

High Court of Zurich
President lic. Iur. Rolf Naef and
Head Judge lic. Iur. Peter Marti
Hirschgraben 13/15
8021 Zurich

Paris, 18 November 2013

Case No. SB110200-0/K11

Dear Sirs,

We refer to the letter of 26 March 2013 in which Mr Rudolf Elmer raised some issues and made some requests in order to bring more light into the matter of Business-Case No. SB110200-0/K11, and to your response of 2 April 2013 stating that his letter has been handed over to the prosecution for further consideration.

We have learned that none of the applications Mr Elmer made were given any further consideration by the prosecution. In particular, a criminal investigation into Julius Baer's conduct based on the criminal law (*Strafgesetzbuch*), Article 102, and the Money-Laundering Law, Article 305, has not been performed even though there is a strong suspicion that the bank was involved in criminal conduct.

Taking into consideration the UK newspaper The Guardian's articles of February 2009, and the information that is still published on the website of the pro-transparency organisation WikiLeaks, there must be sufficient suspicion not only to file a report to the Money-Laundering Reporting Office in Switzerland but also to perform a criminal investigation.

Following is the application Mr Elmer made on 26 March 2013 addressed to the judges of the High Court in paragraph 2):

2) Because of (a) 18 and 19 March 2013 at the Prosecutor Zurich viewed files and Cayman data, (b) at the District Court of Zurich and presented at the Zurich High Court justifications of my trade with enclosed and the judges passed notes, the (c) listed herein initiated criminal proceedings and penalties by the Cantonal Tax Administration Zurich and the Swiss Federal Tax Administration, the (d) Information on WikiLeaks' (Mirror), the (e) international reporting (The Guardian UK, February 9, 2009), (f) imminent indictment of Bank Julius Baer & Co. AG and the United States, (g) payment of EUR 50 million compared with Germany concerning terminating the investigation actions against the Bank in 2011 and (h) massively tarnished credibility of management (eg key witness Christoph Hiestand, however, Dr. Raymond Baer, Rudolf E. Baer, Michael Baer, etc.) in the process of "coercion and assault" (eg the determination result of the

prosecution of the alleged hidden observation) are sufficient evidence from which justifies an immediate house search at Bank Julius Baer & Co. Ltd., Zurich. The suspicion of using tax fraud and money-laundering is clearly to be taken into consideration. I apply in addition to the criminal case also with a view to finding evidence in this method a search of the bank, as the credibility of the Bank and its representatives which lost credibility (eg determination result of the prosecution of the alleged hidden observation).

In addition, when reviewing the indictment of 25 June 2010, we have noticed that there are considerable shortcomings and errors in what the prosecutor filed at the “Bezirksgericht” (Lower Court) on 19 January 2011 and on which the Higher Court based its decision of 17 November 2011. The decision of the High Court was that it is not in a position to reach a decision based on the information filed by the Prosecution Office. The High Court’s reasoning was in respect of the emails and violation of Swiss Bank Secrecy:

- a) **Emails:** It is necessary to have more evidence to prove that Rudolf Elmer is the culprit or to prove that he can be excluded as a culprit. Therefore, what is required is international legal assistance in Mauritius to discover who was the owner of the IP address 196.192.111.64, who used it and also who used and owned the email accounts robin.hood3055@yahoo.com, robin.hood3055@yahoo.ca and robin.hoodii@hotmail.com through a request for information from the service providers Yahoo and Hotmail.
- b) **Violation of Swiss Bank Secrecy:** 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. Therefore, it is to investigate whether there are data which relate to Julius Baer & Co. AG, Zürich and which would consequently be protected by Swiss Bank Secrecy.

