

## The Taxcast transcript, April 2025: Criminalising Journalists

**Naomi Fowler:** Hello and welcome to the Taxcast from the Tax Justice Network. I'm Naomi Fowler.

On the Taxcast this month – Switzerland: it's famous for its banking secrecy, and for years we at the Tax Justice Network ranked it number one in our Financial Secrecy Index as the world's worst global offender. It's dropped down to second place in recent times with the United States at the top of the corruption tree and with President Trump in power, the US position is unlikely to change for quite a long time. And despite some improvements Switzerland's made to its banking secrecy, when it comes to every big global data leak story, Switzerland's still pretty much guaranteed to be involved. It's never been the friendliest place for investigative journalists, but now they risk arrest, imprisonment and huge fines, and the situation could get even worse.

**Bastian Obermayer:** If I would go to Switzerland now, they could arrest me, and question me and put me to jail for up to three years just for doing mere journalism.

**Naomi Fowler:** This is Bastian Obermayer, one of the Pulitzer Prize winning investigative journalists who broke the Panama Papers story, Panama Papers story, and many other groundbreaking scandals.

**Bastian Obermayer:** And they even could have me for five years if they think that I would have made any profit and as we published a book on the stories, they, they might even do that, right? So um, I'm not, I'm not gonna go to Switzerland, which is really sad for me because I've got friends there and even family there, but yeah, um, I'm not taking that risk. I don't wanna land in a very comfortable Swiss jail.

**Naomi Fowler:** Bastian Obermayer is used to taking on the powerful, but the risks he describes really began the day he and other journalists started working on another big data leak story, which they called Suisse Secrets. For them, the story was clear. The world needed to know that Credit Suisse Bank had knowingly given safe haven to a hundred billion US dollars from corrupt politicians, criminals, spies, and dictators.

**News reader:** yet another document leak shedding some, uh, unflattering light on the workings of the international banking system. This time it's Credit Suisse...

**Second news reader:** Dictators, human rights abusers, drug traffickers, all among the account holders being revealed and what is called the Suisse Secrets leak. An insider at Credit Suisse delivered a trove of documents to German newspaper Süddeutsche Zeitung who shared it with a consortium of nearly 50 other news outlets. The data shows that Credit Suisse handled funds for dozens of corrupt politicians, money launderers, and intelligence officials notorious for torture, in fact according to current Swiss banking ethics rules, none of them should have been able to open an account. Such regulations though are rarely enforced, partly due to the country's long history of banking secrecy... [fade out]

**Bastian Obermayer:** In the beginning when we got the data and we looked at it, we were almost joking that, you know, ha ha, we're breaking this law because we are doing this investigation because it seemed so ridiculous, right? We're journalists, we thought, after all, they would look at that and would say, okay, there's enough, there's enough justification. We found so many bad actors there and the bank did not really do what it should have done so, um, we didn't really take it seriously, but then after we all met, the whole reporting team in Barcelona and we went through it again and again and again, and the first colleagues already said they were not gonna take any flights that would have stopped over in Zurich because they could be arrested in Zurich. So we thought, okay um, this is really serious and, and this is, this is gonna have a lot of implications, not only for me and Frederik Obermaier, my colleague, but for the whole Süddeutsche Zeitung team that was involved. So we made this very clear to everyone that they should not go to Switzerland in in the course of the next years, yeah. So, we, we definitely were concerned, yes.

**Naomi Fowler:** With investigations like these, big teams of journalists work together from many different countries, all following the data across borders. Over 160 reporters in 39 countries analysed the data leak from Suisse Secrets. 18,000 accounts holding, at times, a hundred billion US dollars. But for Swiss journalists who often partner with journalists like Bastian, they couldn't touch it, even though it's a story about one of their own banks, credit Suisse. This is Swiss investigative journalist, Oliver Zihlmann. He's co-head of the investigative unit at Tamedia, the leading publishing and broadcast media company in Switzerland.

**Oliver Zihlmann:** Suddenly this Credit Suisse data was, was there, and I don't know who the whistleblower is really, I really don't know, but it, it's something clear that it isn't some, some, uh, hack in Panama, you know, this is from Switzerland and this is, I, I, I guess it has to come from, from within the bank, or at least the possibility as very high. And then we took out this law, we looked

at it and were completely shocked then for the first time because before that it wasn't really a problem. But then we looked at it, we looked with our lawyers, we looked with specialists, and we saw that, that we do not have little chance, but virtually no chance ever taking this data even in our hands.

