Rudolf Elmer
Nauengasse 11
8427 Rorbas
Switzerland

Mr. President of the European Court of Human Rights
Dr. Linos-Alexandre Sicilianos
Council of Europe

67075 Strasbourg Cedex

Rorbas, October 13th, 2019

Complaint against the fourth rejection of an application submitted by Rudolf Elmer to the European Court of Human Rights (ECHR) as determined by Dr. Daniel Rietiker, an Officer of the Court and a Swiss National who has now dealt with, and rejected, all four of Rudolf Elmer`s complaints (att. 01) filed in the period from 2008 to 2019

Dear Mr. President Dr. Sicilianos,

I, Rudolf Elmer, Swiss National and a layman[1], would first like to apologise that it has become necessary to bring this complaint to your attention but I do feel it is important so as to ensure that **complaints generally, and in my case specifically, are treated fairly and correctly** and **according to the rules of the ECHR** and **the Courts case-law[2],** particularly where the admissibility of a complaint is not reviewed by a judge, and also **to protect the reputation** of the European Court of Human Rights. My fourth complaint which is also an **internationally sensitive case[3]** was turned down on Aug 26th, 2019 **(att. 05)** in my view wrongly, on the basis of overlooked or ignored evidence and in manner that creates procedural unfairness.

[1] I have totally run out of assets and can no longer afford a lawyer to deal with this issue, therefore, do accept this complaint of a layman.

[2] Quoted from *"Reporting on the implementation of the revised rule on the lodging of new application (02/2015),* **(att. 23/2).** There it is stated: *"very exceptional cases where an application raises important issues of interpretation of the Court`s case-law or of the Convention* ***which are of a significance for the effective functioning of the Convention mechanism beyond the individual circumstance of the case****."*

[3] Quoted from *"Reporting on the implementation of the revised rule on the lodging of new application (02/2015)*, **(att. 23/2)".** There it is stated: *"The examination whether an application complies with Rule 47 is conducted according to guidelines approved by the Plenary Court and under the supervision of the President of the Court who is consulted in all cases which raise new aspects of application of the procedure or which are borderline or* ***sensitive in some way."***

Here is **a summary** of the issues I would like to address with you in this letter:

1) **My application was filed on time and with sufficient evidence to support this** namely with proof that the Federal Court of Switzerland sent its written decision in my case to my lawyer on February 13th, 2019, four and a half months after the verdict was delivered on October 10th, 2018 **(att. 06).** The decision was received by my lawyer on February 14th, 2019 who then submitted a complaint to the ECHR on my behalf on August 14th, 2019. This was evidenced in my original application **(att. 24)** to the EHCR with a copy of the decision of Federal Court of Switzerland, including a date stamp on the back page of the decision, as well as the date stamp of receipt by my lawyer. This evidence of a timely filing **(att. 06 particularly 6/1 and 6/4)** seems to have been wrongly overlooked or ignored by the senior lawyer at the Office of the Registry, Dr. Daniel Rietiker, who then relied on mistaken or false reasoning to turn down my fourth complaint to the Court.

2) My entire legal case has not been definitively resolved at the national level **(att. 07)** and according to the ECHR case-law, the complainant is not obliged to lodge a complaint even after the six-month period (Varnava and others against Turkey [GK] § 157). However, as my case continues to be heard in the **Swiss courts after 14 years**, I believe I am within my rights to seek final adjudication from the ECHR in my case.

3) In addition, according to the case law of the ECHR, where there is a dispute as to the timeliness of the application, it is up to the accused State to prove that the six-month period has not been observed and to prove on which day the complainant became aware of the decision (Sahmo v. Turkey (Indemnification)). I submit, therefore, that in this case, it should not be up to the Officer of the Registry respectively Dr. Daniel Rietiker to reject my application and ask that you review his decision, with a view to revoking it. I further request that you do so on the bias that my case raise "new aspects of application of the procedure on **which are borderline or sensitive in some way"**.[4]

4) Finally, and forgive me if I have not read the process at the ECHR for determining admissibility correctly, but I understand that it should be up to a **German-speaking judge** to determine admissibility and therefore to turn down an application (see the German FAQ on the ECHR website **(att. 12)**) and not up to a Swiss jurist working for the Registry. I am concerned about the principle of legal independence when **a Swiss jurist decides about a complaint against Switzerland.** However, the situation is even more concerning as Dr. Daniel Rietiker has now dealt with all four of my complaints against Switzerland and he has turned down all of them (two of them have been reviewed by a single judge) since 2008. The general public is very likely to see a risk of bias if a Swiss jurist deals with all the complaints of a Swiss whistleblower and turns them down for a fourth time. On top of this, Dr. Daniel Rietiker has a part-time position **(att. 25)** with the Swiss University of Lausanne, thus financially dependent in the State which is the subject of the Complaint which should, I submit, be considered as well when he works for the ECHR and deals with Swiss complaints.

