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Registered mail

Federal Supreme Court of Switzerland
to the President of the Federal Supreme Court
Prof. Dr. iur. Ulrich Meyer
29 Avenue du Tribunal fédéral
1000 L a u s a n n e 14

Rorbass, 6 July 2020

Request to exclude of the President of the Court and the court clerk in the criminal cases concerning the Swiss Federal Supreme Court Ruling 6B_280/2020 of 17 June 2020 (enclosure 01) due to objective prima facie evidence of prejudice and bias

Dear Mr. Meyer, President of the Federal Supreme Court

in the matter of

Rudolf Elmer, Nauengasse 11, 8427 Rorbass complainant

against

Court President Criminal Law Department
Swiss Federal Judge Christian Denys Defendant 1

Court Clerk Dr. Andreas Traub Defendant 2

- regarding the following grounds for recusal (BGG¹ Art.34 article. 1, a and e) and the objective appearance of a suspicion of bias and impartiality of the defendant 1 and 2 with regard to the assessment of the complaint of 3 March 2020 (enclosure 02) filed by complainant in the matter of the Swiss Federal Supreme Court decision of 17 June 2020 (6B_280/2020, enclosure 01),

¹ Bundesgesetz über Bundesgericht translates to Federal Law on the Swiss Federal Supreme Court, dated 17 June 2005 (as of 1 January 2019)

- on the principle that, according to Article 30(1) of the Swiss Federal Constitution and Article 6(1) of the ECHR, every person has the right to have his case heard by an impartial judge without interference from extraneous circumstances or prejudice,

- concerning the fact that the guarantee of the constitutional judge is violated when, in the case of objective considerations, circumstances exist which may give rise to the objective appearance of bias or the risk of bias.

A) Preliminary and summary remarks

1. Prejudice and bias are assumed according to the case law when circumstances exist which, when viewed objectively, are likely to arouse suspicion about the judge's stance on impartiality. Such circumstances may be based on a certain behavior of the judge concerned or on certain external circumstances of a functional and organizational nature. The subjective feelings of a party should not be taken into account when assessing such circumstances. Distrust of impartiality must appear to be objectively justified. However, it is sufficient if circumstances exist which, when viewed objectively, give the appearance of bias and prejudice. For the rejection, it is not required that the judge is actually biased (BGE² 137 I 227 E. 2.1., BGE 134 I 238 E. 2.1, each with references to other Swiss Federal Court rulings).
2. Defendant 1 is not only jointly responsible for the complaint of 3 March 2020 (enclosure 02), because he has ruled on it, but also because he has himself played a decisive role in the facts and circumstances that are presented in this document and has contributed to the matter.

In his function as President of the Court (defendant 1) with jurisdiction in this case, he was able to exert a decisive influence on the criminal proceedings (in total, duration of criminal proceedings of the "Elmer case", has been 15 years, of which 3 ½ years with the Federal Court of Switzerland). In relevant parts of the facts and circumstances described below, which appear to be objectively justified, the defendant 1 has participated and contributed in excessive and deliberate delays by unnecessarily prolonging the duration of the proceedings and hearings.

² BGE translates Swiss Federal Court Ruling

3. Thus, there is the appearance of a suspicion of prejudice and bias. The grounds of appeal listed in the detail below prove that, from an objective point of view, there is at least, the appearance of prejudice and bias. In addition, facts are listed which give reason to suspect that violations of judges' duties also exist. These relate primarily to the criminal proceedings of the Office of the Attorney General of the Canton of Zurich (OAG) against Rudolf Elmer 6B_1314/2016 and 6B_1318/2016 as well as against other listed Swiss federal judgements.
4. Further reasons justified an exclusion of the two defendants in the proceedings of case 6B_280/2020, since they should have already excluded themselves from the proceedings when the appeal was filed on March 3rd. 2020 (enclosure 02).
5. The complainant always acted in the interest of promoting administration of justice, whilst respecting his rights of defense in the long overdue criminal proceedings (cases 6B_1314/2016 and 6B_1318/2016, enclosure 03). Furthermore, in the period from 2005 to 2009 when he worked in Mauritius, he repeatedly made himself available for public prosecutor's enquiries during his annual visits to Switzerland via his defense counsel.
6. The complainant in criminal case 6B_280/2020 (enclosure 02) was not instrumental in obtaining or taking any actions that caused an intolerable prolongation of the proceedings. The complainant was only safeguarding his rights given by law as an accused person.