**Naomi:** Wow. And, and that's, this is in a democracy where you're supposed to have freedom of speech, right? I mean, uh, it's a shock.

**Oliver Zihlmann:** It is a shock because you know, usually when you have sensitive data, it's always a problem to publish that, I mean, it's, it's always a case, uh, where you have to weigh the public interest versus the privacy or other interests of the one you are writing about. That's, that's daily business, you know, and then you, you are weighing these things and you're trying to do the best to navigate as good as it gets. And then you publish, and then he can, he can still sue you and then it comes in front of a judge and he tells us, then in the end, have you weighed correctly or not? And if not, then you're being punished, so that's normal business. But here the law, and that is different here, the law doesn't provide this possibility. It is, it is automatic. So we could have had documents from our head of government being corrupt and publish that, it wouldn't change anything. The public interest doesn't come in at all. It is, it is automatic.

**Naomi Fowler:** Bastian Obermayer again:

**Bastian Obermayer:** This is ridiculous because there's no other democratic country that does have this kind of law, and, and so for me it's about public interest, and I do understand that it's in the public interest to protect people, banks from thieves. But if as a reporter, we find in stolen data things, anything that would point us to a crime, we *must* be allowed to report it. This is what journalism is for! And if we can't do that, it's not a free press, it's not a free society. So, so I'm very happy to have this, these kinds of discussions with everyone in Switzerland, but just not *in* Switzerland because I wanna be sure that I can go home after the discussion again.

What we do as journalists, we are not looking for like some unknown citizen that hides, I don't know, 500 euros or 5,000 or even 50,000, or even a 1000,000 euros in Switzerland. You know, we are going for public figures.

**Naomi Fowler:** Of course, it's not illegal to open a Swiss bank account. The details journalists researched and published were about people who should have raised clear red flags for Credit Suisse. It's ironic because in some ways Switzerland has reluctantly, under international pressure, agreed to exchange

information on bank accounts, but usually only with the most powerful countries who shout the loudest. Oliver Zihlmann again.

**Oliver Zihlmann:** Switzerland has changed a lot. We're not the James Bond villains from the sixties any anymore. One of the main things is that the banking secrecy towards very many other countries was lifted in 2009 and in the years later on because it just couldn't be contained any longer. So there is transparency to tax offices around, to many many country. Uh, the Credit Suisse data was very interesting because it was focused on those countries where it *isn't* open, you know, there are a lot of other countries in Saudi Arabia, where we still have the banking secrecy and the colleagues were looking at customers from those country where it is still intact, but it is lifted, uh, vis-a-vis Germany, France, and others. So, so Switzerland changed there a lot, but not its laws.

**Naomi Fowler:** So a few steps forward, but with the expansion of restrictions on journalists, Switzerland is taking many worrying steps backwards. The Swiss State has always been very active in protecting its banks. Going right back to the Banking Act of 1934, it's been a crime for its bankers to disclose client information to foreign entities, third parties or even Swiss authorities without the client's consent or without an official criminal complaint. But in 2008, the Swiss toughened up Article 47 of the Swiss Banking Act, otherwise known as the Federal Act on Banks and Savings Banks. Oliver Zihlmann again.

**Oliver Zihlmann:** The idea of the Banking Act Article 47 was always to protect the data, protect the clients from abroad coming here so that their country really don't know. But in 2008, after the financial crisis, there was really an enormous pressure of all governments abroad to really get the non-taxed riches back to their countries. And that's where we had a new development then.

**Naomi Fowler:** The Swiss made Article 47 even tougher, increasing the penalties for violating secrecy laws from three to five years, and increasing the fine. Public awareness was going up everywhere and governments around the world were becoming more motivated to recover unpaid taxes. The data leaks started flying out from Swiss banks.

**News reader:** Well, here's what we know so far, German newspapers are reporting that someone has information on around 1500 suspected German tax evaders holding Swiss bank accounts and that person's offering to sell this data to the German government for two and a half million euros. Now this information could apparently yield as much as 200 million euros in lost tax revenue. So Jennifer, how has Switzerland reacted then?

