

Security for costs and the Hague Convention of 1954

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A claimant who has no domicile or seat in Switzerland must, on request of the defendant, provide security for the defendant's party costs (Article 99(1) (a) CPC). International treaties take precedence. Article 17 of the Hague Convention on Civil Procedure of 1 March 1954 prohibits requiring security from nationals of a contracting state who are domiciled in one of those states merely because they are foreigners or have no domicile in the forum state. The Convention has bound Italy since 12 April 1957 and Switzerland since 5 July 1957.¹ An Italian company suing in Lugano is therefore not obliged to provide security merely because its seat is in Milan. Other grounds for security under Article 99(1) CPC, such as apparent insolvency or unpaid costs from earlier proceedings, remain available against it.

1 Civil procedure in Italy after the Cartabia reform

On the Italian side, civil procedure is governed by the *Codice di procedura civile* of 1940, which has been amended many times. The most recent comprehensive reform, named after the then Minister of Justice Marta Cartabia, was enacted by Legislative Decree No. 149 of 10 October 2022 and applies, for most of its provisions, to proceedings commenced after 28 February 2023.² It was part of the reforms promised under Italy's National Recovery and Resilience Plan (*Piano nazionale di ripresa e resilienza*, PNRR), which committed Italy to reducing the duration of civil proceedings by 40 per cent by June 2026, measured against 2019.³ The reform concentrated preparatory exchanges before the first hearing, strengthened the summary procedure and introduced new provisions on arbitration and on the electronic file.

The duration of Italian civil proceedings remains the main practical difference from Switzerland. According to an analysis of the Catholic University's Observatory on Italian Public Accounts, a civil case that passed

through all three instances took on average 2,512 days in 2019, almost seven years. By 2023 the figure had fallen to 2,075 days, a reduction of 17.4 per cent. The author doubted that the target of 40 per cent would be reached.⁴ For the creditor of an Italian debtor, the duration of the main proceedings is one reason to use the summary routes: the *decreto ingiuntivo* in Italy, the Swiss debt enforcement procedure in Ticino, and the protective measures on both sides of the border.

Italian law also requires an attempt at mediation before certain actions may be brought. Disputes arising from banking, financial and insurance contracts belong to the matters for which mediation is a condition of admissibility under Article 5 of Legislative Decree No. 28 of 4 March 2010.⁵ An Italian client who wants to sue a Lugano bank in Italy under the consumer rules of the Convention must therefore first go through mediation, whereas the bank that sues in Lugano under a valid choice of court clause will first face the Swiss conciliation procedure.

Feature Ticino (Switzerland) Lombardy (Italy) Code CPC 2008, revised 2025 c.p.c. 1940, Cartabia 2022 First instance Pretura (single judge) Tribunale ordinario Appeal Tribunale d'appello, Lugano Corte d'appello, Milan or Brescia Final instance Federal Supreme Court Corte di cassazione Pre-action step Conciliation (Art. 197 CPC) Mediation in banking matters Summary Payment order (DEBA) *Decreto ingiuntivo* payment route Exequatur for Cantonal enforcement court Corte d'appello LC judgments

2 Notes

1. Federal Office of Justice, authorization of 25 February 2022 for taking evidence by videoconference, <https://www.e-doc.admin.ch/dam/bj/de/data/publiservice/publikationen/verfuegungen/ejpd-verfuegung-videokonferenz-d.pdf.download.pdf/ejpd-verfuegung-videokonferenz-d.pdf> (on the Hague Convention on Civil Procedure of 1954 in Swiss practice); HCCH, Convention of 1 March 1954 on civil procedure, Art. 17, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=33>, and <https://www.hcch.net/en/instruments/conventions/status-table/?cid=33>. ↩
2. Gian Paolo Coppola, Dario Covucci and Claudia Bosco, The Reform of Arbitration in Italy, LCA Studio Legale, February 2023, <https://www.lcalex.it/wp-content/uploads/2023/02/The-Reform-of-Arbitration-in-Italy.pdf>. ↩

3. Isotta Valpreda, analysis of the duration of Italian civil justice under the PNRR, Osservatorio sui Conti Pubblici Italiani, Università Cattolica del Sacro Cuore, 28 June 2024, <https://osservatoriocpi.unicatt.it/ocpi-I%20tempi%20della%20giustizia%20civile%20si%20sono%20ridotti%20grazie%20al%20PNRR.pdf>. ↩
4. Valpreda (above). ↩
5. Decreto legislativo 4 marzo 2010, n. 28, Art. 5(1), in the version of the Cartabia reform. ↩

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