B) Specific grounds of appeal

The specific grounds of appeal primarily call for a stay of execution on the part of defendants 1 and 2 in respect of the appeal lodged with the Swiss Federal Supreme Court on 3 March 2020 (enclosure 02) and its court ruling of 17 June 2020 (6B_280/2020, enclosure 01). Secondly, the "Request of exclusion of the defendants 1 and 2 in respect of the appeal of 3 March 2020 related to the ruling of the Swiss Federal Supreme Court of 17 June 2020 (6B_280/2020) which requires the relevant ruling, due to existing prejudice and bias, to be reassessed by independent judges.

a) The composition of the panel for the above judgment was not discernible to the complainant prior to the Swiss Federal Court's judgment, since the criminal law department of the Swiss Federal Court does not in principle disclose the composition of the panel of the judges until the

judgment is rendered or the judgment is provided in writing, which is why the complaint is also directed only against the President of the Criminal Court and the clerk of the court.

b) *The judgment was delivered by post to the complainant on 1 July 2020 (enclosure 17). The present appeal has been filed within the time limit immediately after receipt of the Swiss Federal Supreme Court ruling of 17 June 2020 (6B_280/2020) after learning about the three members of the panel. Pursuant to Court Ruling 1B_542/2018 article. 3.1., an application submitted six to seven days after the reason for the exclusion of court members has become known by complainant it is deemed to be in due time.*

c) *On the judgment of 10 October 2018 (6B_1314/2016 and 6B_1318/2016, enclosure 03)*

For example, a manifest error of assessment, which was not corrected during the trial, was that the data would come from a Caribbean bank i.e. Julius Baer Bank and Trust Company Ltd, Cayman Islands. Since the beginning of the investigation and proceedings 17. June 2005, the complainant has corrected this false statement several times in the prosecutor's inquiries and in courts. The data originated from a trust office of the bank, i.e. not a bank, but an accounting and management company named Julius Baer Trust Company Ltd. of the Cayman Islands. Thus, neither of this data was protected by Cayman nor by Swiss banking secrecy law. The description of the facts in the court ruling of 10 October 2018 (6B_1314/2016 and 6B_1318/2016, enclosure 03, page 4, A. Facts) is therefore again incorrect and misleading. After 14 years of investigation, the economic facts were still not correctly recorded in the Swiss Federal Court ruling of 10 October 2018 (6B_1314/2016 and 6B_1318/2016, enclosure 03). Taking into account further errors noted (enclosure 03) in the court ruling of 10 October 2018, the objective appearance of continuing bias and prejudice by defendant 2 cannot be ruled out here either.

d) *Also, the complainant has great interest in bringing these unspeakable criminal proceedings to a final end, however, this is not under his control. The detailed complaint of 3 March 2020 shows in an exemplary manner that the opaque and careless way in which the persons responsible for the work have delayed the tedious process considerably, making it extremely difficult to bring the proceedings to a proper close according to the law.*

With regard to the complaint of 3 March 2020 (enclosure 02) and the Swiss Federal Supreme Court decision 6B_280/2020 of 17 June 2020 (enclosure 01), the complainant therefore submits the following R E Q U E S T S:

1. The defendants 1 and 2 must, on the basis of the infringement of Article 30(1) of the Swiss Federal Constitution and Article 6(1) of the ECHR and Article 34(1)(a) and (e) and the fact that, on objective consideration of the circumstances and facts, admit there appears to be at least partial prejudice and bias, for the purposes of the assessment of the complaint of 3 March 2020, as persons who have not been lawfully being in the function as a President of the court (head judge) and court clerk, therefore, a review of the ruling of 17 June 2020 should be made mandatory and possibly retroactively adjusted.

2. The Swiss Federal Court of Justice's judgment of 17 June 2020 (6B_280/2020) is to be invalidated and properly reassessed by impartial and unbiased judges, those whose duties are formerly segregated from this department of the criminal court. In particular with respect to the overall duration and delays during the past 15 years these legal proceedings have taken.