So now Switzerland is saying it will offer no legal help... [Fade]

**Naomi Fowler:** Bear in mind, all these leaks from Swiss banks had a kind of logic since Switzerland was and still is, one of the world's biggest global offenders in this area. There was just more money being given safe haven there than most other jurisdictions. Oliver Zihlmann:

**Oliver Zihlmann:** We had a lot of whistleblowers in 2008, 7, 8, and 9, who basically took screenshots from their clients and things like that, or even took out all the data, like Herve Falciani did in Geneva, and they took it out and they gave it to the tax man in Paris or I don't know where, in Germany, where those people then saw who has bank accounts in Switzerland and then could go after these people. And so Switzerland really lost a lot of data. And the chilling effect for the customers was that if there is a banking breach in Switzerland, no, let's say German who has black money in Switzerland, knew if they were part of the leak. So that led to really a massive flow out of black money out of Switzerland towards Germany because there everybody was insecure if Switzerland was even safe. And that in turn, uh, was making politicians in Switzerland very angry. And they say we have to get the law even tighter, so we are not only punishing with the prosecutor - the banker, that is since the thirties, but also the one who *transmits it*. So they added a new paragraph and said you're also punishable if you *take* this from a banker stolen data and give it out, and even more so if you sell it.

But during the debate, so this was, let's say the debate was 2000 9, 10, 11, 12, there was a big debate in parliament and then some some MPs said yeah, well, but the guy or the one who transmits it may not only be a fence, it may also be a journalist who receives a leak and wants to tell a story about tax fraud, about things like that, criminals being in Switzerland, and they will be immediately liable because they're transmitting into the public, not to someone, not to some foreign tax office who then pays him, but who does that in public interest. So the, so the MPs knew exactly what could happen with this paragraph but the very famous answer then came from one of the Liberal party who says, well, that's true, basically, but it's just not the duty of journalists to look at private bank data. So for him, it wasn't a problem. So it was passed the law and in July of 2015, it came into effect.

**Naomi Fowler:** Let's just get our heads around this change. In 2015, Article 47 was expanded to specifically capture and target third parties such as journalists and whistleblowers, and here's that moment in Parliament that Oliver mentioned, with the Liberal party MP there, really killing the notion that public interest is part of the job of a journalist.

**Swiss MP:** [Fade in] Dann wurde noch eine letzte Entkräftung gesagt, die Journalisten können dann ihre Arbeit nicht mehr machen, das hat Kollegin Marra gesagt. Und hierzu ist zu sagen... [Fade up] ...es gehört nicht zur Aufgabe von Journalisten, geheime, intime, persönliche Daten, die gestohlen wurden, in den Medien auszubreiten und die Persönlichkeitsrechte der Betroffenen zu verletzen. Das gehört schlichtweg nicht zu ihrem Job. FADE Bei all diesen Gründen bitte ich Sie, unserer Fraktion zu folgen und der Kommissionsmehrheit und auf die Vorlage einzutreten. [Fade out]

It is *not* the job of journalists to disseminate secret, intimate, personal data that has been stolen, in the media and violate the personal rights of the person that has been affected. That is simply not part of their job.”

**Oliver Zihlmann:** At the beginning when this law came into effect in 2015, actually for six, seven year, practically nothing happened because there, there are occasions where Swiss Bank data come into the possession of journalists, let's say Panama Papers or things like that. But this kind of data doesn't touch this new law because it was hacked or it was stolen or, I don't know how this data came to be in, in Panama, but far out of Switzerland, it wasn't a Swiss banker, you know, who took things out, who made himself liable on the Swiss criminal law, who then gave it to the journalist, who then transmits it. So in all these years, 15, 16 Panama Papers per all those investigations, a lot of Swiss bank accounts actually came up but this was never a legal problem because we didn't have a breach from a Swiss bank. And then suddenly this Credit Suisse data was there and that was now a leak obviously from inside Credit Suisse. At the end of the day, we, we really can't even touch it because transferring it would mean I get the data, I give it to my colleague, and then I'm already liable. So we had to decline, which was the first time in our international investigation, we had to decline although we were the specialists, of course, for Credit Suisse. So usually when you have a leak from a country, then the country itself is a very important partner. But this time, we said no, sorry, it's just impossible for us.

