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The Standard of Restraint in Political Criticism on Social Media Platforms

The Italian Supreme Court of Cassation reaffirms the boundaries of the justification defence of political criticism: the communicative disvalue of digital media does not relax the requirement of a functional nexus with specific objective facts

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Reading time 16 min

Current Legal Framework as of 6 November 2026: Updated to Italian Supreme Court of Cassation, Criminal Division, Judgment no. 8235 of 2 March 2026.

ABSTRACT

Abstract: This contribution examines the operational scope of the statutory justification defence under Article 51 of the Italian Criminal Code in expressions of opinion disseminated across digital platforms, focusing specifically on the **standard of restraint in political criticism** in light of Judgment no. 8235/2026 of the **Italian Supreme Court of Cassation, Criminal Division**. The analysis reconstructs the delicate balance between freedom of political critique and the protection of personal honour and reputation, demonstrating how **exposure to public contempt** and gratuitous assaults on the moral integrity of the target preclude the justifying effect of exercising a constitutional right, even where the statements arise within a heated local administrative dispute involving elected or appointed public officials.

Key Takeaways

- The requirement of expressive restraint (*continenza*) governs the formal manner of communication and prevents political dissent from degenerating into an unsubstantiated infringement upon the personal dignity of the criticised individual.
- Political criticism tolerates vibrant, trenchant, and polemical expressions, yet crosses into criminal defamation whenever it resolves into apodictic derogatory epithets wholly detached from specific historical events or administrative acts.
- The use of social media platforms or online bulletin boards amplifies the dissemination of defamatory allegations, subjecting the injured party to a markedly heightened exposure to public contempt.
- The absence of a functional nexus between the disparaging assessment and conduct performed in public office renders the verbal assault purely *ad hominem* and bars reliance on the justification defence under Article 51 of the Italian Criminal Code.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Criminal Law & Offences against the Person

LEADING DECISION
Italian Supreme Court of Cassation, Criminal Division, Judgment of 2 March 2026, no. 8235 — Pres. Pistorelli, Rapp. Scordamaglia.

Legal Principle / Editorial Headnote

With respect to aggravated defamation committed via social networking platforms, the statutory justification defence of exercising the right of political criticism under Article 51 of the Italian Criminal Code requires that expressions of dissent, even when articulated in harsh and polemical tones, remain anchored to specific historical facts and comply with the canon of formal restraint; that threshold is irremediably breached whenever communication degenerates into generic, apodictic, and gratuitously defamatory statements aimed at striking the moral persona of the public official on a personal level and exposing that individual to public contempt.

01. THE STANDARD OF RESTRAINT IN POLITICAL CRITICISM ON SOCIAL MEDIA AND THE FACTUAL BACKGROUND

State of the Law Prior to This Ruling:

Within the settled case law of the Italian Supreme Court of Cassation, the concept of political criticism has progressively benefited from a broader margin of tolerance toward harsh, biting, and polemical tones associated with the inherent vigour of democratic debate. Nevertheless, the unchecked proliferation of interactions on virtual timelines and digital platforms has alerted courts and scholars to the risk that the computer screen might turn into an assumed law-free zone, calling for a strict delineation of the statutory justification defence so as to curb the spread of purely personal verbal aggression.

Defining the **standard of restraint in political criticism** constitutes one of the most intricate and sensitive issues in contemporary **criminal law**, particularly when dialectical confrontation shifts from the physical forums of

municipal governance to digital platforms. The exercise of the right to freely express one's thoughts, solemnly enshrined in Article 21 of the Italian Constitution and recognised under Article 51 of the Italian Criminal Code as a statutory justification defence capable of negating the unlawfulness of the offence of defamation under Article 595 of the Italian Criminal Code, encounters an impassable barrier in the protection of the **moral dignity** and **social reputation** of the injured party. That barrier holds firm even where the recipient of the statements holds elective or institutional public office, requiring the court to verify whether the attack is genuinely functional to public information and debate or whether it crosses into unwarranted personal disparagement.

The evolution of electronic communication channels has brought about a profound transformation in the dynamics of public discourse. Disputes that once unfolded within the circumscribed settings of civic assemblies, municipal council chambers, or printed periodical press are now poured daily onto virtual boards accessible to the indistinct public of the Internet, where the apparent horizontality of exchange frequently fosters progressive verbal disinhibition. Within this reshaped relational ecosystem, the case law of the **Italian Supreme Court of Cassation, Criminal Division** is consistently called upon to reaffirm that freedom of criticism may never degenerate into a licence to insult, and that the liveliness of political controversy does not exempt the author of a post from the duty to observe expressive restraint (*continenza*) and to ground critical evaluation in an established core of factual truth.