3. if requests 1) and 2) are accepted, the complainant is permitted, within a given period of time, to update and re-submit his complaint of 20 March 2020 (enclosure 02), in particular with regard to the overall length of the legal proceedings of more than 15 years. The reason is that the time circumstances have changed significantly since the submission of 3 March 2020 and the 15 years of proceedings have been considerably exceeded.

4. The appeal should be granted suspensive effect within the meaning of Art. 103(3) BGG³, because these requests or exclusion of court members must first be decided before the pending appeal of 3 March 2020 (enclosure 02) can be reassessed in view of the overall length of the proceedings. The determination of the actual total duration of the proceedings is therefore still open, though it has already been at least 15 years, which would have to be assessed by the Swiss Federal Supreme Court in other cases as extremely excessive and unlawful.

5. All costs and compensation are to be borne by the defendants.

6. Due to the complainant's financial circumstances, an application is made for free administration of justice and for the waiver of an advance on costs.

³ Bundesgesetz über Bundesgericht (BGG) translates to Federal Law on the Swiss Federal Supreme Court, dated 17 June 2005 (as of 1 January 2019)

C) Additional process history and particular reasons

1. The Criminal Law Department bears, in addition to the Zurich High Court (ZHC) and the Zurich Attorney General's Office (ZAGO), a large and direct responsibility for massive procedural shortcomings and an extremely excessive duration of proceedings for the transactions in the legal cases 6B_1314/2016, 6B_1318/2016, (enclosure 03). This includes, among other things, the acceptance of an excessively long-winded, drawn out and repetitious 95-page complaint (enclosure 04) from ZAGO without any legal substance. This observation was made by the recognized experts Swiss Federal Judge Prof. Dr. iur. Dr. h.c. Thomas Geiser and the internationally recognized legal expert Prof. Dr. iur. Dr. h.c. Mark Pieth. Not only was the Chief Prosecutor's appeal sharply criticized because it lacked credible substance related to legal requirements and criminal law in its appeal, but also indirectly the criminal law department of the Federal Supreme Court. In three expert opinions (enclosures 06, 07, and 08), the two experts stated that ZAGO had not even taken into account the principle of Art. 1 of the Swiss Penal Code (enclosure 06, page 3) and had thus massively ignored one of the most fundamental principles of Swiss criminal law. The 95-page appeal (enclosure 04) contained only sociological, legal-political, and economic considerations (enclosure 06, page 3), whereas arguments relevant to criminal law were completely omitted. Furthermore, a change in the law would be required in order to condemn the complainant or to grant extension to the administration of interests of the Swiss holding companies to the Cayman Islands (enclosure 06, page 3).

2. Such fundamental and obvious violations as well as the excessively long, rambling and lengthy complaint should not have been tolerated, accepted or allowed to be presented by defendant 1. The ZAGO's complaint should have been immediately rejected for abridgment and legal revision, which would have massively shortened the duration of the entire legal proceedings at the Federal Court of Switzerland and saved the taxpayer the expense.

3. Even if the inadequate indictment and complaint of ZAGO were already the main cause of an untenable delay and the massive costs (attorney and procedural costs), the Swiss federal judges should have recognized and taken this into account. In addition, the Swiss Federal Supreme Court generally does not allow such appeals according to federal court ruling 2C_204/2015. This indicates that the defendant 1 had a certain motive, bias and prejudice. The Criminal Law Department took a total of 3 1/2 years from the date of filing of the ZAGO's complaint (21 November 2016) to come up with the revised ruling of the case 6B_1314/2016, 6B1318/2016 ending at present with the final ruling 6B_280/2020 of 17 June 2020.

4. The judgment of the Zurich's Higher Court of 29 November 2019 (SB190092, enclosure 5) would in fact have been a final decision if the complainant had not exhausted all national remedies with the appeal of 3 March 2020 and the judgment of 6B_280/2020 of 17 June 2020.

