

DANIEL ZAPPELLI: “I AM AGAINST IMPERIALISM OF DEMOCRACY”



DANIEL ZAPPELLI:

AN OUTSTANDING SPOKESMAN, POLITICIAN WHO IS CONSTANTLY IN THE PUBLIC LIGHT AND WHO IS NOT AFRAID TO SPEAK HIS MIND, EVEN IF HIS THOUGHTS OFTEN SEEM TOO HARSH FOR GENEVA’S TRANQUIL LANDSCAPES. THIS IS DANIEL ZAPPELLI – ATTORNEY-GENERAL (AND AT THE SAME TIME – HEAD OF POLICE) OF THE CANTON OF GENEVA, ONE OF THE MOST IMPORTANT FINANCIAL AND POLITICAL CENTERS OF THE WORLD. HIS PREDECESSOR, BERNARD BERTOSSA, WAS WELL-KNOWN IN RUSSIA, AS HE CHOSE RUSSIAN POLITICIANS AND BUSINESSMEN AS HIS PRIMARY TARGET. EVEN IN SWITZERLAND, BERTOSSA’S NAME IS STILL CONSISTENTLY ASSOCIATED WITH THE FIGHT AGAINST THE

RUSSIAN MAFIA – EVEN IF OPINIONS ON WHETHER THIS MAFIA WAS IMAGINARY OR TRUE VARY GREATLY.

ATTORNEY-GENERAL ZAPPELLI HAS AN ENTIRELY DIFFERENT AGENDA IN COMBATING FINANCIAL CRIMES THAN HIS PREDECESSOR. HE ALSO HOLDS COMPLETELY DIFFERENT VIEWS ON RUSSIA AND ITS NEIGHBORS IN THE CIS – AND HAS TO DEAL WITH COUNTERPARTS FROM RUSSIA’S PROSECUTOR-GENERAL’S OFFICE AND OTHER PROSECUTOR’S OFFICES IN FORMER USSR REPUBLICS ON A REGULAR BASIS.

OVER THE PAST YEAR, PIR CENTER PRESIDENT AND EDITOR-IN-CHIEF OF *SECURITY INDEX* JOURNAL DR. VLADIMIR ORLOV (WHO ALSO HEADS GENEVA-BASED CENTRE RUSSE D’ETUDES POLITIQUES) MET DANIEL ZAPPELLI ON MULTIPLE OCCASIONS. BELOW ARE EXCERPTS FROM THEIR LAST ENCOUNTER THAT TOOK PLACE IN OCTOBER 2007 IN MONACO DURING THE SUMMIT ON TRANSNATIONAL CRIME.

SECURITY INDEX: A few years ago, after a series of scandals in Geneva, many Russian businesses decided to avoid your canton and your city. They did not think it was a favorable climate for the Russian business any more here – in contrast with more than a century-old tradition of welcoming Russians in Switzerland and in its French-speaking part. Still, Geneva remains an active and attractive financial and trading center, particularly in the oil sector, for companies with Russian, Ukrainian, Kazakh, Uzbek origins... Can it, though, become even more active and more attractive? What is your approach here?

ZAPPELLI: My approach is simple. There is the key principle in criminal law - everyone is presumed innocent until proven guilty. So I do not think that Russian people should be presumed

guilty until proven innocent. This principle of law applies to everybody, absolutely everybody, including the Russians. This is what we learn in the first year of University.

It is true that as Russia changed its system, and because of the perestroika, it went through huge changes, and some elements inside or even outside Russia were *rotten*.

This is normal consequence of changes.

One should not forget three things.

First of all, Russia has a Procurator General, and states within Russia – parts of the Russian Federation – also have Procurators. Russia is not a lawless state. There exists an established system in which criminals can be pursued for what they did, if they did something.

The second thing is that in Geneva, like everywhere in Switzerland, we implemented a quite strict system of checking people's background when people want to deposit funds in Switzerland. It is one of the strictest systems in the banking world. We assume that banks know what they do, and they are also aware of the consequences if they fail to run their checks, so this is an additional guarantee that when people come here, they are clean.

And the third dimension to it is what happens if we go after somebody. Just imagine the case, a purely theoretical case, in which we have somebody against who we have suspicions. If we suppose, for instance, that a Russian in Geneva has a fortune of an unknown origin, and if we suppose that this fortune is of a criminal origin, wouldn't it be the best thing to do to inform Russian authorities and tell them of the suspicions we have? Ask them whether they intend to launch the criminal procedures against this person? If the crime is supposed to have been committed in Russia, and the Russian authorities or the General Prosecutor decide not to pursue, then we should not be stricter than the Russian authorities themselves, and we should close the case and close the suspicions we have.

It's a simple system. We discussed that with my counterparts in Russia, and I think we should discuss this with the authorities on a cantonal and federal level in main financial centers in Switzerland: Zurich, Geneva, Lugano, Basel, maybe in Zug. This issue should be considered on the cantonal and federal level. This is something I want to be implemented in Switzerland, and it may be possible with a new General Prosecutor of Switzerland.

So these are my views which are indeed quite simple. They are based on the same principle I told you about before: everyone is presumed innocent.





SI: You've mentioned that you had discussions with the Russian authorities. How would you define cooperation of your office with your Russian counterparts? Would you like to improve it or are you happy with how it goes?

