

One man vs. Swiss Banks and the Swiss Secrecy Law

Rudolf Elmer is an ex-Swiss banker turned whistleblower who is spending recent years of his life in a legal battle against his former employer, hoping to end bank secrecy and involved alleged tax fraud.

At the turn of the century Mr. Elmer was fired by a renowned private Zurich bank Julius Baer after spending few years heading the bank's Caymans operation unit. Being denied severance pay and put on polygraph to check loyalty to the bank, Mr. Elmer took exception and started revealing data of bank's clients who used services of Cayman tax haven. He publicly handed over two cd's with data to Julian Assange from WikiLeaks on a news conference in London. Mr. Elmer was one of the first individuals to put the attention of the world public on the alleged tax evasion in places like Cayman Islands, British Virgin Islands, and Isle of Man and particularly Switzerland.

The legal troubles he faced thereon included two stints in detention pending investigation, the first lasting 4 weeks and the other a complete 198 days. After his ex-employers even hired a detective agency to trail him, to harrasse him and his family, and pressed by thousand legal files to go through due to the fact that he could not afford more than a single lawyer, he also spend three months in a mental institution to sort himself out.

Now he is a public activist and stay at home father. He is often invited to EU Headquarters in Brussels to share his experience. Still, at home he is looked upon ambivalently. Some see him as a hero, other as a traitor who dared to go against one of the self-proclaimed national interests – bank secrecy.

Mr. Elmer shared some of his current thoughts with Pistaljka's Milan Pavlica.

You have fought many legal battles, and still, there is no end in sight. How do you assess your chances to fight the system?

Each of my legal battles which amount to approximately 70 right now clearly exposes the dubious way not only the Swiss Penal Courts but also the European Court of Human Rights deals with whistleblower matters. The latter has already turned down four of my complaints and the latest is really shocking. It overwrote the rule of presumption of innocence in court, a basic human right, because it accepted and protected that the Higher Judge of Zurich`s court called me in the court room in front of the press “**an ordinary criminal, a cherry picker, a selfish person**”. This happened after the closing of the public hearing of the verdict - my

acquittal in respect of violation of Swiss Bank Secrecy. He clearly was pissed off, but sorry, the pension insurance agreement which I signed with Bank Julius Baer & Co. AG, Zürich in 1999 did not qualify as a Swiss employment contract. My Cayman contract - which the Prosecution Office clearly kept deliberately out of the court files - was ignored for eleven years and eventually turned out to be the game changer.

Two leading Swiss legal experts produced a second opinion for the judges and clearly stated that the insurance agreement is not an employment contract. Hence, those experts concluded that the Cayman contract represents the true employment situation and more importantly that Swiss Bank Secrecy cannot be applied extra-territorially in my case!

However, the “Swiss Bank Secrecy case” is now pending with the Federal Court of Switzerland for more than 1 ½ years and no final decision has been taken by the federal judges.

It appears to me that the judicial systems in the European Union consistently try to **silence whistleblowers** with whatever they can because there is no interest in law and order in respect to the financial industries. It seems that national interest are well above the law. This exists not only in Switzerland with the Swiss Bank Secrecy, but also in Germany in case of car industry, in the USA in respect of the Snowden and Manning stories etc.

Therefore, my chances are very slim to really win the case, but I have made a lot of noise and it is now a public matter in the sense of that the man in the street might support not only my case, but more importantly, a very strong whistleblower protection law particularly in the private sector. This would be a real victory for me and my case.

Let's play the “What if” game. What will be the consequences to the Swiss bank system if you eventually win in court?

I do not have any chance to win against the Swiss system, really. It clearly protects the competitive advantage of “Swiss Bank Secrecy” and its side effect that Switzerland is such a rich country. It is not only difficult to fight the case in Switzerland, it is also extremely difficult to fight the matter internationally. Switzerland has become one of - if not - **the biggest safe in the world** which protects the financial assets and non-financial assets (e.g. art work, jewelry, yachts, airplanes etc.) of millionaires and multi-national conglomerates.