We don't wanna, we don't wanna have a paragraph saying you can do whatever you want. What we wanna have is that we have at least a chance to defend ourselves in court. I mean, we are divulging extremely little personal information out of leaks. We saw that with Panama Papers and others. And in every single case we have paragraphs and paragraphs, pages of pages of justification, why we are doing exactly that. And I mean, what people are being exposed as Swiss bank customers? Not the dentist, not my neighbour. It's usually either really convicted criminals, but more often foreign political exposed persons of autocracies and that's at the end of the day what we are exposing, and those are the one, and that makes me a little bit angry, those are

the ones who are profiting from this law. We are protecting the sorts of Putin and Aliev. That's what we are protecting here, when we, when we make a story, we say, you are taking very unwholesome customers, very political exposed persons.

**Naomi Fowler:** I mean, you can't get much more public interest than that.

**Oliver Zihlmann:** It's, yeah, you can't get more public interest because we say the people in those countries *need to know* that their leaders have bank accounts in Switzerland. They really need to know that, and I don't know why we are protecting these people with this very strict law.

As Swiss citizens, let's say my medical information or my information that is with my lawyer is much less protected than the foreign dictator is protected with his money in Switzerland you know. If he is exposed, then the prosecutor comes. If some Swiss press, some, let's say, irresponsible Swiss press would divulge, uh I don't know, medical secrets, it would be, let's say less harsh the law than in the case of the foreign dictator. Uh, I can't wrap my head around that they're doing that because, um, yeah, it, it came out of this battle, you know, then in 2008 and 9 against those data thieves who were selling data and politicians were really angry but in my opinion, they made a law that wasn't very well thought through then.

**Naomi Fowler:** Oliver and many Swiss journalists started working hard to raise awareness about Article 47. It's been widely condemned by freedom of speech advocates, including the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Irene Khan. She wrote to the Swiss government and raised at the highest levels at the UN what she says is quote - normally a problem in authoritarian states - close quote.

**Oliver Zihlmann:** So what happened then was the, the lower chamber of the Swiss Parliament they took it into their hands to look at that, and they passed a motion, uh, giving, uh, a mandate to the government to look at that and if they also, if the government as well sees a problem with press freedom, coming up with a solution. So this, this passed the lower chamber, the government itself, uh, responded and said they were willingly looking at that and evaluating that. And then it had to go to the upper chamber as well, so it had to pass two chambers before it really can reach the government. And the upper chamber completely rejected that. They say it's no need at all to look at that, we're completely fine with this law, and even more so, they took the opportunity to say, well, in our opinion, it's not only leaked bank data that are the problem, where we are completely fine with the law as it is right now, despite what the

UN or, or the lower chamber says, we have to actually *extend* what we are now forbidding with the banking secrecy to perhaps all other data as well, all stolen data. So they sank the motion completely, so this, this motion is gone. And they made a new one, giving a new question, let's say, to the government. And this time the wording is, please dear government, look at if it is possible to actually forbid the handling of *all* data that has been illegally obtained. And since this one didn't have to go to both chambers, that is now the one that reached government. So the government is now not looking, uh, certainly not looking only at the banking secrecy, but at all data that has been gathered illegally. That would be the end of investigative journalism, basically in Switzerland. So initially it was handled quite well, but then it turned around 180 degree and is now going into a direction where nobody really knows what's coming out in the end.

**Valentin Rubin:** My name's Valentin Rubin. I'm policy and advocacy manager at Reporters Without Borders Switzerland. We stand for the interest and the safety and security of journalists worldwide, be that physical threats, legal threats, political threats.

Article 47 of the Banking Act has created some, I have to say, absurd situations and the Swiss journalists, the Swiss media, who in theory would be the experts for Swiss banking, could not participate in this investigation out of fear that they would be punished to years in prison or 250,000 francs, which is about 270,000 euros. And obviously that would be a far too high price to pay for a journalist to work and unfortunately they had to watch the others do the reporting. Even for a big newsroom, that's a lot of money, and not talking about the small newsrooms.