We would like to highlight some of the shortcomings and errors in the indictment of 25 June 2011, which cannot be explained simply as typos. These shortcomings and errors were used as evidence by the judge, Dr Sebastian Aepli, of the Lower Court to find Mr Elmer guilty and were also used by the High Court of Zurich not to decide “*in dubio pro reo*” (a judicial principle widely accepted in democratic nations, including Switzerland) but to decide that an entire and detailed investigation must be performed again under the direct supervision and lead of the High Court – this, after six years of a similar, fruitless, investigation.

As of today, this investigation is still ongoing due to the fact that international legal assistance in three countries had to be requested again in respect of those emails sent in the year 2007. The purpose was to identify the sender as well as to gather more information on the internet connection(s) used. The responses of the internet providers related to those requests confirmed that no data from 2007 were still available in 2012. Yahoo did, however, confirm that there exists a “robin.hood@yahoo.co.id” in Indonesia. In addition, the Swiss Institute of Comparative Law in Lausanne was asked to provide a second opinion on the violation of Swiss Bank Secrecy and Cayman Confidentiality Law regarding data originating from Julius Baer Bank & Trust Company Ltd in the Cayman Islands. It appears that the judges of the High Court did not know any way in law to come up with a verdict on 17 November 2011. Therefore, the additional investigation requested by the High Court on 17 November 2011 has taken close to two additional years and is still not completed. The legal case was first opened with a house search of Mr Elmer’s home on 27 September 2005. The entire investigation is now about to enter its ninth year.

In addition to the requests stated in Mr Elmer's letter of 26 March 2013, we have noticed in our review of the indictment dated 25 June 2010 several shortcomings when we compared the known facts with those which the prosecution states in the indictment.

In respect of the 25 June 2010 indictment of the Prosecution Office there are major errors regarding “Robin Hood” and the threatening emails that we would like to bring to your attention:

1) **The 25 June 2010 indictment states:** 7 August 2007, 19.20 Uhr (*Ortszeit* (local time) 13:19:38 Uhr, *Eingangszeit* (incoming time) Zürich 17:19:41 Uhr) sent from Robin.hood3055@yahoo.COM via the internet service provider Telecomplus in Mauritius, the email “Your (*sic*) dirty pig” to Mr Christoph Hiestand, lawyer at Julius Baer Bank. (*evidence 01 + 02*)

Based on the original document the facts are as follows: Email sent: “8. August 2007, 16.34, IP address: 196.192.111.64 (location St. Pierre, Mauritius), sender robin.hood3055@yahoo.CA, recipient Christoph Hiestand” (*evidence 03 + 04*)

Error in the 25 June 2010 indictment: The incriminating email was not sent from a xxxx.@yahoo@.COM address, it was sent from a xxx@yahoo.CA address. The top-level domains (as they are called in the technical jargon) .com or .ca are completely distinct entities because they designate two different email servers (Yahoo.com and Yahoo.ca in this case) based in two different countries – the United States and Canada respectively. Therefore the senders robin.hood3055@yahoo.COM and robin.hood3055@yahoo.CA could well be completely different people. In addition it was sent a day later, on 8 August 2007, however the Prosecution and the bank claim it has arrived in Switzerland already on 7 August 2007. This cannot be considered simply a typo mistake; it is an error that reveals poor-quality investigative work. The indictment is therefore false in this material matter, which may have misled the judges.

2) **The 25 June 2010 indictment states:** “6. September 2007, 07.32 von (from) robin.hood3055.yahoo.com via Manx-Telecom-ADSL von (from) Isle of Man an (to) Christoph Hiestand “Are you still alive? That will change soon.” (*evidence 05*)

Based on the original document the facts are as follows: “Email sent: 6. September 2007, 01:32.22 (-400 / EDT) IP Address: 80.65.241.180 (location Sefton Hotel), sender: robin.hood3055@yahoo.ca, Recipient: Christoph Hiestand” (*evidence 06 + 07 + 08*)

- **First error in the 25 June 2010 indictment:** The incriminating email was not sent from a xxxx.yahoo@COM address, it was sent from a xxx@yahoo.CA one. As stated above, these two email addresses designate two different accounts on two different servers in two different countries, and likely two different persons. Again, this is an important material error in the indictment which could have misled the judges.
- **Second error:** The time **07.32 Uhr** (*evidence 05*) in the indictment does not correspond to the actual time the email was sent, **01:32:22** (-0400 / EDT) (*evidence 08*). (Local time of the sender in the Isle of Man was 01:32:22, which is in the early hours during the night of 5/6 September 2007.)

