

The Ticino prosecution service

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The Ticino criminal justice system of the time was organized in two districts. The public prosecutor of the Sottoceneri sat in Lugano and covered the districts of Lugano and Mendrisio, where nearly all the banks and fiduciaries of the canton were based. The public prosecutor of the Sopraceneri sat in Bellinzona and covered the north of the canton, including the Gotthard and San Bernardino routes and the Magadino plain with its customs and transit traffic. Investigations were conducted by the prosecutors and by investigating judges (*giudici istruttori*), who had the powers of search and seizure.¹ The magistrates had to handle the ordinary criminality of a canton with a long land border and, in addition, the financial cases that arose from Lugano's growth.

The magistrates of both districts nevertheless gained an experience that few Swiss prosecutors shared. Since most of their cases had an Italian dimension, they knew Italian criminal law and procedure. They read Italian court files without translation and had direct contacts with Italian colleagues in Como, Varese, Milan and later Palermo. When the drug trade began to use the same channels as flight capital, it was natural that the first Swiss investigations of drug money should begin in Lugano and Bellinzona. The prosecutors were also exposed. The Addaura attempt of 1989 showed that the Mafia regarded Swiss magistrates who followed its money as enemies.

1 Cash, couriers and banking secrecy

The practical consequence was that a Lugano bank in 1980 could lawfully receive large amounts of cash from Italy as long as it identified its contracting partner under the agreement of 1977. Italian exchange controls, which made the export of lire without authorization a criminal offence in Italy, were irrelevant under Swiss law. Italian prosecutors who wanted to know where money had gone met two barriers: the fiscal and

currency exception in mutual assistance, and the procedural protection of bank clients, who could challenge the Swiss decisions on assistance before the courts. The same features that protected the Italian saver against his own State also protected the drug trafficker who posed as an Italian saver.²

Essentials. Until 1 August 1990 Swiss law contained no money laundering offence. The banks' due diligence agreement of 1977 (VSB/CDB 77) required identification of the contracting partner and, in doubtful cases, of the beneficial owner, but it was a private contract binding only banks. Receiving and obstruction of justice under the Criminal Code of 1937 did not cover the laundering of drug proceeds by third parties. Mutual assistance excluded fiscal and currency offences. Italian criminal money could therefore enter Lugano's banks through the same channels as Italian flight capital.

2 Notes

1. L'Impartial, 5 November 1988 (as above) (prosecution service of the Sopraceneri in Bellinzona); Botschaft of 12 June 1989 (as above), 1075 ("Ersten Staatsanwalt des Sottoceneri"); International Criminal Tribunal for the former Yugoslavia, "Carla Del Ponte", <https://www.icty.org/sid/101> (appointed in September 1981 "investigating magistrate and later [...] public prosecutor in the office of the Lugano district attorney"). ↩
2. Art. 80e IMAC, <https://www.droit-bilingue.ch/en-de/3/35/351.1-80e-119.html>, and Art. 80h IMAC, <https://www.droit-bilingue.ch/en-de/3/35/351.1-80h-121.html> (current rules on appeals and on standing of "any person who is personally and directly affected by a mutual assistance measure"). On the restriction of remedies by the revision of 4 October 1996 see the section on mutual assistance below and Chapter H.IV. ↩

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