DZ: The cooperation is not bad, indeed, but it can always be better. But we have to trust each other - without trust there is nothing which can be done. We encountered some difficulties recently in the Yukos case: in the recent decision from the Swiss Federal Tribunal it was decided there was no reason to freeze

the money. The Federal Tribunal said that it looked more like a political game (I don't know if the term "game" is appropriate, perhaps a "political fight" is a better term), than a criminal one and decided to release all the assets. And this is a bad sign: for the first time, the Federal Tribunal, which is the highest judicial authority, tells states: you are mixing politics and criminal law, and that does not do.

So this is a sign that something should be improved. But that obviously necessitates discussion with both Swiss and Russian authorities.

In this particular case, the example is inverted – it is the Swiss authorities who decided that this particular Russian company and its former owners were not to be pursued. So I think in any case things change, obviously.

My vision is a pragmatic one: either I can prove that somebody is guilty and I have evidence of that, and then I go further, or if I don't – then I don't. And as the evidence can only be gathered in Russia, if the Russian authorities either do not cooperate or do not share the same suspicions, then I should not go further.

SI: Well, let's move from Russia to a more general question: how do you view the process of your office's cooperation with other countries on financial crimes? I remember you told me once that Switzerland cannot be "more saint than the Pope" – in other words, it cannot behave better than the countries where the origin of the money is, so you just cannot require cooperation if the country X does not want to cooperate fully.

DZ: I think we should distinguish between two types of cases.

First, there are cases where there is a victim of a financial crime. It could be a big company that is a victim of a swindle, or a case where money was stolen and then put somewhere else, including in Switzerland. In these cases, it is pretty simple: everything depends on the capacity

of the victim to act quickly in the country where the crime was committed, and respectively on how good his lawyers are.

More often, the cooperation between lawyers in different countries is faster than cooperation between states. Let's imagine that the crime was committed in Switzerland, and then the money went to three different countries, including Switzerland, Liechtenstein, and England. Very often the best solution is for the victim to launch criminal complaints in every country, and to start to gather evidence from those countries. Then the lawyers can exchange the evidence they gathered more quickly than the states can communicate between themselves. So the international cooperation between states is often slower than the cooperation between the lawyers. This is my opinion as a former lawyer and as a current General Attorney.

However, we don't usually run into problems with this type of cases. The problems start when we begin a criminal procedure against someone who is not accused of anything, and then if the country does not cooperate, the case is closed, so everything depends on whether we have a victim or not.

SI: Many of us in Russia still have a stereotype of Switzerland as an island in Europe. However, at least on the financial crimes issue, the money laundering issue, it is already hard to imagine that Switzerland is still an *island*. How do you see current relations between Switzerland and EU on financial crimes? Should they be further transformed or maybe not at all?

DZ: I think that the main difference of Switzerland is that it really still is an island – but an island exactly in the geographical center of Western Europe. So in any case, Europe cannot do without Switzerland. If you have a spot in the middle, you have to go through this spot, you cannot go around it. The main difference between Switzerland and other countries is its banking secrecy policy. And the main issue is: will Switzerland lose its secrecy policy or will it abandon its views on it?

I think Switzerland has no financial interest in losing its banking secrets and banking secrecy policy. It should preserve them, in my opinion.

Very often there are two views: different countries want to fight the fact they lose money because people do not declare their income to tax authorities. The tax crimes are not considered crimes in Switzerland. And then there is no money laundering for the purpose of tax evasion. I think it is up to the countries around to have better fiscal or tax systems. If they want to keep the money inside, they should be clever and make sure that people want to remain in their own country, even if it means they pay less tax than before.

As far as I'm concerned, I think that Switzerland should continue to have a discussion with EU, but should not abandon the existing system. This is my personal view on this issue.

SI: Stereotypes often play bad tricks with all of us. Another one is “democracy”. What does this word really mean, particularly in societies in transition? Wouldn't it be a mistake to think that the democracies are perfect, and that repeating “democracy” hundred times would already help solve most issues?

DZ: Switzerland is a very special type of democracy in the sense that everybody can always contest the decisions of the government. It's a good thing in the sense that it is a real democracy, but it is a bad thing in the sense that things do not go very fast.

Sometimes you can block advancing of ideas for eternity: whether is it good or bad, I don't know. I'm accustomed to that, and it a system which works for me. But I think some nations, depending on their size, their history, their background – may not be ready for democracy, and for them, democracy would not be the best system.

We in the Western counties export democracy as if it were the best solution, as if you should be ashamed not to have a democracy. This is a wrong vision of the world. In my opinion, some countries simply could not work based on democracy. Sometimes it is better to have a good, strong, “despot éclairé”, as we call it in French: somebody who takes good decisions and makes sure that the people live well, are overall happy, and it should work for the people themselves. And then nobody contests the leader's decisions.

In big countries like Russia, - it is obvious that such countries need somebody strong who is able to take decisions.

In Russia, you have the Duma, you have a president, you have all the standards of democracy. But in such a big country you need somebody who is enabled to act in this type of democracy to make decisions and then implement them without those decisions being always contested or blocked.

And what I call *imperialism of democracy*, - this is what is not at all positive, is not good, and I am against it.

SI: People of Geneva know you well: you do not hesitate to make sharp comments, to express your point of view and to defend it. Your name and pictures are often on front pages of the newspapers. We have discussed global issues... but, as the Attorney-General of Geneva, what issues are of your primary concern?

DZ: My main duty is to make sure that Geneva is a safe place. I have to make sure that people abide by the law and criminals are sentenced. We need a clean financial place, and it's obligation for us to maintain this financial environment. It's my duty as well to make sure that people are not robbed, so I make sure that people who commit crimes are arrested and sentenced. My opinion is that we should have a bit more police visible. But Geneva is not like New York, However, it could be safer for everybody. So this is my main concern.