

The Federal Supreme Court

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The Federal Supreme Court in Lausanne, with a seat for its social law divisions in Lucerne, decides in all official languages. Article 54 paragraph 1 of the Federal Supreme Court Act provides that the proceedings are conducted in one of the official languages, as a rule in the language of the contested decision. If the parties use another official language, that language may be adopted.¹ Appeals from Ticino are therefore normally decided in Italian, and an appeal from a decision of the Federal Criminal Court in Bellinzona that was conducted in Italian also leads to an Italian judgment.

The share of Italian in the court's work is small but stable. In 2016 the court rendered 7,811 decisions, of which 61.5 per cent were in German, 33.5 per cent in French and 5 per cent in Italian. Of the decisions on the merits, 319 or 6.8 per cent were published in the official collection. In 2017 the court had 38 ordinary judges: 23 German speakers, 12 French speakers and 3 Italian speakers. Romansh was represented neither among the ordinary judges nor among the 19 substitute judges.² Judge Aubry Girardin describes the internal organization: the court is divided into seven divisions by subject matter, two for public law, two for civil law, one for criminal law and two for social insurance law. These divisions decide cases in all languages, each judge speaks, writes and deliberates in his or her own national language, and the judgments are not translated. Only the court's press releases are translated into the other official languages.³

The structure has consequences for Italian-language cases. With three Italian-speaking judges distributed across seven divisions, a division may not include any judge whose first language is Italian. A panel deciding an Italian case may then consist of judges who read Italian well but deliberate in German or French, and the judgment in Italian is drafted with the assistance of Italian-speaking clerks. The arrangement works because Swiss judges and clerks are trained in multilingual practice. It also explains

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why the Italian-language case law of the court is shorter in volume and why many questions of financial market law have been decided only in German or French. For a Lugano practitioner, that body of case law forms part of the law to be applied, as BGE 134 III 534 makes clear.⁴

The published leading cases (BGE, in Italian DTF, *Decisioni del Tribunale federale svizzero*) carry headnotes in all three official languages. An Italian-speaking reader can therefore find the principle of every published decision in Italian, even when the reasoning is in German or French.⁵ For unpublished judgments, which form the great majority, the reader must work in the language of the decision.

1 Notes

1. Devinat and Pichonnaz (above), on Federal Act of 17 June 2005 on the Federal Supreme Court (Federal Supreme Court Act, SCA), SR 173.110, Art. 54 para. 1. ↩
2. Devinat and Pichonnaz (above). ↩
3. Aubry Girardin (above). ↩
4. Devinat and Pichonnaz (above), on BGE 134 III 534. ↩
5. Aubry Girardin (above): the published judgment is preceded by a headnote "rédigé en trois langues (allemand; français; italien)", while the judgment itself is published in its original language without translation. ↩

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