

Swiss acts in Italy and the apostille

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The Hague *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* replaces the chain of legalizations by a single certificate, the apostille, issued by the competent authority of the state of origin. Switzerland signed the Convention on 5 October 1961 and ratified it on 10 January 1973, with effect from 11 March 1973. Italy signed on 15 December 1961 and ratified on 13 December 1977, so that the Convention entered into force for Italy on 11 February 1978. The Convention had 124 contracting parties at the time of writing.¹ In Switzerland apostilles for cantonal documents, including notarial deeds, are issued by the cantonal chancelleries, in Ticino by the *Cancelleria dello Stato* in Bellinzona, and apostilles for federal documents by the Federal Chancellery. In Italy the competent authorities are the *Procure della Repubblica* for judicial and notarial documents and the prefectures for administrative documents.²

A Swiss notarial deed that is to be used in Italy, for example to transfer an Italian property or to deposit a power of attorney with an Italian notary, therefore requires an apostille and, as a rule, a certified Italian translation if it is not already in Italian. Ticinese deeds have an advantage here because they are written in Italian, but their Swiss terminology may still require explanation. For land and corporate acts, Italian law adds a further step. A deed drawn up abroad must be deposited with an Italian notary, who checks its conformity with Italian law and records it in his register before it can be used for registration in the Italian land registers or the *registro delle imprese*.³ An Italian buyer of a house in Ticino who signs before a Ticinese notary is thus in a familiar procedure. An Italian seller of an apartment in Como who prefers to sign in Lugano should know that the deed will in any case pass through an Italian notary's hands.

1 Language before the courts: Article 122 and 123 c.p.c.

Italian civil procedure is monolingual. Article 122(1) c.p.c. states: "In tutto il processo è prescritto l'uso della lingua italiana." When a person who does not know Italian must be heard, the judge may appoint an interpreter, who takes an oath before exercising his functions.⁴ Under Art. 123 c.p.c., when documents not written in Italian must be examined, the judge may appoint a translator, who takes an oath in the same way as an expert witness under Art. 193 c.p.c.⁵ The Constitutional Court has softened the rule only for recognized linguistic minorities in Italy, such as the Slovenian minority in the areas where it is settled. Italian courts usually accept documents in French or English without translation if the judge and the parties understand them, but a party cannot rely on this. A Swiss bank that sues an Italian client in Milan on the basis of its Germanlanguage general terms must produce an Italian translation, which will become the text the court reads.

In practice parties produce sworn translations (*traduzioni giurate* or *asseverate*), which a translator certifies by oath before a court clerk, a justice of the peace or a notary.⁶ The translation does not become authentic in the sense that it replaces the original, but it carries the translator's personal responsibility for accuracy. If the translation is contested, the judge may appoint his own translator under Art. 123 c.p.c. For Swiss documents in Italian, such as Ticinese judgments or deeds, no translation is needed. Their Swiss terms may nevertheless require an explanation by a legal expert or a declaration on Swiss law, because the Italian judge reads them through Italian concepts.

2 Notes

1. Hague Conference on Private International Law (HCCH), "Status table: Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents", <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>. ↩
2. Competent authorities as designated by Switzerland and Italy under Art. 6 of the Convention and listed by the HCCH. ↩
3. Legge 16 febbraio 1913, n. 89 (legge notarile), Art. 106 n. 4, and the corresponding rules of the notarial regulation on the deposit of acts drawn up abroad. ↩
4. Codice di procedura civile, Art. 122, text at Avvocato Andreani, <https://www.avvocatoandreani.it/servizi/codice-procedura-civile/art>

- 122-cpc.html (including the reference to Constitutional Court judgment No. 62 of 1992 on the Slovenian minority). ↩
5. Codice di procedura civile, Art. 123, text at Avvocato Andreani, <https://www.avvocatoandreani.it/servizi/codice-procedura-civile/art-123-cpc.html>. ↩
6. The oath (asseverazione) is regulated by Regio Decreto 9 ottobre 1922, n. 1366, Art. 5, and by the practice of the courts. ↩

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