1.1 — Online Defamation and the Pervasiveness of Social Media Platforms

The dissemination of offensive content through electronic media ordinarily satisfies the aggravated offence set forth in Article 595, third paragraph, of the Italian Criminal Code, which governs defamation committed through **any other means of publicity** alongside the printed press. The distinctive nature of **social media platforms** and online blogs lies in their potentially boundless diffusive capacity across both time and space, enabling statements to reach a vast and heterogeneous audience instantaneously while impressing harmful assertions with lasting persistence in digital archives. The communicative multiplier inherent in a social media timeline exposes the targeted individual to disproportionate vulnerability, because the disparaging judgment is repeated, shared, and commented upon within a self-reinforcing loop of emotional reactions and cascading replies.

Precisely on account of this pervasiveness, judicial scrutiny over the prerequisites for lawful criticism cannot retreat before online habits favouring hyperbolic or casual registers of speech. While the setting of virtual debate requires courts to take account of the communicative conventions of the web without demanding a sterile or clinical style of narration, digital disintermediation cannot become a pretext for dismantling criminal law safeguards protecting individual honour. As equally underscored by recent constitutional coordinates concerning the external limits of institutional immunity and the protection of personality rights against harmful conduct carried out through electronic messages, projecting one's thoughts onto a virtual platform does not diminish the author's liability when communication degenerates into crude denigration of a political opponent.

The **defamatory capacity** of words circulated online therefore manifests itself with a virulence that is qualitatively distinct from face-to-face conversation. The harmful impact of a digital comment stems from its aptitude to crystallise a stigma of discredit upon the digital identity of the injured person, directly affecting both personal esteem and professional standing within the community in which that individual works and discharges a public mandate.

1.2 — The Factual Background and Subject Matter of Supreme Court Judgment no. 8235/2026

The concrete application of these principles was reaffirmed with notable clarity by the **Italian Supreme Court of Cassation, Criminal Division** in Judgment of 2 March 2026, no. 8235[1], delivered at the conclusion of criminal proceedings arising from repeated online posts. The case originated from messages published by a citizen on his personal

profile on a major social networking platform and on the pages of a local civic news blog, directed against the municipal councillor (*assessore comunale*) responsible for spatial planning and agricultural policy in a municipality in the Veneto region. In those posts, the defendant characterised the local official in categorical and openly demeaning terms, describing him as incompetent, devoid of ability, sanctimonious, and arrogant, adding that he habitually uttered nonsense and absurdities of every description and improperly regarded himself as superior to fellow citizens.

The trial court and the appellate court established the defendant's criminal liability for continuous **aggravated defamation**, ruling out the applicability of the justification defence invoked by counsel. In his appeal on points of law before the Supreme Court of Cassation, the defendant alleged a breach of Article 51 of the Italian Criminal Code, contending that the expressions employed fell within the lawful exercise of **political criticism** in view of the public office held by the injured party. According to the defence submission, the biting language was not aimed at striking the councillor's private sphere, but formed part of a sharp controversy over the municipality's administrative choices, thereby mitigating the injurious weight of the speech and fully justifying the contested remarks.

The Supreme Court of Cassation flatly rejected the appellant's argument and upheld the findings of the lower courts. The Criminal Division emphasised that the epithets employed were wholly divorced from specific measures or clearly identified administrative episodes, amounting instead to a mere string of apodictic and derogatory assertions. Lacking any demonstrated factual basis capable of supporting a reasoned critical evaluation, the online statement loses its character as democratic critique and degenerates into a **gratuitous personal attack**, structurally and teleologically alien to the sphere of operation of the statutory justification defence.

02. THE LEGAL STATUS OF EXPRESSIVE RESTRAINT BETWEEN FREEDOM OF EXPRESSION AND PERSONAL DIGNITY

The doctrinal architecture of justification defences in criminal law demands an ongoing balancing of competing constitutional interests of primary rank. On one side stands freedom of expression guaranteed by Article 21 of the Italian Constitution and Article 10 of the European Convention on Human Rights, which serves as the cornerstone of every democratic and pluralist legal order; on the other side stands the inviolability of the human person under Article 2 of the Italian Constitution, articulated in criminal law through the protection of honour, decency, and reputation against unwarranted assaults. Article 51 of the Italian Criminal Code gives statutory expression to this balance by excluding criminal punishability for anyone acting in the exercise of a legal right, provided that the actor does not overstep the conditions of lawfulness established by legislation and refined by settled judicial doctrine.