[4] Quoted from *"Reporting on the implementation of the revised rule on the lodging of new application (02/2015)*, **(att. 23/2)".** There it is stated: *"The examination whether an application complies with Rule 47 is conducted according to guidelines approved by the Plenary Court and under the supervision of the President of the Court who is consulted in all cases which raise new aspects of application of the procedure or* ***which are borderline or sensitive in some way."***

5) The office of Dr. Daniel Rietiker has failed to follow several rulings of ECHR which relate to how my case should be assessed in terms of its admissibility. These are set out in this letter and the cases are published on the website of the ECHR.

6) In addition, if it is determined somehow on an independent review, that I have not complied with the six-month rule, or that I have not provided herein adequate explanation for an alleged failure to comply with the six-month-rule, I further raise important issues of interpretation of the Court`s case law and its convention in this letter which, I submit, justifies the exception under article 47 § 5 **(att. 22, 23)** to reapply for considering the complaint of Aug 14th, 2019 **(att. 24)**.

7) The above are fully set out in the body of this letter und "Facts of the Complaint and Request for Action".

Based on this reasoning I request a re-application of the complaint filed on Aug 14th, 2019 **(att. 24)** on article 47 in general and also article 47 § 5 **(att. 22 and 23).**

Facts of the Complaint and Request for Action

1) **Introduction**

I recognise ECHR has to deal with plenty of complaints and that most of them do not fulfill the requirements for admission. I am also aware of the fact that the current work load of the Court is extremely high. However, it is vital that complaints are treated fairly and correctly at the entry point of admission and that this is done in such a way so as not to violate the rules and guidelines of the ECHR, and in a manner, which is in line with the Court`s jurisprudence and its Rules. When applications to the court are not handled correctly, there is a risk to the reputation of the Court and to the rule of law.

There are plenty of observers and supporters who have followed my legal cases and my actions of civil disobedience against Swiss banking secrecy for more than 14 years now. Some EU politicians and several whistleblower organisations globally were extremely concerned by the Swiss Federal Court ruling of October 10th, 2018 and have reported on my long legal battle for justice on their web pages[5] and in the international media.

During these 14 years fighting for justice through the Swiss courts up to the Federal Court of Switzerland – which has yet again returned part of my case to a lower court - I have filed four separate complaints **(att. 01)** with the ECHR. All of them were turned down without exception and without any way to appeal the decision. This has shocked me and my family and those who have supported me and the principles at stake in my case.

Two of my complaints were filed on my behalf by the law firm Tethong, Blattner AG, Zurich who defended me in respect of the charges against me of violating Swiss banking secrecy which has now ended with an acquittal. The reason for my acquittal, finally accepted by the Swiss Court after 14 years, was that Swiss Banking secrecy could not be applied because I was not employed with a bank domiciled in Switzerland. My lawyer first addressed this issue in 2005 but Swiss prosecutors and judges simply ignored these key arguments for a decade and continued to pursue me through the courts.

I do think it is worth mentioning, that included among the many thousands of people supporting me in my fight against Swiss banking secrecy are: His Holiness Pope Francis; the former President of the European Parliament, Martin Schulz, and his successor David-Maria Sassoli; and Members of the European Parliament including Ana Gomes, Stelios Koulouglou and others as set out in the attached list. **(att. 02).** Most of these have written supporting statements in their letters to me which I also attach **(att. 03).** There are already two international documentaries out about my life. One of them "A Leak in Paradise" won first prize at the documentary festival in Cannes (France) 2012. As well a well-known New York film company is working on another documentary about my life and my fight in the Swiss and European Courts to stop the legal persecution against those who challenge Swiss banking secrecy, and by extension, Switzerland. It is notable that even Pope Francis stated, after having received my letter **(att. 04)** and after so many Swiss banking scandals, that

[5] Tax Justice Network: https://www.taxjustice.net/2015/07/01/guest-blog-how-switzerland-corrupted-its-courts-to-nail-rudolf-elmer/
AnsTageslicht (Germany): https://www.anstageslicht.de/themen/finanzsystem/whistleblower-rudolf-elmer-gegen-bank-julius-baer/

„El secreto bancario es el robo más grande de la humanidad y tiene consecuencias catastróficas para los más pobres de la tierra"

Taking all this into account, I believe that the proportionality of the Swiss state's prosecution of me under Swiss Banking secrecy laws for 14 years without: any ability to avail myself of whistleblower protections recognized by the ECHR[6], the Council of Europe[7], and now by the European Union in a new Directive[8]; a debilitating costs order awarded against me and so no compensation for the pain and suffering caused to me and my family; and ongoing burden of the outstanding court hearings in my case, should be a matter of legal significance for the European Court of Human Rights. I appeal to you, as the President of the European Court of Human Rights, to review the basis for the rejection of the fourth application made to the ECHR (**att. 05, 06. 24) with** a view to revoking this decision.