There are other major errors in the indictment which mean it should not be used as the basis for making any reasonable decision, particularly in a court trial. For instance, it does not use the internationally accepted standards of displaying time – 00:00:00/hour, minutes, seconds – but instead uses, eg “07.32 Uhr”, which could indicate either morning or evening.

3) **The 25 June 2010 indictment states:** “24. August 2007, 10.41 *ein email von rfdghdda@mail.com via Afrinic bzw. Telecomplus von Mauritius an die Eingabemaske Tages Anzeiger* “Urgent, there are explosives in Julius Baer, Zurich, which will go off this afternoon, Friday 24th”. (*evidence 09 + 10*)

Based on the original document the facts are as follows: “24. August 2007, 10:41:22 (+0200 / Zürich / CET), IP address: 196.27.85.168 (location Atrinic – MV-telecomplus-MWT, Mauritius), sender: rfdghdda@mail.com, Recipient: website tagesanzeiger.ch”. (*evidence 11*)

It is not clear if the prosecution refers to local time or time of receipt and therefore it distorts the information provided and consequently the evidence. It is also crucial to know how long such an email was travelling across the internet in order to have an indication of where it came from. According to the document, it states that the IP address is part of: “Parent: 196.27.64.0 – 196.27.95.255” (*evidence 04*). These IP addresses are allocated to Mauritius but they cannot by themselves identify who was sitting behind the keyboard of the computer(s) behind those IP addresses, nor can they rule out whether a third party from anywhere in the world intercepted or manipulated these Mauritian IP addresses remotely. To allocate such an email to a particular person living in Mauritius is not possible simply on the basis that a specific computer has an IP-address allocated to Mauritius.

Another obvious anomaly is the fact that the indictment has as an attachment a long list of accounts with account details such as account name, title, account number and branch, but the branch shown is Julius Baer, New York and all the accounts are allocated to Julius Baer, New York. Mr Elmer is accused of having violated Swiss Bank Secrecy and not a secrecy law of the United States. The 25 June 2010 indictment refers to these accounts but they have no relevance to Mr Elmer's case, and therefore again this may have misled the judges (and also whoever else reads the indictment – it was made public on 19 January 2011).

To summarize, the prosecutor's 25 June 2010 indictment appears to be of poor quality and, according to our review and international standards, it cannot be considered valid as an indictment to judge whether Mr Elmer (or for that matter anybody) violated Swiss Bank Secrecy without major revision by the Head Prosecutor, Dr R. Jäger. Furthermore, in its present state, it fails to show any evidence that Mr Elmer was the originator of the threatening emails.

Therefore, we feel the following questions should be addressed without delay:

- 1) Why has the prosecution not performed a criminal investigation of Julius Baer Bank & Co. AG, Zurich on the facts provided by Mr Elmer, information which has been widely published and is publicly available on the internet at The Guardian newspaper's website and at WikiLeaks?

- 2) Why have the judges of the High Court, who do have the lead in this matter, not requested that such a criminal investigation be performed in order to evaluate the entire case and to understand whether Mr Elmer had good reasons to make this information public?
- 3) Why have the assets of Arturo Acosta Chapparo (a Mexican drug lord), the Bin Laden family and other alleged criminals (confer Guardian articles, WikiLeaks' website, confiscated data) not been investigated by Zurich's authorities?
- 4) Given that the 25 June 2010 indictment contains major inconsistencies and obvious flaws, shouldn't the High Court return the entire case to the judge of the *Bezirksgericht* (Lower Court), namely Dr Sebastian Aeppli, in order to reassess his judgment based on a corrected and completed indictment by the Prosecution Office?