In the judgment of the Zurich's Higher Court of 29 November 2019 (SB190092) under the heading: **It is recognized** (enclosure 05, pages 38 - 42), however, it states that an appeal can still be lodged with the Federal Court of Switzerland. This expressly confirms that the Higher Court decision of 29 November 2019 had not yet become final. It is also evidenced that to date, no final decisions against the complainant have been taken by the judiciary. It is incomprehensible that no ZAGO legal document mentions that according to the Swiss Federal Supreme Court decision of 10 October 2018, no previous decision has become final, since the judgement of the Zurich's High Court of 16 August 2016 had been completely overturned by Swiss Federal Court ruling of 10 October 2018 (enclosure 03, page 46, paragraph 3.) and had been sent back to Zurich's Higher Court. On 26 April 2019 (enclosure 09), the Zurich's Higher Court correctly confirmed to the complainant: **'Accordingly, there are currently no points of judgement that are already legally binding'**.

5. This confirms that the overall proceedings 6B_1314/2016 and 6B_1318/2016 combined in the Swiss Federal Supreme Court ruling of October 10, 2018 (enclosure 03) have not yet been enforced, i.e. there are no final judgment points.

6. On 21 November 2016, the complainant's lawyer filed an appeal against the judgment of Zurich's Higher Court of 16 August 2016 within the time limit, for which the written Swiss Federal Supreme Court's ruling dated 10 October 2018 (6B_1314/2016, 6B_1318/2016), (enclosure 03), i.e. 2 ¼ years later, was only available on 14 February 2019. Zurich's Higher Court did not send its newly drafted judgment of 29 November 2019 (enclosure 05) to the complainant's lawyer until 3 February 2020. The complainant's appeal to the Swiss Federal Court of Switzerland is dated 20 March 2020 and was dismissed by the Swiss Federal Supreme Court's judgement of 17 June 2020. This judgment was received by the complainant by post only on 1 July 2020. A duration of 3 1/2 years dealing with the matter on the Swiss Federal Supreme Court is an excessively long period to answer a simple legal question as 'what qualifies to be a Cayman employee in a Cayman Bank' and 'how is it related to Swiss banking secrecy'. The total duration of this simple legal case of 15 years must be considered as extreme and specifically engineered to cause grief.

7. The excessive delays, taxpayer money and time wasted on unnecessary procedural allegations ultimately by defendants 1 and 2 reflects open and blatant prejudice not only

towards the complainant, but also total disregard and disrespect to independent third parties and the general public as a whole who knew about this case.

8. As additional justifications for the complainant's request for the exclusion of defendant 1 there are other Federal Supreme Court rulings to be mentioned. In particular the Swiss Federal Supreme Court ruling 6B_222/2017 (enclosure 10) of the Criminal Law Department (non-recovery regarding the suppression of documents, forgery of documents, etc.) against employees of Bank Julius Baer & Co. AG, Zurich. The accusation was that the employees, in particular, in response to the order of 27 July 2005 by the Prosecutor's Office regarding the edition, deliberately suppressed the signed and relevant employment contract of the complainant. Later, this contract justified the acquittal of a violation of Swiss banking secrecy. The edition order of the Prosecutor's Office was issued on the basis of the criminal charges brought by Bank Julius Baer & Co. AG, Zurich, dated 17 June 2005 against the complainant. Without any independent referee, the complainant's appeal and evidence by was blatantly omitted by the defendant 1 during his judgement decision 6B 222/2017 (enclosure 10).

9. In the Swiss Federal Supreme Court ruling 6B_1223/2017 (enclosure 16) of 12 December 2017 of the Criminal Law Department regarding "False Statement (Article 307 of the Criminal Law) of the General Counsel of Julius Baer Holding Ltd. As President of the Court and the proceedings, defendant 1 has dismissed the complaint. The dismissal referred to the following false statement made by the General Counsel of Julius Baer Holding Ltd. - who had been legally responsible for the case of Rudolf Elmer at the bank since 2002 - on the occasion of the interrogation by Prosecutor (StAin) A. Bergmann on 14 August 2008. The General Counsel made the following statement in response to the central question on criminal case SB 110200 against the complainant (quotations, enclosure 11):

Question StAin A. Bergmann: *'To which banking secrecy laws was he [Rudolf Elmer] subject?*

Answer Ch. Hiestand: *Certainly, the local, Cayman Islands banking secrecy laws. After all, he was formally employed by the bank and was therefore also subject to Swiss banking secrecy laws.*

This testimony was clearly false and should have been struck off accordingly!