2) The facts

My latest complaint to the Court was turned down in a letter dated August 26th, 2019 **(att. 05)** and the reason given was that the conditions laid down in Article 47 of the Rules of Procedure of the Court of Justice had not been fulfilled. The stated reason was as follows:

"Not all relevant copies of the documents proving compliance with the six-month deadline have been submitted, in particular the proof of delivery by Swiss Post concerning the judgment of the Swiss Federal Supreme Court of 10 October 2018 is missing."

The letter was signed by:

Mit freundlichen Grüßen
Für den Kanzler

p.p. 

Daniel Rietiker
Rechtsreferent

While this letter is clearly from the Registry rather than from Dr. Daniel Rietiker personally, it has to be assumed that it was sent with Dr. Daniel Rietiker's approval, and that he had agreed with the grounds for turning down the complaint under Article 47 of the Court rules.

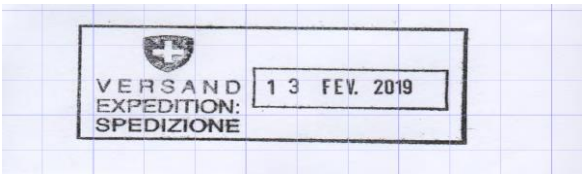
However, my lawyer attached to the complaint (Nr. 44421/19 Elmer c. Suisse) **(att. 24)** the Federal Court judgement of October 10th, 2018 **(att. 06)** which clearly showed the written ruling was sent by the Federal Court on the February 13th, 2019 **(att. 06/4)**, therefore, the ruling left the Federal Court of Switzerland, Lausanne by mail on February 13th, 2019. She also included the receiving date stamp of her law firm, Ganden Blattner AG, Zurich, which showed it was received by her on February 14th, 2019 **(att. 06/1).** Dr. Daniel Rietiker had all the evidence to determine that my application fulfilled the requirements of filing a complaint to the ECHR within the six-month time-limit – including proof of the date my lawyer received the decision **(att. 06)** of the Federal Court. Below is a copy and paste of the evidence as found on the back of the last page of the Federal Court`s ruling **(att. 06/4)** which represents

[6] Guja v. Molova ECHR (Application Nr. 14277/04), February 12th, 2008 (see https://hudoc.echr.coe.int/eng#{"itemid":["001-85016"]}

[7] Recommendation Committee of Ministers adopted Recommendation CM/Rec(2014)7 on the protection of whistleblowers (See https://rm.coe.int/16807096c7)

[8] Directive Of The European Parliament And Of The Council on the protection of persons who report breaches of Union law, 25 September 2019 (https://www.consilium.europa.eu/en/press/press-releases/2019/10/07/better-protection-of-whistle-blowers-new-eu-wide-rules-to-kick-in-in-2021/

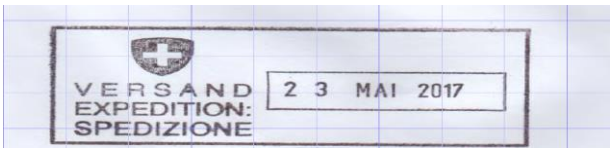
the dispatching date of the Federal Court of Switzerland **(evidence on the back of the last page of Federal Court ruling which was possibly ignored by mistake (att. 06/4)**:



It appears this was overlooked by Dr. Daniel Rietiker respectively his deputy. However, I submit that confirmation of **the Federal Courts of Switzerland is clearly the stronger and the more crucial evidence than a postal confirmation** and therefore I refer again to the application filed by my lawyer on August 14th, 2019 **(att. 24)** and letter of August 26th 2019 **(att. 05)** signed on behalf of Dr. Daniel Rietiker turning down my application.

There is no suggestion that my lawyer has tampered in any way with the date stamp of her law firm showing receipt of the decision on February 14th, 2019 (**att. 06/1**), which would be considered a crime in Switzerland (as Dr. Daniel Rietiker would know as a trained Swiss lawyer).

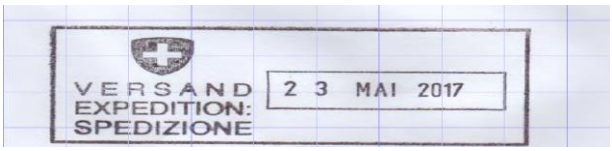
It should be noted that while my previous respectively third complaint (Nr. 80845/17 Elmer c Suisse), submitted by my lawyer on November 20th, 2017, was accepted (though eventually turned down on different grounds) the admissibility criteria under Article 47 were clearly met and accepted by Dr. Daniel Rietiker **(att. 08)** even though the verdict of the Federal Court was May 12th, 2017 **(att. 09)** and the date stamp on the back page of the Federal Court decision indicates it was sent on May 23rd, 2017 **(att. 09/3 and 09/4)**. My lawyer filed the complaint at the ECHR on Nov 20th, 2017 **(att. 10 particularly 10/3)** respectively 192 days **(att. 01)** after the Federal Court verdict was delivered and the 180 days after the decision was sent to my lawyer, respectively within the six-month-period. See below a copy and paste of the date the decision was dispatched by the Federal Court of Switzerland to my lawyer **(evidence on the back of the last page of Federal Court ruling which was accepted by the ECHR att. 09/3)**:



