

Article 47: the criminal protection of banking secrecy

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The Banking Act of 1934 contained a provision that would make Switzerland famous and controversial for the rest of the century. Article 47 made the violation of professional secrecy by employees, officers and auditors of banks a criminal offence, punishable by imprisonment or fine.¹ The obligation of confidentiality, which had existed before as a contractual duty and a matter of professional custom, was thus reinforced by criminal law. A bank employee who disclosed information about a client to a third party, including a foreign authority, committed a crime.

The criminal protection of banking secrecy had several purposes. It reassured foreign clients, whose confidence had been shaken by the Paris affair of 1932 and by the attempts of foreign governments to obtain information about their citizens' assets in Switzerland. It protected the banks against the pressure of their own employees, who might be tempted to sell information to foreign authorities or to blackmail clients. And it gave the Swiss authorities an argument to refuse foreign requests: Swiss law prohibited disclosure, so that the banks could not provide information even if they wished.

Banking secrecy protected neither clients against Swiss authorities in criminal proceedings nor assets of criminal origin against confiscation in Switzerland. It did protect foreign clients against the tax authorities of their home countries, because Switzerland did not regard tax evasion, as distinct from tax fraud, as a crime for which it would provide assistance. This distinction between evasion and fraud, which was central to the Swiss position for most of the twentieth century, became the target of international pressure at the beginning of the twenty-first century. Part E examines how Switzerland abandoned it between 2009 and 2017.

The role of Basel in the history of banking secrecy is thus considerable. It was the search of the Paris offices of a Basel bank in 1932 that contributed

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to the inclusion of Article 47 in the Banking Act. And it was a Basel bank, the Swiss Bank Corporation, through its successor UBS, that would be at the centre of the United States tax investigation of 2008 and 2009 that led to the end of banking secrecy for foreign tax evaders.

1 Notes

1. Art. 47 of the Banking Act of 8 November 1934 (SR 952.0), original version: criminal liability for the violation of professional secrecy by bank officers, employees, auditors and members of the banking commission. To be verified. ↩

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