If 4) is not acted upon Mr Elmer will have been found guilty by the *Bezirksgericht* (Lower Court) based on false facts and evidence and the appeal which the judges of the High Court will have to deal with would be based on a questionable judgment and false facts. In other words, Mr Elmer, the defendant, will lose a level of appeal due to a decision made by the *Bezirksgericht* (Lower Court) based on distorted facts by the Prosecution Office.

Article 6 of the European Convention on Human Rights on "Fair Trial"

We would like to point out that in the present case Article 6 of the European Convention on Human Rights is violated due to the fact that everyone is entitled to a fair and public hearing within a reasonable time and that he must be informed in detail about the nature and cause of the accusation against him, which obviously includes correct presentation of the facts.

- a) Given that Judge Dr Sebastian Aeppli (*Bezirksgericht*) at the Lower Court came to his decision that Rudolf Elmer is guilty and sentenced him to eight months' imprisonment and a fine of CHF 7.200 – both suspended during a probationary period – which can be considered as a minor punishment for a minor violation, there is a disproportionate length of investigation, particularly in view of the judges of the High Court requesting on 17 November 2011 another detailed investigation under the High Court's supervision. That investigation is still ongoing and most likely by this stage violates Mr Elmer's right to have his case heard within a reasonable time. Because of the unending nature of this ongoing court trial all Mr Elmer's applications for work have been turned down by prospective employers, which has caused unnecessary hardship not only for him but also for his family over several years.
- b) All 20 of Mr Elmer's witness requests have been turned down by both Judge Dr Sebastian Aeppli, *Bezirksgericht* (Lower Court) and by Head Judge Peter Marti, *Obergericht* (High Court) on 2 September 2011, which is a clear violation of Article 6 of the European Convention on Human Rights that a defendant is allowed to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

We would be grateful for answers to the four questions we ask above, in order to understand why in a trial where the prosecution initially asked (indictment of 25 June 2010) for a punishment of eight months' imprisonment and a fine of CHF 7.200, both suspended, Mr Elmer's case is still not resolved. More than that, however, we hope that you will take the right action to avoid any further injustice for a Swiss citizen whose whistleblowing in the public interest has deservedly received worldwide acknowledgement in the international community. We hope that you will agree with us that it is time to put a stop to the judicial miscarriage of Mr Elmer's case before this highly publicized injustice has repercussions on Switzerland's reputation as a democracy.

We believe, as do Mr Elmer's many supporters, that he has always acted with the best interests of the people, especially the weakest in society, uppermost in his mind, and nothing to this day challenges that view. Mr Elmer has been a pioneer in courageously exposing a systemic injustice in the Swiss legal system that Switzerland is now taking steps to correct with the supportive acknowledgement of the international community. Mr Elmer's cause is consequently in the best interest of the people, both in Switzerland and abroad.

Kind regards,

Mehdi Taïleb

President, Liberté-info

List of the evidence items cited above:

Evidence 01 Email, August 7th, 2007, object: "Dirty Pig"

Evidence 02 Extract of the indictment of June 25th, 2010

Evidence 03 Telecomplus Mauritius location of IP-address 196.192.111.64

Evidence 04 Telecomplus Mauritius location of range of IP-addresses

Evidence 05 Extract of the indictment of June 25th, 2010

Evidence 06 Response of Attorney General's Chambers, Isle of Man, March 18th, 2008

Evidence 07 Page 2 of the above item

Evidence 08 Manix Telecom, Isle of Man

Evidence 09 Extract of the indictment of June 25th, 2010

Evidence 10 Email, August 24th, 2007, object: "Explosive"

Evidence 11 Tamedia link to Telecomplus

Evidence 12 Extract of the indictment of June 25th, 2010, Bank accounts of Julius Baer New York