In other words, it was accepted that my lawyer provided confirmation of the Federal Court decision May 12th, 2017 with my handwritten date note of May 24th, 2017 **(att. 09/1, the Federal verdict was sent to me, not to my lawyer, therefore, I made the note received May 24th, 2017)** showing when it was dispatched by the Federal Court and received at my home address. Consequently, the six-month-period started to run May 24th, 2017 **(att. 01)** on the application (Nr. 80845/17 Elmer c. Suisse) when the verdict was originally delivered by post (on May 24th, 2017) to the personal address of Rudolf Elmer **(att. 01 and 09/4).** This is without any doubt a precedent set by the Registry of the ECHR. In addition, my lawyer or myself at the time did not need to prove receipt (May 24th, 2017) by postal confirmation even though my complaint was only submitted on 20 November, 2017 (**192 days** after the verdict was issued on May 12th, 2017 by the Federal Court of Switzerland and within 180 days the Federal Court ruling was received on May 24th, 2017).

It is clear that Dr. Daniel Rietiker treated two of my complaints differently in respect of the starting date of the six-month-period, accepting the dispatching date on the back of the last page of the court ruling and more importantly that in my previous case the delivery date of May 24th, 2017 was clearly accepted as the starting date for the six months period. As well, Dr. Daniel Rietiker would be fully aware

that it can take up to four months for the Federal Court of Switzerland to provide the written decision. He did not request proof of the delivery by Swiss post when reviewing my earlier complaint (Nr. 80845/17 Elmer c. Suisse) and did not turn it down based on Article 47. It has to be assumed that he checked the back of the last page of the Federal Court ruling of May 23rd, 2017 and accepted the following data stamp that the application was within the six-month-rule **(evidence on the back of the last page of Federal Court ruling <u>which was accepted by the ECHR, att. 09/3 and 09/4</u>).**



In conclusion, Dr. Daniel Rietiker set clearly a precedent himself with the complaint Nr. 80845/17 that the date stamped on the back of the last page of the Federal Court ruling is sufficient proof of the dispatching date of the Federal Court of Switzerland and that the next day is determinant as the first day of the beginning of the six-month-period as the receiving date for the complainant.

In addition, according to the German "Leitfaden zu den Zulässigkeitsvoraussetzungen, 2014" **(att. 11)** available on the EU website it is stated in Paragraph 97 **(att. 11/3):**

> *"Es ist Sache des Staates, der sich darauf beruft, dass die Sechsmonatsfrist nicht eingehalten wurde, zu beweisen, an welchem Tag der Beschwerdeführer Kenntnis von der Entscheidung erlangt hat (Sahmo gegen die Türkei (Entschdg.)).*

<u>Translation:</u>

> *"It is for the State, which claims that the six-month period has not been observed, to prove on which day the complainant became aware of the decision (Sahmo v. Turkey (Indemnification)).*

The conclusion according to the ruling Sahmo v. Turkey is that it is up to the accused state to claim that the six-month period has not been observed if there is doubt, rather than Dr. Daniel Rietiker when this is clearly a sensitive case, if not a borderline one[9]. Besides, the requested confirmation of delivery by the Swiss post has not been subject to turning down the previous complaint Nr. 80845/17 Elmer c. Suisse **(att. 08, 15).**

3) Risk of an appearance of bias by the public

According to the German FAQ, the 50 questions available on ECHR webpage **(att. 12),** it is stated in Paragraph 16

> *«Frage: Kann ein Richter es ablehnen über eine Beschwerde zu entscheiden?*
>
> *Antwort: Ja, Richter müssen sogar davon Abstand nehmen, eine Beschwerde zu behandeln, mit der sie zuvor in andere Eigenschaft befasst waren. In diesem Fall erklärt sich der Richter für befangen und wird durch einen anderen Richter des Gerichtshofs oder, im Falle des nationalen Richters, durch einen ad hoc Richter ersetzt.»*

[9] See Notes 2, 3 and 4.

Translation

> *"Question: Can a judge refuse to rule on a complaint?*
>
> *Answer: Yes, judges must even refrain from dealing with a complaint that they have previously dealt with in another capacity. In this case, the judge declares himself biased and is replaced by another judge of the Court or, in the case of the national judge, by an ad hoc judge."*

If this rule is applied to judges why is it not applied to Dr. Daniel Rietiker who has already dealt with three previous Swiss complaints (Nr. 25154/08, Nr. 45572/17 and Nr. 80845/17 **(att. 08, 13, 14)** of mine and my wife before he had to deal with complaint Nr. 44221/19 **(att. 05, 24).** This simply supports the suspicion that he might have been biased.

