

Corruption. Millions of US dollars, stemming from bribes from oil deals, are blocked on Geneva bank accounts. What shall be done with it?

Kazakh gate

By Marc Badertscher

*«Basle, 31/8/2005
Your Excellency, Federal Councillor of Switzerland,
May we draw your attention to a matter, which we think needs a Swiss intervention.
The Kazakhstan Coalition»*

The matter in question are 120 million US dollars. When, with such an amount at stake, someone only voices polite questions but not resolute demands, then they know – the matter is delicate.

The case is about money on Swiss bank accounts from corrupt dealings, and the letter to Swiss Federal Councillor Micheline Calmy-Rey is written by the Kazakhstan Coalition. This group of Kazakh NGO's, supported by Aktion Finanzplatz Schweiz in Basle, would like to see that the citizens of Kazakhstan will benefit from the money. A letter, a polite request – in one of the biggest corruption cases in US-American economic history.

It started at the beginning of the 1990s. The Soviet Union was just broken into parts, and in the newly established states around the Caspian Sea the new rulers began vigorously looking for mineral resources. With some success: In Kazakhstan oil fields nearly as large as the ones in Saudi Arabia were discovered. The US foreign ministry made a forecast that Kazakhstan would, in 2015, become one of the top ten oil producers. The smell of work and business was in the air, especially for the big US oil companies. But there was a problem: How to enter into the new country which was led by President Nursultan Nazarbayev fairly autocratically? How to secure oil-extracting licenses?

The answer had one name: James Giffen, called «the bagman» – the traveling salesman. Giffen, 64-year-old, son of a draper, spent half of his life in Central Asia. At first as a lawyer concerned with general commercial transactions with the Soviet Union, then as an expert for oil extraction and, finally, as an investment banker with his own bank: Mercator. According to news service Bloomberg he travelled 150 times to the Soviet Union, sometimes meeting Soviet head of state Michael Gorbachev or other high functionaries such as today's Kazakh president Nazarbayev. In a word: Giffen knew everybody – although he barely spoke Russian. With time his status changed. Businessman Giffen became an adviser – and with it much sought-after because of his knowledge.

There is an authenticated statement by Ed Chow, manager with oil giant Chevron, who said: «In the 1990s, it was impossible to speak with a Kazakh minister without Giffen's help – especially for an American company.» At first Giffen advised Chevron, after that the government of Kazakhstan, and then everybody at the same time. Nazarbayev – the «boss», as Giffen used to call him – made him ambassador and provided him with a Kazakh passport.

Other oil companies knocked at Giffen's door, and he arranged most of the billion-dollar-deals between them and the Kazakh government, using his own bank as intermediary. Between 1995 and 2000 alone, he earned 67 million dollars in legal fees. Giffen, a whisky lover, did not only enjoy earning, but spending as well. In 1998 he bought in a Geneva jeweler's shop jewelry for half a million dollars, and he presented President Nazarbayev with a luxury speedboat which cost 80'000 dollars.

That we know so much about Giffen has to do with the events in 2003. It was the year when Giffen's star burnt out. In 1999, after a tip-off from Belgium, the Public Prosecutor's office in Geneva started an investigation concerning money laundering. It centered on twelve accounts on Swiss banks. The Prosecutor discovered the names of Giffen and Nazarbayev, and informed the US-authorities which put in a request for legal aid. The Swiss Federal Office for Justice agreed to send files to the USA. This was the end. On the 30th of March 2003, James Giffen was arrested at Kennedy International Airport in New York.

The indictment included bribing of foreign officials. The twelve bank accounts in Geneva were in the name of the Kazakh oil minister and other high officials as well as in the name of Nazarbayev himself. According to the New York Public Prosecutor, Giffen has redirected 84 million dollars onto these

confidential accounts, in return for lucrative drilling rights to Amoco, Mobil, Phillips Petroleum and Texaco.

Giffen may be sentenced to 88 years in prison. But the process has been interrupted. Giffen paid one million dollars bail and is at liberty. The Public Prosecutor said that he never ever had a case in which so many witnesses expressed their fear to speak to the authorities.

The stop in the procedures has to do with the skillful strategy by the defense team. It applied for the admission of files concerning conversations between Giffen and fifteen former US-officials, among them Foreign Secretary James Baker and CIA director Robert Gates. The files are supposed to demonstrate that Giffen did not initiate the deals but followed instructions and was encouraged in his activities by the US Secret Services.

The argument makes sense: Giffen's close contacts with the center of power in Washington are well documented. When the US-authorities discovered that Kazakhstan was thinking of selling some MiG aircraft fighters to North Korea and Iran, they asked Giffen whether he could not intervene. Giffen traveled to Kazakhstan, and the MiGs remained in the country.

