

Council of Europe Platform for the Protection of Journalism and Safety of Journalists

State reply from Switzerland

Bank Reyl Files Criminal Complaint

On 16 May 2025 the Swiss government was notified through their Permanent Representation in Strasbourg of an alert concerning Switzerland that was published on the Council of Europe Platform for the Protection of Journalism and Safety of Journalists. This alert concerns a criminal complaint by Bank Reyl against “unknown persons” over an investigative research that allegedly breaches the Swiss Banking Act (BankA), specifically Article 47.

Switzerland is deeply committed to the protection of all fundamental rights and recognizes the importance of media freedom for democracy and rule of law. For this reason, media freedom is constitutionally protected by Article 17 of the Swiss Federal Constitution. Given this constitutionally protected right, a balancing of interest is required in the application of legislation.

The current version of Article 47 BankA is the result of a decision by Swiss Parliament in 2015. During the debate the importance of privacy protection for bank customer data was recognised and certain Members of Parliament argued that it was not the role of media professionals or other parties to publish confidential bank customer data in the media. This special protection for bank customer data thus reflects the political will of the Swiss legislator.

Article 47 BankA makes the direct disclosure or publication of bank customer secrets – especially the sale of such information – a criminal offence. However, only those publications that enable the identification of a customer can be punished under Article 47 BankA and justifications (lawful acts) remain reserved.

Contrary to a similar provision in the Swiss Criminal Code concerning the criminal liability of publishing secret official proceedings, the criminal provision in Article 47 BankA does not specifically mention a need for a balancing of interests nor any exceptions for higher-ranking interests (such as for media professionals). However, media professionals are always entitled to invoke justifications (lawful acts) under the general rules of criminal law, if their publications are required or permitted by law respectively serve an interest of higher value (Article 14 and Article 17 Swiss Criminal Code). Should such a justification be recognised by the court, the act will be considered lawful and is not punishable. In a recent judgement, the Swiss Federal Court expressly recognised the exercise of media freedom as an act which may be required or permitted by law and thus be considered lawful.

In Switzerland, it generally lies in the responsibility of the judicial system to assess the balance of interests in each specific case. The Swiss Federal Court routinely considers the requirement for a balance of interests – as it is also required by the jurisprudence of the European Court of Human Rights – in cases concerning breaches of secrecy requirements. Up to date, there have been no cases where journalistic publications in Switzerland have led to an actual conviction under Art. 47 BankA.

The Swiss government will continue to follow this case closely. However, given the context of pending legal proceedings, the Swiss government – in line with its commitment to the rule of law and the principle of separation of powers – cannot intervene, make statements or take any measures.

Switzerland continues to fully support the Platform and is grateful for its important work. The Swiss government is at the disposal of the Platform for any further questions on this matter.