4) A single judge decides whether a complaint is admissible

According to the German FAQ, the 50 questions available on the ECHR website **(att. 12),** it is stated in Paragraph 25

> «Frage: In welche Abschnitte gliedert sich ein Verfahren vor dem Gerichtshof?
>
> Ein Einzelrichter erklärt eine Beschwerde für unzulässig, wenn die Unzulässigkeit von vornherein feststeht. Gegen seine Entscheidung gibt es keine Rechtsmittel."

Translation

> *"Question: What are the stages of proceedings before the Court of Justice?*
>
> *A single judge shall declare a complaint inadmissible if the inadmissibility is established in advance. There shall be no appeal against his decision."*

Dr. Daniel Rietiker is according to my understanding "Kanzler", "Gerichtsreferent" (meaning Registrar) and a senior lawyer of the ECHR but he is not a judge. This is demonstrated by my complaint Nr. 80845/17 **(att. 15)** where a single judge Nebojsa Vucinic of Hungary decided that the German drafted composed complaint was not admissible according to article 24 para. 2 and 27 of the convention.

5) Rejection of my complaint is not in keeping with the two recent court rulings of the ECHR

The Federal Court of Switzerland decided on Oct 10th, 2018 **(att. 06/3)** to cancel the entire court ruling of the Higher Court of Zurich **(att. 07) in** my case and to return it to the Higher Court because there was e.g. a prepayment for returning the data requested which the Federal Court did not accept. Thus, it is possible that on rehearing the case, the court will increase the court fees imposed on me and/or make changes to the verdict. In any event, the Higher Court has to review and release the entire ruling again and come up with a new written ruling. This means there are outstanding court proceedings still pending in my case (**att. 07).** Consequently, the entire case has not been definitively resolved at the national level. Dr. Daniel Rietiker should have known that a complainant is not obliged to lodge a complaint **even after the six-month period** (Varnava and others against Turkey [GK], § 157; Chapman vs Belgium (Indemnification), § 34) in circumstances where a case is not yet fully resolved at the national level.

The fact that **that the entire case has still not been definitively resolved at the national level after 14 years** was clear from the verdict of the Federal Court of Switzerland October 10th, 2018 **(att. 06/3)** which was part of the complaint filed by my lawyer on August 14th, 2019 **(att. 24).** Dr. Daniel Rietiker or the

person who signed the letter turning down my complaint could easily have learned it from the verdict of the Federal Court of Switzerland stating (quote, **att. 06 particularly 06/3**)

> *"Im Verfahren 6B_1318/2016 wird die Beschwerde von Rudolf Elmer teilweise gutgeheissen. Das Urteil des Obergerichts des Kantons Zürich vom 19. August 2016* ***wird aufgehoben und die Sache zur neuen Entscheidung an die Vorinstanz zurückgewiesen****.»*

Translation

> *"In proceedings 6B_1318/2016, Rudolf Elmer's complaint was partially upheld. The judgment of the Higher Court of the Canton of Zurich of 19 August* ***2016 is set aside and the case is referred back to the lower court for a new decision.****"*

Consequently, rejecting my application contradicts the two mentioned court rulings above and ECHR`s rules and guidelines. The six-month-requirement under Article 47 is clearly not a valid reason to reject my complaint.

6) Practice of the ECHR

There has not been a request for the three previous complaints filed on my behalf to the ECHR to provide proof of delivery by Swiss post even though the six-month-period was not observed for example in the complaint Nr. 80845/17 (date of the verdict May 12th, 2017, filing date Nov 20th, 2017, 192 days **(att. 01)**). In addition, in the first filling Nr. 25154/08 there was not even a Federal Court Ruling available due to the fact Prosecution of the State of Zurich delayed the investigation for five years until lower court dealt with the matter Jan 11th, 2011. Nevertheless, the complaint was accepted **(att. 13)** by the ECHR. It was finally turned down four years after the filing date June 10th, 2008 but only after it was eventually decided by a single judge J. Laffranque on May 15th, 2012 **(att. 17).**

The conclusion is that for the complaint Nr. 80845/17 **(att. 08, 09)** the ECHR relied on the date stamp of the law firm Tethong Blattner AG, Zurich, the dispatching date on the back of the court ruling of the Federal Court of Switzerland. Further, the ECHR accepted my 2008-complaint notwithstanding the lack of a final verdict from the Federal Court of Switzerland and therefore set a precedent in how it handled my case.

In the interests of clarity, the 2008 filing was necessary due to death threats made against my family, and particularly against a six-year-old child (the age of my daughter at the time) **(att. 18);** the delaying tactics of the prosecution office of Zurich and Zurich`s courts; ongoing harassment from my former employer Julius Baer, including the stalking of my family; the suicide attempt by my 11-year old daughter due to the pressures of the prosecution and judges made on my daughter **(her suicide note: att. 19/1)** and doctor`s certificate **(att. 19/2).**

At the time, the only hope I had as a responsible father was to make these matters known to the ECHR and to get public attention on our situation, which happened when WikiLeaks published the complaint in 2008. Dr. Daniel Rietiker received in the attachments to my application, the suicide note **(att. 19/1)** and the drawings of my daughter showing her in a coffin **(att. 20),** the death threats **(att. 18)** when he turned down the complaint lodged with Court by me and my wife (Nr. 45`472). However, rejecting our complaint some four years after it was first lodged, meant that our ordeal continued for another 11 years after 2008.