And that of course, is a situation that we at RSF Switzerland consider absolutely unacceptable because it does limit the journalistic work and important works, uh, in a quite dramatic and drastic way.

The global finding that we at RSF had last year is that journalism in general is being put under pressure directly from the government or from the legislature or from parliament or from the authorities. And that does fit exactly into that pattern. Article 47 in Switzerland is such an example where journalists are being put under pressure from the state.

**Naomi Fowler:** And so if you are accused as a journalist of breaching Article 47, how far could a public interest defence apply if that's used as a defence by journalists in Switzerland?



**Valentin:** It could apply, but only if the courts decide to do so. Because in the law it's not enshrined, so in the law it's not given that it has to be considered, that it might be of public interest or not, it's just, it's left open. So that would mean once a journalist is being accused, he would have to rely on the courts that they interpret the law in a way that would favour his position or her position. And it's just a very big uncertainty that would just leave the situation up to the court.

**Naomi Fowler:** Yeah, obviously that's not a chance that journalists in Switzerland will want to take.

**Valentin Rubin:** No, especially that situation is a dramatic result of this, of this law.

**Naomi Fowler:** We heard earlier from journalist Oliver Zihlmann how the Swiss Parliament, under pressure to reconsider legislation that's silencing the press, have ended up making the situation even worse. Here's [00:29:00]  
Valentin:

**Valentin Rubin:** There has been a discussion that's been going on for more than a year in Switzerland that does not ease the situation, but really make it more difficult for journalists in general, that it should not only be applied for documents in the financial or banking industry, but in general for leaked documents. That would be a catastrophic development for journalism in Switzerland. It's not a binding discussion or binding documents that are being issued right now, but just to show you that the discussion is unfortunately going in the wrong direction.

**Naomi:** Yeah, and I mean the, that, that spread from financial investigations could, could be something like 'Me Too' type cases that journalists are working on, right?

**Valentin:** Yes, it could be, uh, some sexual abuse. It could be corruption in general. It could be environmental issues. It would apply to all sorts of subjects, and it would ultimately lead to companies being able to just distribute the information they want and journalists could only report on these informations that are distributed by these companies, or by the government or by the authorities. And that of course has unfortunately nothing to do with investigative reporting anymore.

**Naomi Fowler:** And where a state is actually breaking international law, as Switzerland is accused of here, the consequences never just stop at the borders of one country. I asked Bastian about that.

**Naomi:** We know that when, when these types of laws are enacted, there's a creep and it starts to influence other countries. What's bad for Swiss journalists is, is going to be bad for journalists everywhere eventually, right?

**Bastian Obermayer:** Yeah, that's quite possible. I don't think that it's, it's gonna affect the European Union in the near future because they, there seems to be a movement a bit away from those practices in Switzerland. But of course, you know, if, if, if you are a government and you are annoyed by reporting of one or another journalist and you're friends with a banker and the banker's also very annoyed about this kind of journalism then, then you might might be tempted to say, why not try this this way, right?

I'm really curious to see which path Switzerland is gonna go down now because there, there's even movement in Switzerland to make this harsh law even more problematic, right? So they moved to see if they could get rid of it after our investigation, and instead doing this, they now move to see if they can even make a harsher law out of this article 47. And yeah, we did not expect that.

**Naomi Fowler:** No, no, no. This is good for business, you know, the wealth managers of the world, they're really tuned into these type of things. They see legislation like this and they go, ah, this is the place for, uh, my very, uh, rich and powerful clients to put their money because it's gonna be safe from journalists like you.

**Bastian Obermayer:** Sure.

**Naomi Fowler:** And now in Switzerland itself, journalists are again up against the power of the state. And a Swiss Italian bank called Bank Reyl. Although the bank is even under investigation by the Swiss state itself, that doesn't help journalists. Bastian Obermayer, from the relative safety of Germany has been one of the journalists working on a story looking at alleged violations of financial regulations at the bank.

**Bastian Obermayer:** The stuff that we've uncovered in the latest story about Bank Reyl was about the family of Azerbaijani Dictator Aliiev and the daughter of the Khazak ex autocrat Nursultan Nazarbayev, and about the son-in-law, former Uzbek President Karimov and about Leonid Reiman, a very rich, former Russian minister and close advisor to Vladimir Putin. Those are already public

people and it should be just completely ordinary for journalists to be allowed to do that because this is our job.

