

Sequestro, pignoramento and the vocabulary of seizure

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Seizure has its own false friends. The Swiss *sequestro* (German *Arrest*) under Art. 271 LEF is a protective attachment of assets of the debtor, available on the grounds listed in the statute, among them the debtor's lack of residence in Switzerland where the claim has a sufficient connection with Switzerland or rests on an acknowledgement of debt and, since 1 January 2011, the creditor's possession of a definitive title for setting aside the objection (*titolo definitivo di rigetto dell'opposizione*), typically an enforceable judgment.¹ The Italian *sequestro conservativo* under Art. 671 c.p.c. fulfils a similar function but requires a well-founded fear of losing the guarantee of the claim (*fondato timore di perdere la garanzia del proprio credito*), a test that does not exist in the Swiss list of grounds. The Italian *sequestro giudiziario* concerns disputed property. The Italian criminal *sequestro preventivo* and *sequestro probatorio* correspond to the Swiss criminal *sequestro* under Art. 263 of the Swiss Criminal Procedure Code. The Swiss *pignoramento* (seizure in the enforcement procedure) and the Italian *pignoramento* (the first act of enforcement under Art. 491 c.p.c.) are closer, but the Swiss version is carried out by the debt enforcement office and the Italian by the court bailiff (*ufficiale giudiziario*).² Chapter H.IV has described the use of the Swiss attachment against Italian debtors and the enforcement of Italian titles in Switzerland.

1 Pretore, tribunale and the language of the courts

Ticino's judicial organization uses terms that Italy has abolished or uses differently. The Canton has ten *preture*, one for each judicial district (Bellinzona, Blenio, Leventina, Locarno Campagna, Locarno Città, Lugano, Mendrisio Nord, Mendrisio Sud, Riviera and Vallemaggia), in which a *pretore* or *pretore aggiunto* sits as single judge. The *pretore* hears all civil cases not reserved to the *giudici di pace*, who decide claims up to CHF 5,000, or to the Third Civil Chamber of the Tribunale d'appello.³ In Italy

the *pretore* was a single judge with limited civil and criminal jurisdiction until Legislative Decree No. 51 of 19 February 1998 abolished the office and transferred its functions to the *tribunale*, with effect from 2 June 1999 for civil proceedings and from 2 January 2000 for criminal proceedings.⁴ Younger Italian lawyers may never have appeared before a *pretore*, and in Italian usage the word now has a historical ring. In Ticino it is the title of the judge before whom most commercial litigation begins. The appellate vocabulary also requires care. Under the Swiss Civil Procedure Code the *appello* is the full appeal against final first-instance decisions in pecuniary matters above CHF 10,000, while the *reclamo* is the limited remedy for lower amounts and for certain procedural decisions. In Ticino both are heard by chambers of the Tribunale d'appello, including the *Camera civile dei reclami*.⁵ Against cantonal decisions of last instance lies the *ricorso* to the Federal Supreme Court, which for civil matters is the *ricorso in materia civile* under Art. 72 of the Federal Supreme Court Act.⁶ In Italy the *appello* is the second-instance appeal to the *Corte d'appello* or the *tribunale*, while the *ricorso per cassazione* lies to the *Corte di cassazione* on points of law. The Swiss *ricorso* in its general sense corresponds in function to the Italian *ricorso per cassazione*, but a Swiss *ricorso* can also be a cantonal administrative appeal or a complaint in criminal proceedings. In Italian civil procedure *ricorso* also designates a form of originating application, as opposed to the *atto di citazione* (writ of summons), which adds another layer of possible confusion.

2 Notes

1. Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy (DEBA), SR 281.1, Art. 271(1) no. 4 ("quando il debitore non dimori in Svizzera, se non vi è altra causa di sequestro, ma il credito abbia un legame sufficiente con la Svizzera o si fondi su un riconoscimento di debito ai sensi dell'articolo 82 capoverso 1") and no. 6 ("quando il creditore possieda nei confronti del debitore un titolo definitivo di rigetto dell'opposizione"), the latter inserted by Art. 3 no. 2 of the Federal Decree of 11 December 2009 approving and implementing the Lugano Convention, in force since 1 January 2011, German and Italian texts at <https://www.droit-bilingue.ch/de-it/2/28/281.1-271-306.html>. See Chapter H.IV. ↩
2. Codice di procedura civile, Art. 491 ("l'espropriazione forzata si inizia col pignoramento"), Brocardi.it, <https://www.brocardi.it/codice-di-procedura-civile/libro-terzo/titolo-ii/capo-i/sezione-ii/art491.html>; Art. 670 (sequestro giudiziario), <https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-iii/sezione-ii/>

art670.html; Art. 671 (sequestro conservativo), <https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-iii/sezione-ii/art671.html>. Swiss Criminal Procedure Code of 5 October 2007 (CrimPC), SR 312.0, Art. 263(1), Italian heading "Principio", <https://www.droit-bilingue.ch/de-it/3/31/312.0-263-267.html>. Codice di procedura penale, Art. 253 (sequestro of the corpo del reato), <https://www.brocardi.it/codice-di-procedura-penale/libro-terzo/titolo-iii/capo-iii/art253.html>, and Art. 321 (sequestro preventivo), <https://www.brocardi.it/codice-di-procedura-penale/libro-quarto/titolo-ii/capo-ii/art321.html>. ↩

3. Canton of Ticino, "Preture" (above); Canton of Ticino, Potere giudiziario, <https://www4.ti.ch/poteri/giudiziario/> (38 circoli, each with a giudice di pace and a deputy). The page cites Art. 37 of the Legge sull'organizzazione giudiziaria (LOG). ↩
4. Wikipedia (Italian), "Pretore (ordinamento italiano)", [https://it.wikipedia.org/wiki/Pretore_\(ordinamento_italiano\)](https://it.wikipedia.org/wiki/Pretore_(ordinamento_italiano)), consulted as a last resort: "il decreto legislativo 19 febbraio 1998 n. 51 ha disposto la soppressione di tale organo sostituendolo con il giudice di Tribunale". ↩
5. Canton of Ticino, "Preture" (above) (appello for proceedings with a value above CHF 10,000); Canton of Ticino, "Tribunale d'appello" (above) (Camera civile dei reclami). Swiss Civil Procedure Code of 19 December 2008 (CPC), SR 272, Art. 308 and 319. ↩
6. Federal Act of 17 June 2005 on the Federal Supreme Court (Federal Supreme Court Act, FSCA), SR 173.110, Art. 72(1), Italian text (Legge sul Tribunale federale, LTF), <https://www.fedlex.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/2006/218/20250101/it/html/fedlex-data-admin-ch-eli-cc-2006-218-20250101-it-html-3.html>. ↩

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Online version: helveticaregister.com/lugano-sequestro-pignoramento-and-the-vocabulary-of-seizure