7) Credibility of a Swiss law firm and the principle of good faith

I humbly submit that a failure to accept the date stamp of the international and well-respected law firm Tethong, Blattner AG, Zurich as proof of receipt of the Federal Court of Switzerland's decision in

my case challenges the credibility of a Swiss law firm which is obliged to uphold the law in Switzerland **(att. 06/1).** and to act honestly and truthfully in all their interactions with all courts of law.

In my view the turning down my fourth complaint under Article 47 violates the principle of good faith. Notwithstanding whether Dr. Daniel Rietiker questioned the veracity of the date stamp proof of dispatching date of the Federal Court of Switzerland **(att. 06/4)** and the receipt as provided by my previous law firm Tethong, Blattner AG, Zurich in 2017, he accepted the complaint Nr. 80`845/17 with the filing of 192 days after the original verdict was delivered. This should be considered **as a precedent of the ECHR in relation to applications submitted**, at least those that he has considered in relation to me the case related to my person in my view.

8) Principle of independence

Dr. Daniel Rietiker is a doctor of law as well as a senior lawyer at the ECHR, but he is not a judge of the ECHR. He is a part-time lecturer of international law at the University of Lausanne, Switzerland **(att. 25).** Therefore, he not only earns income from his work at the ECHR but it has to be assumed, in partially dependent on his income from the University of Lausanne, where he is listed as a part-time lecturer and that he has, understandably, a professional reputation to uphold in Switzerland.

Consequently, third parties may query Dr. Daniel Rietiker`s objectivity when it comes to cases brought against Switzerland at the ECHR. I submit that such a risk of the appearance of bias can and should be avoided. While in my opinion a ”Kanzler/Gerichtsreferent" should never handle complaints from his country of origin, in my case, where the same person, a Swiss national, has now rejected a complaint against Switzerland for a fourth time from the same Swiss complainant, the only way to remove any perception of bias is to have an immediate independent review of the decision to reject my latest complaint to the ECHR. I request that this is done with a view of revoking said decision.

Dr. Daniel Rietiker sent a letter related to the latest complaint dated September 10th, 2019 **(att. 21)** to the German Bundestagsabgeordneter Fabio De Masi stating (quote)

> *«bezugnehmend auf Ihr Schreiben vom 28. August 2019, teile ich Ihnen mit, dass die jüngste Beschwerde von Herrn Elmer vom 14. August 2019 am 26. August 2019 aus **formellen Gründen** eingestellt wurde.»*
>
> Translation
>
> *"With reference to your letter of 28 August 2019, I inform you that Mr. Elmer's most recent complaint of 14 August 2019 was closed to **several formal reasons** on 26 August 2019."*

In the German letter Dr. Daniel Rietiker stresses the fact that there were **several formal reasons** why the complaint had to be turned down for formal matters.

As a matter of fact, in the letter of August 26th 2019 **(att. 05)** there was only one reason mentioned (proof of delivery from the Swiss post) and not any other reason or even several formal reasons. However, the German letter to the German Parliamentarian clearly gives impression that my lawyer Ganden Tethong made several formal errors when she had filed the complaint, which is simply not true.

As is known in the legal community, formal errors are a very serious matter for professional lawyers, particularly when a lawyer can be held liable for making such mistakes. Therefore, I have to strongly request that Dr. Daniel Rietiker refrains immediately from using the plural when explaining (aus formellen Gründen) why the complaint was turned down.

As a lawyer of German mother-tongue he is by profession a master of the German language and therefore he must know how the information would come across with the German Bundestagesabgeordneter, that multiple errors were made by Rudolf Elmer's lawyer, when this was patently not the case.

9) Overly strict interpretation of the Rules

If Dr. Daniel Rietiker found that the date stamp by my lawyer on the Federal Court ruling and the dispatching data on the back of the court ruling of the Federal Court of Switzerland was not sufficient, or he felt it was an absolute requirement to have proof of delivery by Swiss post, it should be taken into account that it is common practice, even in Switzerland, that courts request that such information is provided within a few days. It should also be noted that my lawyer is willing to sign an affidavit confirming the date of receipt of the judgement. It is rare to simply turn down a case for formal reasons without any review of the merits of the claim. To be crystal clear such a complaint would never ever be turned down in Switzerland if a proof of delivery by Swiss post is missing at the initial filing and without being given an opportunity to provide the proof.