Through the lens of consolidated case law, verifying whether the justification defence applies requires the cumulative presence of three prerequisites: the objective or putative truth of the underlying fact narrated, an appreciable **public interest** in its disclosure, and compliance with the canon of expressive restraint (*continenza*). Whereas in the right of journalistic reporting (*diritto di cronaca*) historical accuracy of the account carries strict and binding weight, in the right of criticism (*diritto di critica*) the requirement of truthfulness undergoes a natural adaptation, resolving into the existence of an ascertained factual core onto which the observer grafts a subjective and evaluative assessment. Consequently, the decisive dividing line of criminal lawfulness inevitably centres upon the **standard of restraint in political criticism**, understood as the normative filter governing the expressive measure chosen by the speaker.

2.1 — Formal and Substantive Restraint: The Coordinates of Supreme Court Judgment no. 18170/2015

Properly delineating this requirement demands a clear distinction between the substantive and formal dimensions of restraint. Substantive or material restraint concerns the relevance of the topic and the correspondence of the information to a genuine societal interest in public knowledge, preventing the circulation of rumours or insinuations devoid of any utility for the community. By contrast, **formal restraint** pertains exclusively to the expressive form, stylistic manner, and linguistic register employed in voicing critical opinion, requiring that negative value judgments be articulated in a proportionate manner that does not exceed the dialectical purpose pursued.

A foundational interpretive clarification was provided by the **Italian Supreme Court of Cassation, Criminal Division** in Judgment of 30 April 2015, no. 18170[2], in which the Supreme Court censured an overly restrictive approach adopted by the lower courts. The Court held unequivocally that expressive restraint cannot be equated with an obligation to deliver a clinical, unemphatic narrative stripped of all emotional colouring, because demanding neutral exposition would distort and nullify the very essence of freedom of criticism, which is inherently polemical, subjective, and aimed at persuading the audience of the soundness of one's viewpoint.

Under the nomophylactic guidance laid down in that 2015 ruling, Italian criminal law does not punish harshness of tone, emphatic rhetorical figures, colloquialisms, or forceful accents, so long as such expressive choices retain a **functional nexus** with the subject matter of the critique. The threshold of criminal unlawfulness is crossed solely where the terms used carry a gravely defamatory and needlessly humiliating charge, spilling over into pure verbal aggression detached from factual reality. The justification defence thus fails whenever language sheds its nature as an argumentative instrument and turns into a weapon of *ad personam* denigration designed to destroy the victim's standing in society.

This interpretive canon acquires decisive weight in political disputes. Anyone who participates in public life or holds elective office is naturally exposed to severe scrutiny and even radical challenges regarding policy decisions and administrative orientations. Even so, the broader latitude afforded to political criticism does not amount to wholesale decriminalisation of insult: the critique must consistently target official conduct, political programmes, or institutional performance, whereas resort to abusive expressions attacking the intimate honour and intrinsic worth of the person as such remains strictly impermissible.

03. THE VIRTUAL PUBLIC SQUARE OF SOCIAL MEDIA AND THE PROHIBITION OF PUBLIC CONTEMPT

The disruptive entry of digital technologies into civic debate has reshaped the phenomenology of criminal defamation. Social media timelines and online communities constitute a veritable **virtual public square**, in which any user can broadcast personal opinions and render them instantaneously accessible to an open and indeterminate circle of recipients. Yet the immediacy of digital communication carries an insidious hazard: the compression of time for reflective deliberation frequently triggers an uncontrolled verbal drift, fuelling derogatory impulses that far exceed the legitimate give-and-take of political and trade-union opposition.

Digital disintermediation and the harshness of municipal political disputes do not turn the web into a law-free zone: whenever critical expression abandons factual grounding to become personal ridicule, the impassable boundary safeguarding individual dignity applies in full.

In assessing the criminal relevance of online posts, evidentiary verification plays a decisive strategic role. Forensic preservation of posts, related comment threads, and electronic metadata must satisfy strict chain-of-custody standards so that reconstructing the alleged conduct does not become vulnerable to procedural challenges, in line with settled principles governing the collection and admissibility of digital evidence in criminal proceedings and the evidentiary reliability of electronic records. Once the content of the timeline has been reliably preserved, it falls to the trial court to determine whether the wording complies with the **standard of restraint in political criticism** or constitutes a punishable offence under Article 595 of the Italian Criminal Code.

3.1 — Exposure to Public Ridicule in Supreme Court Judgment no. 8898/2021

A landmark interpretive precedent regarding insults circulated on the web is Judgment of 4 March 2021, no. 8898, delivered by the **Italian Supreme Court of Cassation, Criminal Division**[3]. In that ruling, the Supreme Court brought into sharp focus the qualitative specificities of defamation committed on social media boards, emphasising that a court called upon to scrutinise the justification defence under Article 51 of the Italian Criminal Code must evaluate jointly the literal tenor of the language employed and the distinctive **eccentricity of expressive conventions** characteristic of digital networks.