As you might know Zurich is the place where the headquarters of UBS, Credit Suisse, Julius Baer, Swiss National Bank etc. are domiciled and therefore the true heart of the Swiss Banking Industry. My “attack” on them is clearly an action which reminds me of a Swiss

legend, soldier "Arnold von Winkelried". In the battle of Sempach (1386), the Swiss fought against the Austrian Habsburg army. According to legend, Winkelried cried in the battle:

"I will open a passage into the line; protect, dear countrymen and confederates, my wife and children;

He then threw himself upon the Austrian pikes, taking some of them down with his body. This broke up the Austrian front and made an opening through which the Swiss could attack successfully and win the battle."

I have opened up the battle against the most famous secrecy law in the world which was copied, multiplied and pasted in so many offshore or better secrecy jurisdictions in this world. It is now time that the man in the street gets really involved in this matter and joins me in the battle.

The consequence for the Swiss Banking Industry if Federal judges confirm the ruling of the Higher Court of Zurich in respect of violation of Swiss Bank Secrecy will cause a lot of confusion and uncertainties because Swiss Bank Secrecy would be limited to the territory of Switzerland by the Federal judges of Switzerland.

All the offshore structures (trusts, companies, partnerships, funds etc.) domiciled or set up in the known tax havens holding Swiss bank accounts would lose the protection of Swiss Bank Secrecy, internationally. This could cause a disaster for the Swiss financial industry due to the fact that financial assets held in Switzerland would very likely be moved to other jurisdictions. The crucial element of secrecy might clearly be weakened and limited only to Switzerland based on the legal battle I fight.

Initially, my case appears not a big issue but knowing the modus operandi that the Swiss banks use, the bank accounts, the vouchers, the correspondence are sent for administration and accounting purposes for instance to Cayman, Isle of Man, Delaware, Hong Kong etc. This means that the information would not be protected anymore by the strongest and best-known secrecy law of the world after having crossed the Swiss boundary. This would be a big drawback for tax evaders, money launderers and other criminals. Consequently, the Swiss Parliament works on a Swiss Trust Law in order to have the trust set up under Swiss law in Switzerland and holding Swiss bank accounts protected by the strengthened Swiss Bank Secrecy law. The maximal penalty for violating the Swiss Bank Secrecy used to be 6 months imprisonment up to 2010. Today, it is up to five years of imprisonment.

This demonstrates that the Swiss Bank Secrecy is still alive and functioning very well. The proof of that is that the capital inflow to Switzerland in 2017 increased tremendously and that in 2018 the inflow continues nicely looking from a Swiss banker's point of view.

Switzerland seems to be on the trail of implementing a Whistleblower Protection Act in the private sector. Will you take part in the public debate, if there shall be one?

This is a real joke, I apologize to be that direct!

Switzerland has been trying to implement a WB law in the private sector since 2003. But any attempt to pass a law has been turned down by the mostly conservative Swiss Parliament. There is a good reason for that - Switzerland is home to some major industries, and secrecy has been a money-maker. Therefore, unless there is severe international pressure on Switzerland to implement such a law I seriously doubt the Swiss Parliament will proceed with this initiative. It shall surely take years to pass an effective law for WB protection.

I offered several times my services not only to politicians, but also to Swiss NGOs (Human Rights Watch, Transparency International, Amnesty International, etc.). Also, the Swiss Financial Market Supervisory Authority (FINMA) and many others, but no one was really interested in my international expertise or even willing support a campaign.

Therefore, there might be a public debate which I will try to get involved again, but I am not convinced that Switzerland or respectively the conservative Swiss Parliament would walk the talk!

In addition, Swiss courts do have a history to prosecute every whistleblower and make certain that whistleblowers encounter the financial, social and professional deaths as a consequence.

