor initially proposed 4½ years of imprisonment in Rudolf Elmer's case (attachment Nr 1), which is beyond the legal maximum and suggests an intention to punish.

In its ruling of 7 March 2011, the Federal Court of Switzerland (attachment Nr 2) heavily criticised Zurich's judicial authority and stated that it was arbitrary to have consistently turned down the Elmer family's written complaints in 2005 and 2007 about harassment by the management of Bank Julius Baer and its private investigators. Only in 2011 did the prosecutor for the Canton of Zurich personally question the Elmer family members for the first time – on 24 August 2011 – about what sort of harassment occurred in 2004 and 2005. The private detectives and the representatives of Julius Baer have been questioned several times since 2007 but have not admitted any wrongdoing.

This law – Article 47 of the Federal Law on Banks and Savings Banks – not only protects massive systemic and institutionalised crimes, it also discourages and goes after the only people who, because of the “black-hole” nature of the institutions it protects, from which no information can be gleaned from the outside, are in a position to put the system into check: insider whistleblowers.

In his initial complaint to the ECHR, Mr. Elmer cited offences and violations of his and his family's rights, among which are:

- Coercion via stalking by private investigators hired by Mr. Elmer's former employer, Bank Julius Baer. Following Mr. Elmer's complaint in June 2005, the Swiss justice system (namely, the Zurich-Sihl prosecutor) has failed to properly investigate the matter and finally rejected the complaint in March 2007, despite the clear threats to Mr. Elmer and his family's physical and mental health, as supported by several pieces of evidence.
- Harassment and unlawful termination of Mr. Elmer's employment contract by Bank Julius Baer, against which Mr. Elmer couldn't present any evidence without, ironically, violating the Swiss banking secrecy law.
- The denial of legal assistance for Mr. Elmer by a prosecutor during his first interrogation on 28 September 2005.
- Inhumane and degrading treatment. Despite a medical diagnosis showing a 100% incapacity, Mr. Elmer was kept in prison by the Zurich Canton prosecutor.

These accusations and others (again, supported by evidence) should be impartially and thoroughly investigated and the Swiss authorities ought to explain in full why due process has not been followed on several occasions during the course of Mr. Elmer's still ongoing case.

We have carefully read your letter addressed to Mr. Elmer, in which you notified him of your decision regarding the inadmissibility of his case to be heard at the ECHR. We are

aware that the ECHR does not comment on its decisions; however, we would like to respectfully ask you to clarify, under the requirements of transparency and fair legal process which all democratic institutions owe to their constituents, certain aspects of the procedures followed in the handling of Mr. Elmer's complaint:

- 1) A document entitled "The ECHR in 50 questions" provided on the ECHR's website states: "Manifestly inadmissible applications are examined by a single judge". Since Mr. Elmer's application was examined by a single judge (as opposed to a three, seven or seventeen-judge formation), what particular element(s) made Mr. Elmer's application *à priori* inadmissible? And who decided on its admissibility within the ECHR?
- 2) Mr. Elmer's complaint was received at the ECHR in May 2008. According to the document on the ECHR's website called "The European Court of Human Rights: Questions and Answers", the delay before an application is examined can be up to one year. Assuming that Mr. Elmer's application was therefore examined within one year of receipt, that is, by May 2009, and given that the judge who decided on its admissibility – Judge Julia Laffranque – joined the ECHR only in January 2011, could you explain what happened to Mr. Elmer's complaint between May 2009 and January 2011?
- 3) Did any judges decline to handle Mr. Elmer's complaint, and, if so, how many?
- 4) What is the ECHR's position on hearing cases such as Mr. Elmer's, which could drag on virtually forever before all domestic remedies are exhausted, given that such exhaustion is something the ECHR requires before it will consider an application to be heard by the Court? An obvious strategy by a state wishing to avoid scrutiny by the ECHR (Switzerland in this case) could be to simply drag its feet forever, hoping that the complainant's will to seek respite and justice will wear out in the meantime,
- 5) Has the ECHR transmitted or shared part or the whole of Mr. Elmer's complaint and pieces of evidence (including the CD with the names of Bank Julius Baer clients with a criminal record) with Swiss authorities, and if so, what precisely and with whom?

As a non-profit organisation dedicated to the defence of digital freedom – with an emphasis on freedom of information – we have been appalled by the case of Mr. Elmer, one of the most prominent whistleblowers to have used the digital space as a medium for exposing information of great value to the public interest. We have therefore decided to start a public awareness and support campaign to make Mr. Elmer's case much more widely known, both within and outside the EU.

For the reasons given above, we believe the ECHR should take a clear stance against Switzerland's banking secrecy law, which causes grave harms for the majority of European citizens, and we regret that the ECHR didn't take up the opportunity which Mr.

Elmer's complaint presented to deal with this fundamental issue of our time. However, we hope you can at least provide answers to the questions about his case outlined above in the interests of transparency and full accountability.

Please note that this letter and your reply will be published on our website ([www.liberte-info.net](http://www.liberte-info.net)) and on other news and human rights campaigning websites.

Sincerely yours,

Mehdi Taïleb  
President  
Liberté-info

CC with attachments 1) and 2):

- Nils Muižniek, Council of Europe Commissioner for Human Rights
- Algirdas Šemeta, European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud
- Eva Joly, Member of the European Parliament
- Sophie in 't Veld, Member of the European Parliament

Attachments

- 1) Prosecutor's proposal of 4½ years' imprisonment, 10 March 2011
- 2) Ruling of the Federal Court of Switzerland, 7 March 2011
- 3) Copy of Mr. Elmer's letter to the ECHR granting Liberté-info access to information about his complaint