

## The political and the legal limits: the Russian requests

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The limits of judicial review in mutual assistance became visible in the requests from Russia. In a decision of 20 January 2026, published a week later, the Board of Appeal dismissed complaints by companies not resident in Russia against the execution of a Russian request concerning the forfeiture of assets. It considered the complainants' numerous objections concerning the fairness of the Russian proceedings to be plausible but held that it was bound by the restrictive case law of the Federal Supreme Court on the invocation of Article 2 IMAC, which protects against assistance in foreign proceedings that do not meet the requirements of the ECHR. As an exceptional measure it waived the court costs and forwarded the matter to the Federal Department of Justice and Police so that the Department could examine whether cooperation should be restricted under Article 1a IMAC to safeguard the sovereignty, security or other essential interests of Switzerland.<sup>1</sup>

The decision shows the division of roles in Swiss mutual assistance. The court applies the law and the treaties, while the decision to restrict cooperation with a particular state for political reasons belongs to the executive. For the financial centre, which holds assets of clients from many states with uncertain rule of law, this division matters. A client cannot expect the Board of Appeal to refuse assistance because the requesting state is politically problematic, unless he can show concretely that the foreign proceedings violate fundamental procedural guarantees in his case.

### 1 Italian penalties and Swiss sovereignty

A case decided by the Appeals Chamber on 20 February 2023 concerned the boundary between private debt collection and mutual assistance. In March 2020 a debt collection company in western Switzerland had sent a person resident in Switzerland an invoice for the payment of a fine imposed

by Italian authorities. The Criminal Chamber convicted two senior employees of the company on 22 June 2022 of unlawful acts on behalf of a foreign state under Article 271 SCC. The Appeals Chamber confirmed the convictions. It held that sending an invoice to collect a foreign criminal penalty constituted the first step towards the enforcement of a foreign decision on Swiss territory. Such enforcement required the procedures of the mutual assistance treaties and federal authorization, neither of which had been obtained.<sup>2</sup>

The case is of practical interest in Ticino. Every year thousands of Swiss residents drive into Lombardy and Piedmont, and Italian municipalities and their collection agents pursue the resulting traffic fines across the border. The judgment does not prevent Italian authorities from sending notices directly by post where a treaty permits it. It does, however, mark the line that a Swiss company acting for a foreign authority may not cross. Chapter H.IV discussed Article 271 SCC in the context of service of documents and the taking of evidence for Italian civil proceedings.

For the practitioner. In mutual assistance proceedings involving accounts in Lugano: - the final ruling of the executing authority and the preceding interim rulings are challenged together before the Board of Appeal in Bellinzona (Art. 80e(1) IMAC), - interim rulings can be challenged separately only in cases of seizure or the presence of foreign officials causing immediate and irreparable prejudice (Art. 80e(2) IMAC), - only the account holder has standing to oppose the transmission of bank documents (Art. 80h IMAC, see Chapter H.IV), - a further appeal to the Federal Supreme Court is admissible only in particularly important cases, so that the case must be fully argued before the Board of Appeal, - objections based on the human rights situation in the requesting state require concrete evidence of a risk in the individual case, and general political arguments are for the Federal Department of Justice and Police under Art. 1a IMAC.

## 2 Notes

1. Federal Criminal Court, press release on decision RR.2023.127-133, 27 January 2026, <https://www.bstger.ch/de/media/comunicati-stampa/2026/2026-01-27/1532.html>. ↩

2. Federal Criminal Court, press release on judgment CA.2022.19, 21 February 2023, <https://www.bstger.ch/de/media/comunicati-stampa/2023/2023-02-21/1322.html>. ↩

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