However, defendant 1 dismissed the complainant's appeal to the Federal Supreme Court in its judgment 6B_1223/2017 (enclosure 16) of 12 December 2017. This is yet another decision by defendant 1 which shows the objective appearance to be one of bias and prejudice.

10 In a Swiss Federal Supreme Court ruling of 16 March 2015 (6B_193/2015), the Criminal Law Department ruled against the complaint in the matter of "satisfaction and arbitrariness" with regard to the cancellation of criminal proceedings against the complainant's wife Adelheid Heckel Elmer for violating Swiss banking secrecy. The claim for compensation of at least CHF 5,000 was ignored by the courts, even though, among other things, the daughter, who was 11 years old at the time, needed care assistance (who later attempted to commit suicide) and the wife herself needed legal support. The President of the Court again, was defendant 1 (enclosure 14).

11. With the Swiss Federal Court order of 19 January 2017 (6B_1318/2016), the Criminal Law Department decided to reject the application in the matter of "Assessment of punishment (attempted coercion etc.); surrender of confiscated objects; arbitrariness; application for free administration of justice and legal assistance". Among other things, family pictures, objects belonging to the daughter and her self-written children's stories have still not been returned by the authorities. The President of the Court again was defendant 1 (enclosure 15).

12. It can therefore be overwhelming assumed without doubt, also for independent third parties, that in the proceedings 6B_280/2020 (enclosure 02) the panel consisted only of federal judges of the criminal law department who did not comply with the basic legal requirement of segregating the duties of impartial judges and thus the guarantee of an independent and impartial court hearing from Art. 30 para. 1 of the Swiss Federal Constitution was not observed (Federal Ruling 5A_374/2012 and 16 August 2012 E. 2.1.; 5A_654/2010 of 30 September 2011 E.1).

E) Time limit and form

1. The present request for leave to appeal is based on the appeal filed on 3 March 2020 (enclosure 02) against the ruling of the Zurich Higher Court of Appeal of 29 November 2019 (enclosure 05) and the Swiss Federal Supreme Court ruling 6B_280/2020 of 17 June 2020 (enclosure 01), which was received by the complainant by registered post on 1 July 2020 (enclosure 17) by the complainant.

2. Today's filing of this request for exclusions of defendant 1 and 2 is in compliance with the time limit for appeal pursuant to (Art. 100 para. 1 BGG⁴) and Art.36 BGG, since the appeal "request of exclusion" was filed with the President of the Court of the Swiss Federal Supreme Court within 7 days after the reason for exclusion was known to the complainant (defendant 1 and 2 are members of the panel of the judgment 6B_280/2020), following the receiving of the Swiss Federal Supreme Court judgment 6B_280/2020 on 1 July 2020 (enclosure 17).

3. The complainant asserts that the opened proceedings 6B_280/2020 also violate federal law and international law in several respects regarding the grounds for abstention and impartiality (Federal Supreme Court Art. 34 BGG. 1, a and e) as well as Federal Constitution Art. 30 BV⁵. 1; article 6 item 1 ECHR) and, in addition, there are also particularly blatant and repetitive errors of the judges which, in the complainant's view, must be investigated or assessed as a serious violation of the duties of these judges.

For the reasons set out above, I request that the applications submitted at the beginning be approved.

Yours sincerely



Rudolf Elmer

The complaint triple

Enclosures:

According to the separate list

Distribution:

- Federal Judge Christian Denys (only complaint without enclosures)
- Clerk Dr. Andreas Traub (only complaint without enclosures)

DISCLAIMER:

Translations of any materials into English are intended solely as a convenience to the non-German-reading public and are not legally binding.

I have attempted to provide an accurate translation of the original material in German, but due to the nuances in translating to a foreign language, slight differences may exist. References identifying the original document in German are available.

⁴ Bundesgesetz über Bundesgericht (BGG) translates to Federal Law on the Swiss Federal Supreme Court, dated 17 June 2005 (as of 1 January 2019)

⁵ Swiss Federal Constitution