Lastly, I like to mention that I have studied the Serbian WB law and I think it is really effective and a breakthrough in favor of civil society within Europe, because the judicial system is forced to protect and support true whistleblowers. By the way such a law would have no chance in Switzerland these days, because the Swiss legal system is kept deliberately archaic and outdated in this matter in order to have as much room possible to manipulate cases like whistleblowing in favor of its economy.

Finally, I would like to say that Switzerland won against Serbia in the football world championship, but in respect of whistleblowing and whistleblower law the Swiss are well behind Serbia!

Well done Serbia, I only can say!

Generally, people in Serbia see Switzerland as a well-organized, rich and orderly country. How does your country look from your perspective?

I entirely agree that Switzerland is a well-organized, very rich and orderly country. However there is a very dark side to it which happens to be under the surface. Such are the opaque business practices; undermining the laws of other countries by not treating tax evasion as a crime; usage of Swiss Bank Secrecy and foreign special purpose vehicles to set up structures - trusts, companies, partnerships, foundations etc. in other jurisdictions, by delaying or even avoiding international assistance; self-regulation of the Swiss Banking Industry through the Swiss Financial Market Supervisory Authority mainly financed by the big Swiss banks; judges who have to be members of a major Swiss party in order to be even elected and on top of it the judges are forced to contribute to the political party 10–15% of their income; the hidden sponsoring of political parties by rich individuals and multi-national conglomerates etc.

Therefore, the bottom line really is that the country is controlled by rich individuals and multi-national conglomerates, directly or indirectly. However, the marketing department of Switzerland is simply brilliant because Switzerland's reputation is exceptional in this world due to the fact that many scandals do not come to the surface because there are secrecy laws. The investigations by the Prosecution Office against key players usually go nowhere or a deal is made with the culprits to avoid a court trial (95% of criminal cases are closed by a deal between the Prosecution Office and the culprits), and there are also big threats to people who think about bringing the truth to the public. For instance, I was told by Top Management of Julius Baer that if I take the bank to court, Julius Baer will finish me up! They were nearly successful, not only in Switzerland, but also in Mauritius where the bank's tentacles reached me. I lost my job there from one day to the next.

Consequently, I am not proud to be Swiss after having encountered the dark side of Switzerland. The greed and the methods how Switzerland silences true whistleblowers. It is shocking to see that hardly any criminal banker faces any legal actions in the Swiss society. In other countries such as the USA those bankers would go to prison for decades. In the worst case scenario Swiss bankers are only exposed to a fine, maybe a few months of suspended imprisonment, but that's all.

Two of the major protagonists in the now famous press conference when you handed over discs with data to WikiLeaks, are both in tough life situations. Julian Assange is still isolated

in the Ecuadorean Embassy in London, while you have had your share of problems. How do you see the future of whistleblowers and whistleblowing (WB) in Europe?

Based on my experience I have to predict that whistleblowers will go through difficult times in the future, such as the financial, social and professional death. I believe that in Europe there will be not no drastic changes similar to the Serbia WB protection law. An effective WB law in the private sector does not really exists in the EU and Europe for obvious reasons exemplified in the case of Switzerland.

Even though the man on the street knows today that most scandals have come lately to light due to whistleblowers, there is still no sufficient support for a strong and effective WB protection law, implemented and working in Europe. On the other hand, there is no doubt today that WB are key players as game changers in our civil society. There is a tremendous potential with WB as conscientious objectors to change the world for the better. That way the whistleblowers are a big threat to the dubious establishment.

"Offshore" and "Leak in Paradise" are documentaries about your story. How does publicity help the whistle blowers cause?

The public and particularly the media are crucial for whistleblowers. If the public supports a whistleblower it sends a strong message. It forces politicians to pick up the matter and take it to the Parliament even if they do not want to, and some of the most conservative judges have to consider it in a lawsuit. Consequently, the exposed company or a government body can be stopped in the abuse of the whistleblower, in destroying of his credibility, harassment and similar.

Therefore, publicity plays a central role in the fight against the abusive practices carried out by some individuals and multi-national conglomerates who believe they are above the law.