In my view the swift rejection of my complaint in a letter dated August 26th, 2019 **(att. 05)** only 12 days after the complaint was submitted without taking into account a) the stamp date of receipt of the decision by my lawyer, dated February 14th, 2019 **(att. 06/1)** b) the stamp date of the dispatching date on back page of ruling of the Federal Court of Switzerland **(att. 06/4)** and c) the fact that court proceedings against me in Switzerland are ongoing **(att. 06/3)** some 14 years after they were commenced, **raises serious questions of fairness.** The material content of the complaint, which has been reviewed by several law professors in line with ECHR case law, and found it provide a strong claim against Switzerland for a failure to provide a fair trial (under Art. 6.2 ECHR) to a whistleblower who was acquitted of the crime of breaching Swiss bank secrecy only after 14 years defending himself through the courts and at the same time was issued with a debilitating costs order of CHF 320 000 in court fees and whilst rejecting any claim for compensation for his 217 days solitary confinement, or for the request by the by the prosecution to impose a life-long ban from working in the finance industry (which was eventually also turned down by the Federal Court of Switzerland) even though the Federal Court of Switzerland concluded that Rudolf Elmer was not guilty of having violated Swiss banking secrecy.

10) Article 47

Having read and reviewed Article 47 **(att. 22)** which is published on ECHR webpage in detail, not only by me but also by my lawyer and others, it is not mentioned that it is obligatory to provide proof of delivery by Swiss post or by any other post office. It appears that this is a new rule which has not been communicated or written down on the webpage. Nor is it in any rules and guidelines available for third parties. There is no doubt that such a crucial factor needs to be explicitly mentioned in order to be able to use it for the only and simple reason to turn down a complaint.

In view of the fact in the aforementioned "Leitfaden zu den Zulässigkeitsvoraussetzungen, 2014" **(att. 11)** it is for the State, which claims that the six-month period has not been observed, to prove on which day the complainant became aware of the decision (Sahmo v. Turkey (Indemnification)) and not the admission office, or Dr. Daniel Rietiker, or his deputy to do so in a ruling of the ECHR .

11) Exception under Article 47 § 5 (att. 23)

While I do not agree and believe that I provide adequate evidence at the time of lodging my complaint that I complied with the time limits for doing so, at this point in time it is fact that according to Dr. Daniel Rietiker the application of complaint Nr. 44221/19 failed rule 47. Therefore, I refer to the above

article that applications which fail to comply with Rule 47 may still be allocated for decision by a judge in certain cases. The reasoning is

1. **I have provided an adequate explanation for not complying with the rule** in this letter stating that my lawyer date stamped the Federal Court ruling **(att. 06/1);** the fact that the dispatching date on the back of the last page of the court`s ruling was overlooked or ignored **(att. 06/4)**; the attached copy of letter of the Higher Court of Zurich that the case is still pending on the national level **(att. 07)**; the precedent set by Dr. Daniel Rietiker complaint Nr. 80845/17 with the 192 days between verdict date and filing date **(att. 01 and 09),** principle of good faith and overstated judicial formalism **(Paragraph 8 and 10);** no explicit information on the website of the ECHR to provide conclusive proof and evidence of delivery by post.

   I submit this is an adequate explanation of why I did not comply with the rule of Art. 47.

2. **Mine is an exceptional case where I raise important issues of interpretation of the Court`s case-law or of the Convention** which are of significance for the effective functioning of the Convention mechanism beyond the individual circumstances of the case on the bias of the following arguments:

   2.1. Firstly, the Court`s case-law requires that a case has to be definitively resolved at the national level which is not the case related to the complaint Nr. 44221/19 **(att. 16, 06/3)** explained herein and therefore, a complainant (in this case myself, Rudolf Elmer), is not obliged to lodge a complaint within the six-month-time limit (Varnava and others vs Turkey [GK], § 157; Chapman vs Belgium (Indeminifcation), § 34).

   There is evidence not only in the ruling of the Federal Court of Oct 10th, 2018 **(att. 06/3)** but also with the letter of the Higher Court of Zurich **(att. 16)** that an entire new verdict will have to be issued by Swiss courts, after court proceedings of more than 14 years and most importantly, when none of the convictions have to this day become res judicata according to the Higher Court of Zurich **(att. 16).**

   2.2. The Court`s case-law states according to ruling (Sahmo v. Turkey (Indemnification) that it is up to the State, which claims that the six-month period has not been observed, to prove on which day the complainant became aware of the decision.

   This is in conflict with reasons for rejection complaint Nr. 44221/19 **(att. 05, 06, 24)** where it is stated that it is up to the complainant to prove that the six-month period has been observed by providing evidence of the proof of delivery by Swiss post. Therefore, it is in contradiction to the Court`s case-law of the ECHR.

   Lastly, as a matter of fact the Federal Court of Switzerland provided the information on the back of the last page which is the dispatching date of the Federal Court and the following day, February 14th, 2019 is the beginning of the six-month-period **(att. 06/1, 06/4).** The day when the complainant becomes aware of the court`s decision.

2.3. Independence of a Registrar should not be treated differently from that of a judge when it comes to interpreting the rules of the Court.

