

Ticino's own cases

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The 1990s also brought cases in which the Swiss intermediaries themselves were tried in Ticino. The most prominent concerned a lawyer in Lugano who between 1993 and 2000 laundered about 75 billion old lire of 'Ndrangheta drug proceeds. He was arrested in 2000 and sentenced on 16 June 2003 by the Lugano criminal assizes to fourteen years' imprisonment for money laundering. The cantonal appeal court confirmed the judgment in April 2004, and the Federal Court dismissed the final appeal in November 2004.¹ The case showed that the criminal provisions of 1990 could reach the professional launderer in the financial centre itself, and that a Ticino court was prepared to impose a heavy sentence on a member of the local bar.

1 Federal jurisdiction and the Attorney General

The experience of the Ticino cases also changed the federal organization of criminal justice. Until the late 1990s money laundering and organized crime were prosecuted by the cantons, which meant that a case involving accounts in Lugano, Zurich and Geneva was split between three prosecution services with different languages and procedures. Carla Del Ponte, appointed Attorney General of Switzerland on 1 April 1994, brought her Ticino experience to Bern.² As Attorney General she pursued several international cases of corruption and money laundering, and she pressed for federal powers in this field.

The result was the so-called efficiency bill (*Effizienzvorlage*) of 22 December 1999, which entered into force on 1 January 2002. It gave the Confederation jurisdiction over organized crime, money laundering and corruption where the offences were committed largely abroad or in several cantons without a clear centre in one of them. The rule is now found in Article 24 of the Swiss Criminal Procedure Code.³ To try these cases, the Confederation created the Federal Criminal Court, which began work in

Bellinzona on 1 April 2004. Parliament had chosen Bellinzona as its seat by a federal act of 21 June 2002, a political decision in favour of Italian-speaking Switzerland. Given the history traced in this chapter, it also placed the court close to the border where many of its cases began.⁴

2 The reputation crisis

For the Swiss financial centre as a whole the 1990s were a decade of reputational damage. In 1990 the Geneva sociologist and National Councillor Jean Ziegler, professor at the University of Geneva since 1972, published *La Suisse lave plus blanc* with the Paris publisher Seuil. As its title announced, the book attacked Switzerland as a place where criminal money was washed clean.⁵ The debate on dormant accounts of Holocaust victims, the work of the Volcker Committee from 1996 and the Bergier Commission from 1996 to 2001, which Chapter D.I treats, brought the conduct of Swiss banks during the Second World War before a world audience. The cases of the assets of Ferdinand Marcos, of the Nigerian dictator Sani Abacha and of the Peruvian intelligence chief Vladimiro Montesinos, investigated mainly in Geneva and Zurich, kept the theme of illicit assets in the international press until the end of the decade.⁶

Lugano was less exposed to the international scandals than Geneva and Zurich, but it carried the burden of the Italian cases. In the Italian press of the 1990s the Ticino bank account became the symbol of the hidden wealth of Tangentopoli, and Italian politicians repeatedly accused Switzerland of harbouring the proceeds of tax evasion and corruption. The Swiss reply, which the Ticino banks and authorities made their own, was to distinguish sharply between criminal money, against which Switzerland had armed itself with the offences of 1990 and 1994, and undeclared money, which remained a matter for the client and his own tax authorities. This distinction defined the business model of Lugano's private banks until the Italian tax amnesties of 2001 to 2009 and the end of banking secrecy vis-à-vis Italy, which Chapter E.II describes.

Common misconception. The *conto Protezione* is sometimes cited as proof that Swiss banks knowingly served Italian corruption in the 1980s. What the Italian courts established concerned the Italian payers and recipients and the intermediary who held the account. The record consulted for this chapter contains no finding that the Lugano bank or its staff knew the purpose of the payment, and no Swiss proceedings against the bank in this matter are known. The case illustrates the risk that the banks' due diligence agreement of 1977 was meant to control: an account held by a nominee

whose identity was known to the bank, while the true beneficiary and the purpose of the payments were not.

3 Notes

1. Gautieri, Ticinonline, 21 June 2018 (as above) (lawyer Francesco Moretti; laundering of about 75 billion old lire, 1993–2000; judgment of the Corte delle Assise criminali di Lugano of 16 June 2003, fourteen years; appeal judgment of April 2004; Federal Court, November 2004).
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2. ICTY, "Carla Del Ponte" (as above). ↩
3. Federal Criminal Court, "Cronistoria" (as above) (amendment of the Criminal Code of 22 December 1999, in force since 1 January 2002, with new federal powers in organized and economic crime). Former Art. 340bis SCC and Art. 24 of the Swiss Criminal Procedure Code of 5 October 2007, SR 312.0. ↩
4. Federal Criminal Court, "Cronistoria" (as above) (federal act on the seats of the Federal Criminal Court and the Federal Administrative Court adopted on 21 June 2002; start of activity on 1 April 2004 in temporary premises in Bellinzona). See Chapter J.II. ↩
5. Jean Ziegler, *La Suisse lave plus blanc* (Paris: Éditions du Seuil, 1990), bibliographical data and professorship at the University of Geneva (1972–2002) according to "Jean Ziegler", French Wikipedia, https://fr.wikipedia.org/wiki/Jean_Ziegler (consulted as a last resort).
↩
6. Federal Finance Administration, *Geldwäscherei* (as above), for the Marcos case of 1986 and, at 37, the Abacha case. ↩

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