The Supreme Court laid down a rigorous rule: the fundamental values of the human person must be deemed indefeasibly infringed whenever the targeted individual, beyond suffering mockery of personal image, is exposed to **public contempt**. Resorting to vulgar, demeaning, or blatantly abusive epithets, even where triggered by a dispute arising in a sporting or professional context, finds no causal justification in the exercise of the right of criticism. Such utterances serve no informational purpose and contribute no dialectical elements to public discussion, amounting instead to a purely derogatory device designed to provoke collective scorn and derision.

The reach of this precedent is programmatic: addressing a social media audience does not mitigate the gravity of the offence, but rather heightens its substantive harmfulness owing to the multiplier effect of viral amplification. Where the author of a message wishes to report irregularities or breaches of professional ethics, the legal system provides institutional channels entrusted with oversight; conversely, venting derogatory impulses in the digital public square forecloses reliance on Article 51 of the Italian Criminal Code from the outset, leaving both criminal liability and civil liability for damages intact.

3.2 — Assessing the Dialectical Context: A Comparison with Supreme Court Judgment no. 5359/2026

Evaluating expressive restraint cannot, however, turn into an abstract and decontextualised lexical censorship. Supreme Court jurisprudence achieved a significant point of synthesis in Judgment of 10 February 2026, no. 5359, in which the **Italian Supreme Court of Cassation, Criminal Division**[4] addressed a dispute stemming from posts published in local Facebook groups concerning judicial proceedings involving municipal officials and civil servants. On that occasion, the Supreme Court quashed the appellate conviction, which had found the defendant guilty on the basis of purely conclusory assertions without conducting an actual examination of the relational and communicative context in which the comments had been posted.

The Criminal Division held that the injurious potential of a statement cannot be isolated from the dialectical flow of the online discussion. Where a message constitutes commentary on truthful judicial news reports, such as reports concerning the indictment of political figures or public executives, a democratic legal order guarantees citizens and media outlets alike the right to voice **negative assessments** and stern censures regarding the conduct of public officials. Within that setting, the use of hyperbole, polemical colouring, or figurative language remains justified, provided that the intervention maintains close adherence to the core of established facts and does not degenerate into a gratuitous *ad personam* assault severed from historical reality.

A systematic comparison between Judgment no. 5359/2026 and Judgment no. 8235/2026 reveals the exact boundary of criminal protection: whereas in the decision of 10 February 2026 the author was commenting on verified press reports and documented institutional events, in the decision of 2 March 2026 the defendant had merely unleashed upon the municipal councillor a barrage of apodictic and generalised derogatory epithets devoid of any connection to specific facts. Anchoring dissent to verified historical circumstances is precisely what grounds the lawfulness of political criticism, whereas insult as an end in itself irreversibly consummates the injury to honour.

04. PRACTICAL IMPLICATIONS, EVIDENTIARY BURDENS, AND CRIMINAL DEFENCE STRATEGIES

The interpretive framework reaffirmed by the Supreme Court of Cassation requires legal practitioners to undertake a rigorous reassessment of defence strategies in litigation over aggravated online defamation. On the criminal law plane, merely invoking in conclusory terms the political nature of a dispute or the heated atmosphere of municipal debate is insufficient to defeat prosecution or the compensatory claims brought by the civil party joined in criminal proceedings (*parte civile*). Rather, defence counsel must perform a careful **distinguishing** analysis between justified speech and unprotected expressions, demonstrating the concrete satisfaction of every constituent element of the justification defence.

The justification defence under Article 51 of the Italian Criminal Code **does not apply** where a social media post degenerates into a bare sequence of abusive epithets lacking objective factual reference; conversely, the defence operates effectively where the disparaging judgment, however biting or sarcastic, builds upon true and documented facts of public interest. Unlike civil disputes turning on liability for private insults and the concrete assessment of offensiveness within interpersonal relationships, in prosecutions under Article 595 of the Italian Criminal Code involving a political figure judicial inquiry focuses on the functional proportionality between the criticised act and the derogatory characterisation employed.

4.1 — What Evidence and Defence Submissions Are Required to Sustain the Political Criticism Defence?