Giffen's lawyer William Schwartz said to the relevant court of jurisdiction in New York: «Your Honor, we will present documents which proof the interconnections.» Wayne Madsen, who follows the process very closely, writes on his homepage that some of the connections involved the notorious company Halliburton which at that time was presided by Dick Cheney. Cheney, in the meantime vice-president under George W. Bush, met, according to the «New York Times», with close aids of Kazakh's president Nazarbayev to discuss the matter of the Geneva accounts.

Kazakhstan. Fifteen million inhabitants, but the ninth-biggest country of the world, according to its surface. Not many of the newly obtained petrodollars reach the population: Forty percent of all Kazakh people live below the poverty line. At the latest vote, the party of the president achieved 43 percent. A further 19 percent went to the party of his daughter. On the corruption index of anti-bribery organization Transparency International, Kazakhstan ranks 122nd out of 146 countries.

Against this sorry state of affair, some NGO's in Kazakhstan would like to act. They are called Public Committee Against Corruption or For a Fair Kazakhstan and they have one purpose: to strengthen civil society. However, such an aim is costly, and at this point Aktion Finanzplatz (AFP) comes into play. «The blocked money in Geneva belongs to the Kazakh people. Therefore we propose that the millions are put into a fund which supports projects to strengthen the Kazakh civil society», explains Stefan Howald who works with AFP. One possibility would be to support independent journalist's schools or juridical training centers.

Switzerland already has some experience with funds supplied from confiscated money. For example in Nigeria, where millions, stolen by ex-dictator Sani Abacha and his clan and transferred to Swiss bank accounts, are now returned to Nigeria to support socially responsible projects, overseen by World Bank experts. The Swiss government and Swiss NGO's will have a say which experts will control the projects. In Peru as well, Switzerland helped to create such a fund. The Kazakh government has signaled that it wouldn't oppose the idea of such a fund, as Howald explains. The present interruption of the course procedures in New York would be the ideal opportunity, to prepare the political situation for such a fund. At the moment, Swiss Foreign Minister Micheline Calmy-Rey would have some scope for action.

But the Federal Department for Foreign Affairs holds the view that, in the first instance, the American justice has to conclude the procedures. But the Department agrees with the fundamental idea of returning blocked money to its country of origin.

Recently, the international debate about returning illegitimate money has received a new basis. Article 51 of the Anti-Corruption Convention by the UNO provides for transferring blocked assets to the country of origin. The convention comes into force on the 14th December of this year; Switzerland has signed it, but not yet ratified.

But the big question is: What, in the case of «Kazakhgate», counts as the country of origin? And who may dispose over the money? What happens if Giffen is convicted? What if he is acquitted?

«It will be decisive, how one answers the question, who the victim of the deal is», says Howald. «We are of the view that the bribes were a part of the purchase price for the oil contracts. Accordingly, the money belongs to Kazakhstan.» However, it would also be conceivable to argue that the oil companies are the injured party because the bribes were additional costs to the agreed purchase price. The process in New

York will be vital to decide the question, who the victim was.

Today, however, some victims are already clear. For example journalist Sergei Duwanow. He wrote in Kazakhstan about the Geneva accounts and landed in prison. Or Lira Baisetowa, chief editor of opposition newspaper «Respublika2000». She spoke with former Geneva Public Prosecutor Bernard Bertossa about the affair and published the interview. Shortly afterwards her daughter was kidnapped and murdered. Just recently, the authorities closed «Respublika2000». According to several Internet forums, the Geneva bank account affair was in the last year the most important domestic subject in Kazakhstan.

Swiss Federal Councillor Micheline Calmy-Rey answered in a letter to the Kazakhstan Coalition that Switzerland, together with partners in Kazakhstan and the USA, was looking for a way to return the money to its rightful owners.

This is how diplomacy sounds.

In Kazakhstan, presidential elections are taking place this winter. The constitution would have permitted Nazarbayev to wait one more year. However, he asks now, prematurely, for the vote of his people, in December, one month before the procedures against James Giffen will restart in New York.

This is politics.

INQUIRIES IN GENEVA

Apart from the case in the USA, the inquiries in Geneva into possible money laundering by Giffen are not yet concluded. Public Prosecutor Daniel Zappelli maintains that at the moment Switzerland has to wait until the other countries act. According to him, it is still too early to decide on the use of the blocked millions. «Everything is possible. One can consider everything.»

According to legal experts there are several scenarios. Even if the US-authorities would like to confiscate the blocked millions and use it, as is theoretically possible, for its own purposes, there remains a certain scope of action to Switzerland. The reason lies in the so-called splitting: the blocked assets would be split between the USA and Switzerland. The usual deal is fifty-fifty, but this is negotiable.

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