

Article 271 of the Swiss Criminal Code

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The Swiss insistence on official channels has a criminal law basis. Article 271(1) of the Swiss Criminal Code (SCC) punishes any person who, without lawful authority, carries out activities on behalf of a foreign state on Swiss territory where such activities are the responsibility of a public authority or public official. The same penalty applies to any person who encourages or aids such activities.¹ Service of foreign judicial documents and the taking of evidence for foreign proceedings are official acts in the Swiss view. Three examples show the reach of the provision. An Italian lawyer who travels to Lugano to take a witness statement for use in Italian proceedings risks committing the offence, and so does an Italian court-appointed expert (*consulente tecnico d'ufficio*) who inspects premises in Ticino. A Swiss company that hands over documents to an Italian court outside the channels of judicial assistance is in the same position unless it obtains an authorization from the competent federal authority.

The scope of the provision was clarified by the Federal Supreme Court in a judgment of 1 November 2021. The chairman of the board of a Swiss wealth management company had transmitted client files to the United States Department of Justice without using the channels of administrative or judicial assistance. The court convicted him and imposed a fine of CHF 10,000. It held that the direct transmission of non-public information about third parties to a foreign authority violated Swiss sovereignty when it circumvented the official channels, which alone provided the procedural safeguards for the persons concerned.² Commentators have noted that the judgment leaves open how far a party may voluntarily produce its own documents in foreign civil proceedings. For Lugano banks and fiduciaries involved in Italian civil proceedings, the safe course is to produce documents only on the basis of a Swiss court order made in execution of a request for judicial assistance, or with a federal authorization.

1 The Hague Evidence Convention

The taking of evidence in civil matters between Switzerland and Italy is governed by the Hague Convention on the taking of evidence abroad in civil or commercial matters of 18 March 1970 (SR 0.274.132), in force for Italy since 21 August 1982 and for Switzerland since 1 January 1995.³ A court in Milan that needs the testimony of a witness in Lugano, or documents from a Lugano bank, sends a letter of request to the Ticino central authority, which forwards it to the competent court. The Swiss court executes the request according to its own procedural law, although it may follow a special procedure requested by the foreign court unless that procedure is incompatible with Swiss law. Witnesses may invoke the rights to refuse testimony of both states, and Swiss banking secrecy yields to a court order in civil proceedings only after the court has balanced the interests involved.⁴

Switzerland made a reservation under Article 23 of the Convention against letters of request issued for the purpose of obtaining pre-trial discovery of documents. The Federal Supreme Court has interpreted it narrowly. In a judgment of 4 December 2007 it held that the reservation served to refuse very general requests, the so-called fishing expeditions, and did not bar targeted requests for documents with a direct connection to the subject matter of the litigation.⁵ Under Chapter II of the Convention, commissioners and consular officers may take evidence in Switzerland only with the authorization of the Swiss authorities. During the pandemic, the Federal Office of Justice granted authorizations for the examination of witnesses in Switzerland by videoconference for foreign proceedings, subject to strict conditions such as voluntary participation, the absence of coercion and respect for the rights to refuse testimony.⁶

In figures. According to the statistics of the Federal Office of Justice, Switzerland received 1,187 requests for the taking of evidence in criminal matters in 2024 and 1,312 in 2025, together with 514 and 544 extradition requests. In civil matters, the office recorded 479 incoming requests for service and 31 requests for the taking of evidence in 2024, and 369 and 17 respectively in 2025.⁷ The civil figures cover only requests that passed through the Federal Office of Justice. Requests from Italian courts under the Hague conventions go directly to the cantonal central authorities and are not included. In Ticino, the debt enforcement offices recorded about 173,000 payment orders in 2023, a figure that includes domestic and cross-border cases.⁸

2 Notes

1. Swiss Criminal Code of 21 December 1937 (SCC), SR 311.0, Art. 271(1), as paraphrased in Müller, Delli Colli and Brüttsch, GesKR 2022 (below). The provision is the legal basis named in the FOJ's authorization of 25 February 2022 (above). ↩
2. Dominique Müller, Flavio Delli Colli and Susanne Brüttsch, "Klarere Konturen für Art. 271 Ziff. 1 StGB?", GesKR 2022, 115–119, https://www.lenzstaehelin.com/fileadmin/user_upload/MUELLER_DELLI_COLLI_BRUETSC_H_GesKR_01_2022_Klarere_Konturen_fuer_Art._271_Ziff._1_StGB_115-119.pdf (on Federal Supreme Court, judgment 6B_216/2020 of 1 November 2021); Müller, Delli Colli and Brüttsch (above). ↩
3. FOJ, authorization of 25 February 2022 (above), citing the Hague Evidence Convention as SR 0.274.132; HCCH, status table of the Evidence Convention, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82>. ↩
4. U.S. Department of State (above); Federal Supreme Court, judgment 4A_399/2007 of 4 December 2007, summary at Omnilex, <https://app.omnilex.ai/de/sources/court-decision/ch-bger--4a-399-2007/4a3992007>. ↩
5. Federal Supreme Court, 4A_399/2007 (above). ↩
6. FOJ, authorization of 25 February 2022 (above). ↩
7. FOJ, Statistica dell'assistenza giudiziaria internazionale 2016–2025 , <https://www.bj.admin.ch/dam/it/sd-web/9iv28ltQz5An/rhf-statistik.pdf>. ↩
8. "Aumentano in Ticino i precetti esecutivi", RSI, 22 April 2024, <https://www.rsi.ch/info/ticino-grigioni-e-insubria/Aumentano-in-Ticino-i-precetti-esecutivi--2128674.html>. ↩

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