To sustain the justification defence of exercising the right of criticism successfully, **defence counsel's procedural strategy** must rest upon a rigorous evidentiary foundation from the preliminary investigation stage onward or when drafting appellate grounds. With regard to the allocation of evidentiary burdens, although criminal proceedings are governed by the presumption of innocence and the principle of *in dubio pro reo*, the defence bears a specific **burden of production and allegation** (*onere di allegazione*) concerning the historical facts underlying the critical comment. The defendant cannot simply assert good faith in the abstract, but must submit administrative records, press reports, or documentary evidence establishing the historical truth of the criticised episode, or at least concrete elements capable of

supporting a blameless putative belief in a justification defence under Article 59, fourth paragraph, of the Italian Criminal Code.

Second, the defence strategy must establish the **functional relevance** of the communicative manner chosen. Filing not merely the isolated comment, but the entire discussion thread and multimedia context in which the remark was posted is essential in order to show whether the statement constituted an immediate dialectical reply to prior provocations or formed part of an already heated civic debate. Conversely, where the expressions employed prove intrinsically humiliating and unconnected to any identified administrative measure, defence efforts on the merits of justification will prove unavailing, exposing the defendant to criminal conviction and to an award of non-pecuniary damages in favour of the injured party.

The following table summarises the operational coordinates delineated by the Supreme Court of Cassation for distinguishing lawful speech from criminally punishable conduct in the digital political arena:

Communicative Scenario	Legal Classification	Procedural Outcome	Burden on the Defence
Harsh commentary on municipal resolutions or truthful judicial news	Right of political criticism under Art. 51 Criminal Code	**Justified conduct**	Production of verified underlying facts and full debate thread
Apodictic derogatory epithets detached from specific administrative acts	Aggravated defamation under Art. 595 Criminal Code	**Criminal liability**	Justification defence barred for lack of formal restraint
Personal insults aimed at exposing the target to public contempt online	Infringement of Art. 2 Constitution and modal excess	**Criminal and civil liability**	Defence inapplicable; assessment of alternative or restorative procedures

Judgment no. 8235/2026 of the Italian Supreme Court of Cassation reaffirms a clear and balanced interpretive guideline: democratic competition and local political debate can never justify annihilating an individual's moral sphere through online defamation. Although the exercise of political dissent accommodates trenchant and polemical tones, the boundary of criminal lawfulness remains firmly guarded by the principle of formal restraint and by the necessary connection of critical expressions to objectively identified administrative conduct. Far from constituting a territory exempt from legal accountability, the digital public square of social media demands strict respect for human dignity so as to preserve a civil public discourse that does not degenerate into crude *ad personam* aggression.

References & Authorities Cited

Statutory Provisions

- Constitution of the Italian Republic, Articles 2 and 21 — Inviolable human rights and constitutional freedom of expression
- Italian Criminal Code, Articles 51 and 595 — Justification defence of exercising a legal right and offence of aggravated defamation committed through the press or any other means of publicity
- European Convention on Human Rights (ECHR), Article 10 — Freedom of expression and proportionate restrictions necessary for the protection of the reputation or rights of others

Case Law Cited

1. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 2 March 2026, no. 8235** — Pres. Pistorelli, Rapp. Scordamaglia. In relation to online defamation committed via social networking platforms and civic blogs, the justification defence of exercising the right of political criticism under Article 51 of the Italian Criminal Code does not cover generic, apodictic, and gravely derogatory epithets directed against municipal officials without connection to specific administrative acts or episodes. Outcome: appeal dismissed. Para.: 1, 2 and 3.
2. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 30 April 2015, no. 18170** — Pres. Lombardi, Rapp. Pistorelli. The requirement of expressive restraint pertains to the formal manner of communication and does not demand a clinical or unemphatic narrative, permitting harsh tones provided they remain functional and proportionate to the critique without degenerating into gratuitous verbal aggression. Outcome: judgment quashed in part without remand as to criminal liability and with remand as to civil claims. Para.: 2.2, 2.3 and 2.4.
3. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 4 March 2021, no. 8898** — Pres. Miccoli, Rapp. Belmonte. When assessing expressive restraint in statements disseminated via social networking platforms, courts must take into account the expressive eccentricity of digital media while holding that the limits of Article 51 of the Italian Criminal Code are exceeded whenever the injured party is exposed to public contempt. Outcome: appeals dismissed. Para.: 2.1, 2.2, 2.5 and 2.6.
4. **Italian Supreme Court of Cassation, Criminal Division, Judgment of 10 February 2026, no. 5359** — Pres. Miccoli, Rapp. Morosini. In exercising political criticism on Facebook groups, the offensiveness of contested statements must be evaluated within the concrete dialectical context, so that negative value judgments linked to truthful judicial news reports of public interest remain justified. Outcome: judgment quashed in part without remand as to criminal liability and with remand as to civil claims. Para.: 3.2, 3.4 and 3.5.

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