

UBS judgment not based on French law, lawyers say

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Lawyers acting for UBS have accused French judges of ignoring legal arguments and caving to public pressure to hand down a penalty against the Swiss bank that has no basis in law.

On 20 February, the [Criminal Court of Paris found](#) Swiss bank UBS and its French subsidiary guilty of facilitating tax evasion. The French National Financial Prosecutor's (PNF) had accused the bank of illegally concealing assets worth €10 billion in Switzerland on behalf of its French clients.

The court fined UBS group €3.7 billion, its French subsidiary €15 million, and ordered the group to pay the French state €800 million euros in damages. The court also gave five former UBS executives suspended sentences ranging from six to 18 months and ordered them to pay fines ranging from €300,000 to €50,000 after finding them guilty of laundering the proceeds of tax evasion.

UBS and the individuals have filed an appeal against the verdict. The cases are expected to be heard by the Paris Court of Appeal in 2020. At the appellate court, the PNF will have to convince a fresh panel of judges that the conduct was grave enough to justify the penalty.

Lawyers who worked on the case pointed out that only 20 pages out of the 200-page ruling are focused on legal responses to the defendants' arguments

Members of the defence counsel, who did not want to be identified, added that the ruling reflects poorly on the three judges – president Christine Mee and associate judges Marie-Ange Le Gallo and Clément Bourrelly – who heard the case, saying they lack experience in adjudicating complex financial cases.

Mee is an experienced judge from Marseilles. She is new to the Criminal Court of Paris having [joined the court a month before](#) the UBS trial started in October 2018. Le Gallo joined the Criminal Court of Paris as [a judge in July 2017](#). Meanwhile, Bourrelly [graduated from the National School of Magistrates in 2017](#). He is a floating judge, who steps in to preside over cases when other judges are unable to attend a trial.

In particular, Denis Chemla at Allen & Overy in Paris criticised how the judges calculated the penalty against UBS. He said that though the French state regularly claims damages in large white-collar crime cases, the amount is typically reflective of the costs of the investigation and trial and rarely exceeds €2 million. “Beyond the standard paragraph about the judges’ finding this amount to be adequate compensation, there is no explanation to how the judges came to the figure of €800 million,” Chemla, who represented UBS Group, said.

“There is a lot of public pressure on this case and France wants to look tough on white-collar crime, but this judgment is not one that is based on engagement with the law,” he added.

Robin Löff at Debevoise & Plimpton in Paris queried how judges calculated the €3.7 billion fine against UBS. He said that there is an apparent inconsistency in how the judges arrived at the figure. Löff said that the judges stated that the basis for calculating a fine should be based on the amount of unpaid taxes, but then proceeded to calculate the fine with regard to the total assets deposited by French clients in UBS. If the fine had been calculated on the basis of unpaid taxes, he said that the maximum would have been about €1.5 billion. Löff said that the fine imposed on UBS is therefore either wrong in principle or the reasoning set out for calculating the fine is “misconceived”.

Kiril Bougartchev at Bougartchev Moyne Associés in Paris, who represented Philippe Wick, head of UBS France’s International desk in the case, said that his client deserved a judgment based on law. “Moral consideration is a matter for philosophers and legal consideration is the matter for lawyers, courts, and judges,” he said.

Bougartchev said that the judgment didn’t demonstrate how it found his client guilty of laundering the proceeds of tax evasion.

UBS penalty: a warning to others

In light of the eye-watering penalty handed down after the trial, experts told GIR that the historic case demonstrates that companies should carefully consider accepting settlement proposals from French prosecutors.

UBS [famously refused](#) to enter into a French version of a deferred prosecution agreement, known as the judicial public interest agreement (CJIP) in 2017.

At the time, UBS general counsel Markus Diethelm told French newspaper JDD that the €1.1 billion figure the bank was offered was “unthinkable vis-a-vis our shareholders as well as vis-a-vis other jurisdictions with which we have negotiated”.

[HSBC was the first corporate to sign a CJIP](#) in November 2017 to settle a long-running investigation into the provision of tax avoidance facilities to wealthy French nationals. The bank was made to pay what was then the largest corporate penalty for criminal conduct in French history, €300 million. That was followed by French bank Société Générale’s \$1.3 billion settlement [with French and US authorities in June 2018](#) to settle bribery and financial market manipulation charges.

Although the bottom line may be a big motivation for corporates looking for a resolution, Bryan Sillaman at Hughes Hubbard & Reed in Paris said that individuals might not feel the same way. Sillaman said that a corporation may be more willing to reach a quick and efficient resolution, even if it means significant financial penalties, whereas individuals – who face the threat of incarceration – may be more willing to continue to challenge a prosecutor’s case.

The PNF declined to comment.

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