2.3.1. According to FAQ 50 Questions Nr. 16 **(att. 12),** (quote)

"Question: Can a judge refuse to rule on a complaint?

Answer: Yes, judges must even refrain from dealing with a complaint that they have previously dealt with in another capacity. In this case the judge clarifies that he/she is biased and will be replaced by another judge."

In my view he should have refrained from dealing with my complaints after he turned down the second.

2.3.2. From the ECHR`s point of view, this practice where "Kanzler/Gerichtsreferent" (registrar) deals with multiple complaints from the same complainant concerning the country a registrar originates from and possibly earns income from, as in this case (see section 8) Principle of independence, page 10) raises a potential issue of bias and potentially damages the reputation and credibility of the Court.

I humbly request that this issue must be addressed in relation to my complaint Nr. 44221/19 **(att. 24)** specifically but importantly, as a matter of significance affecting the effective function of the court as it set a striking example of the importance of the reinforcing the appearance of the legal independence of the Court.

In summary, I request the decision to reject my complaint be revoked on the grounds of having provided adequate explanation for not complying with the rule 47 and that mine is a very exceptional case that raises important issues of interpretation for the Court`s case-law and of the convention which are of significance for the functioning of the Convention mechanism beyond the individual circumstance of my case.

The rejection of complaint Nr. 44221/19 **(att. 24)** I further submit rises new aspects of application of the procedure on a borderline and sensitive case, given the impact of Swiss banking secrecy on the capacity of Swiss whistleblowers to adequately defend themselves and without any law to protect whistleblowers in the private sector in Switzerland. This results in the disproportionate use of the courts and the legal against whistleblowers which can then result in the absurd situation, as it did in my cases, where the whistleblower is finally acquitted after years of legal battle through the Swiss courts to clear their name, only to have a debilitating cost order granted against them and no compensation for any of the ordeal they or their families have experience. In my case, I was finally acquitted 14 years after my disclosures where made, a pyrrhic victory, as I face further punishment in the form of CHF 320`000 court fees or even more and without any compensation for the 217 days I spent in solitary confinement, the 14 years of interrogation and court trials or for the wrongful and false request made to the Court by the Prosecution Office to slap a life-long ban from ever working in the financial industry again.

I submit that this is a very important and it is a sensitive case for the ECHR, given its implication for the capacity of whistleblowers to defend themselves in Switzerland, and the impact of the overreaching nature of Swiss banking secrecy on the capacity of law enforcement and policy makers to tackle corruption, and the importance that politicians, including the European Parliament, the Council of Europe and even the Holy Pope Francis, have attached to the outcome of this case.

12) Conclusion

In conclusion I submit that the rejection of my complaint as set out in the letter of August 26th, 2019 **(att. 05)**

- does not comply with the rules and guidelines of the ECHR and the two ECHR rulings (Varnava and others vs Turkey [GK], § 158; Chapman vs Belge (indemnification)). § 34) and

- should be immediately and independently reviewed on the basis

    a. that adequate proof of complying with the 6-month time limit was provided when the complaint was lodged or

    b. that the case should be considered exceptional Article 47 § 5 as it raises important issues of interpretation of the Court`s case-law of its Convention and for all the other reasons I have set out in this letter.

On this basis, I request that a full and independent review of my case is performed within the next 30 days.

A list is provided with all the attachments and those attachments are linked in the text with numbers in order to find the supporting documents.

If more information is required my lawyer will provide them including resubmitting any of the documents which were submitted at the time of lodging my application on August 14th, 2019 **(att. 24)**.

Finally, due to the fact that this is such an important case and my supporters have invested much time and money, particularly in a crowdfunding initiative to help me, it is my duty to provide them with a copy of the letter of August 26th, 2019 rejecting my complaint and a copy of the letter Dr. Daniel Rietiker sent to Parliamentarian Fabio De Masi, dated September 10th, 2019 in order to explain why the ECHR turned down the complaint Nr. 44221/19. I also want to let you know in advance that in order to demonstrate that I have tried to achieve justice despite the excruciating social, financial and professional death I have experienced over these years, many years of court proceedings I am forced to provide my supporters, as listed below, and the general public with a copy of this open letter to you.

Yours faithfully,

Rudolf Elmer

Cc:

Dr. Daniel Rietiker (without attachments)

The holy Pope Francis (side letter and attachments)

Martin Schulz (former President of the European Parliament, side letter and attachments)

David Maria-Sassoli (current President of the European Parliament, side letter and attachments

Ana Gomes, EU parliamentarian (without attachments)

Fabio De Masi, former EU parliamentarian and German Bundestagsabgeordneter (without attachments)

Stelios Kouloglou EU Parlamentarian (without attachments)

Margret Kiener Nellen Swiss Parliamentarian (without attachments)

Lawyer Ganden Tethong (representative of Rudolf Elmer, without attachments)

Mathew Valencia (The Economist)

Many other supporters of my crowed funding initiative to achieve justice

Attachments: according to the separate list