We know that there's a FINMA investigation and FINMA is the Swiss financial regulatory authority, and they are looking at Bank Reyl. They seem to be looking at negligence on dirty money. This seems to be what FINMA is looking at and, and because we knew parts of this, the bank is now going after us. And funny enough, they use exactly Article 47, which is no surprise of course, because this is exactly what the law is made for, right? To help the banks. So they are using the Article 47 in a, in a letter that they sent us and threaten us with this Article 47. And yeah, the bank seems to have not done things in a proper way, and this is why now the Swiss authorities - not the bad, bad journalists - but the *Swiss authorities* are going after them.

**Naomi Fowler:** Hmm. And even though the Swiss authorities themselves are going after the bank, you still have a threat, a threat under Article 47 from the bank under state law?

**Bastian:** Yeah, yeah, yeah, yeah. They seem to think that we know things and that we have seen things that we should not have seen because it's forbidden under Articles 47 to see it, but that's, that's already enough for them to go after us.

**Naomi Fowler:** Incredible.

**Bastian:** Which is the idea of it, right? It's the whole idea of Article 47 is to safeguard the banks and to safeguard their business and, you know, not to make the banks and Switzerland look, look bad. This is my interpretation here, but for me it's very obvious.

**Naomi Fowler:** Yeah. Um, it's one thing for a journalist to be threatened by rich and powerful people that you're investigating. This happens all the time. We expect it.

**Bastian Obermayer:** It does. Yeah.

**Naomi Fowler:** But it's an, this is a completely different thing to have actually *the state* going after you for reporting on rich and powerful people.

**Bastian Obermayer:** Yeah, I mean, they're not gonna shoot us right? It's Switzerland, it's our neighbour and they are really perceived as a, as a tiny

nation, you know, with those pretty lakes and those wonderful mountains, and it just occurs that they're also going after journalism.

What they told us also in the last 15 years with every new leak, they said, yeah, like, look, this is a window into the past, this has all changed. Nothing of this is still going on. And then you get the next leak and you find the same kind of people again, and you get the next leak and the same kind of people again. So I, I don't really think that they really want to change. I think they are looking for maybe a better environment in the next years, who knows what happens if there's gonna be a peace between Russia and America's Trump, right? Maybe the, maybe the sanctions are gonna fall and then I'm pretty sure we are gonna see the Russian oligarchs back in Geneva and Zurich, with coffers of money so, um, and maybe that's what they're waiting for. Maybe it's not, we don't know. But we know in the meantime, they're going after journalists!

**Naomi Fowler:** It's clear that Article 47 of the Swiss banking law must be changed. Here's Valentin Rubin of Reporters Without Borders in Switzerland:

**Valentin Rubin:** We at RSF Switzerland see mostly two changes or adjustments that would ease the situation. One would be to add some sort of phrase or some sort of clause to say that public interest is being served and that is more important than restricting the press freedom. That is right now not the case, it does not differentiate between public interests or private interests. It's just, it applies in general. So that will be one thing that we, uh, would advocate for. And the other thing is that it would not be applicable to media reports. But at the moment, both of these suggestions are not realistically reached in within the next months or years. We see that this is unjust and this should be appealed, but I mean, who are the journalists to, to, to fight this in the perspective of, of the legislators there? Just the lobby for journalists, is very small compared to the lobby for, for the banking industry, unfortunately.

**Naomi Fowler:** Yes, journalists need all the support they can get in a world where politicians are serving the interests of money and not the public interest. We need them to be able to do their jobs, and to do their jobs well. Journalist Oliver Zihlmann again:

**Oliver Zihlmann:** We're certainly looking at years, I don't have any hope for a quick change at all. But on the long run, we are in the right here, and we're not a dictatorship so at the end of the day I guess we will come through, or I have at least hope, but it will take a long time.

**Naomi Fowler:** Yes. In this race to the bottom, there is no bottom, there's no end. Bankers, and the finance sector in general will always press for more. Unless we resist, protect our journalists, protect the public interest, and protect our democracies. You can read more on all this in the show notes. That's it for this month on the Taxcast. Thanks for listening. We'll be back with you next month. Bye for now.