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The Aggressor's Flight Marks the Limits of Self-Defence

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ABSTRACT
This commentary examines judgment no. 40408/2026 of the Italian Supreme Court of Cassation (Criminal Division) concerning a jeweller who pursued fleeing robbers outside his shop and fired four close-range shots toward their car. Relying on CCTV timestamps, ballistic findings, and autopsy trajectories, the paper shows why the absence of imminent danger and the availability of lawful alternatives under Article 52(1) of the Italian Criminal Code preclude ordinary, commercial-domicile, and putative self-defence, as well as severe disturbance under Article 55(2), concluding with the evidentiary standards for intentional homicide and trial defence strategy.

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The Aggressor's Flight Marks the Limits of Self-Defence

Analysis of Judgment no. 40408/2026 of the Italian Supreme Court of Cassation, Criminal Division, on imminent danger, lawful alternatives, commercial-domicile defence, and culpable excess

CASE DOSSIER

COURT
Italian Supreme Court of Cassation

DECISION
Criminal Division, Judgment of 17 November 2026, no. 40408 (hearing 15 July 2026)

KEY PROVISIONS
Article 52 of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) • Article 55 of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) • Article 575 of the Italian Criminal Code (Royal Decree no. 1398 of…

HOLDING
dismissed the appeal and ordered the appellant to pay court costs and reimburse the legal expenses of the joined civil parties and the party admitted to state legal aid

JEL: K14 • EuroVoc: 573, 3878 • Reading 10 min

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LEGAL PRINCIPLE / EDITORIAL HEADNOTE

Neither ordinary, domicile, nor putative self-defence applies, nor does culpable excess due to severe disturbance operate, when the victim of a robbery pursues the perpetrators outside while they are already fleeing, despite being able to lock the entrances and alert the authorities.

KEY TAKEAWAYS

01 Cessation of danger
The robbers' exit from the premises and movement toward the vehicle mark the end of imminent danger under Article 52(1) of the Italian Criminal Code.

02 Lawful alternative
Locking the shop entrances and alerting law enforcement authorities excludes the defensive necessity of an armed pursuit.

03 Domicile defence and excess
The presumption of proportionality (Article 52(2)–(4)) and severe disturbance (Article 55(2)) presuppose an ongoing danger.

04 Intent and objective proof
Close-range shots aimed at vital organs establish homicidal intent under Article 575 of the Italian Criminal Code and refute putative mistake.

ABSTRACT

This commentary examines the limits of self-defence after an aggressor's flight in light of Judgment no. 40408/2026 of the Italian Supreme Court of Cassation, Criminal Division, concerning a jeweller who pursued fleeing robbers outside his shop and fired four shots toward their departing car. Through an exegesis of Articles 52 and 55 of the Italian Criminal Code corroborated by CCTV footage and autopsy findings, the study explains why the cessation of **imminent danger** and the availability of a **lawful alternative** preclude both **domicile self-defence** and putative self-defence, as well as **severe disturbance** in progress, extending to the evidentiary proof of intent under Article 575 of the Italian Criminal Code and defence burdens at trial.

COMPARATIVE & EUROPEAN LEGAL FRAMING

Institutional & EU Nexus: In Italian criminal law, the Italian Supreme Court of Cassation enforces strict statutory boundaries on justification (*scriminante*) under Articles 52 and 55 of the Italian Criminal Code, aligning domestic proportionality with the right to life under Article 2 of the European Convention on Human Rights (ECtHR), which permits lethal force only when strictly necessary to protect human life against imminent unlawful violence. **Comparative Common Law Lens:** Unlike certain US "stand your ground" or expanded castle-doctrine statutes, Italian domicile self-defence (*legittima difesa domiciliare*) creates only a qualified statutory presumption of proportionality inside protected premises and never authorises deadly pursuit once intruders retreat, mirroring the English Common Law requirement of reasonable necessity and the exclusion of retaliatory force after an attack has ceased.

01. INTRODUCTION: JUDGMENT NO. 40408/2026 OF THE ITALIAN SUPREME COURT OF CASSATION, CRIMINAL DIVISION

The boundary between justified self-defence and punishable conduct returns before the Italian Supreme Court of Cassation, Criminal Division, in Judgment no. 40408 of 17 November 2026.[1] The ruling defines the **limits of self-defence after the flight** of perpetrators who committed a shop robbery. Where the assault comes to an end beyond the commercial threshold, an armed pursuit puts Articles 52 and 55 of the Italian Criminal Code under acute strain. The legal framework admits no emotional shortcuts. Every assessment of lawfulness requires isolating the exact instant at which imminent danger ceases and an unarmed shelter becomes practicable.

§ 2 Statutory reforms governing **domicile self-defence** and **severe disturbance** do not convert commercial premises into a zone exempt from judicial scrutiny of the objective prerequisites of justification. The decision tests the resilience of that filter both on the substantive plane of homicidal intent and putative mistake and on the evidentiary plane of *ex ante* assessment through CCTV footage, ballistics, and autopsy findings.

§ 3 The analysis proceeds from the chronological sequence of events and the sixteen grounds of appeal, then turns to the exegesis of Articles 52 and 55 of the Italian Criminal Code in light of consistent case law. Finally, it examines grey areas and defence burdens at trial.

02. CHRONOLOGICAL SEQUENCE OF THE ACTION AND PROCEDURAL HISTORY

§ 4 In the late afternoon of 28 April 2021, three robbers arrived at a jewellery shop in a Ford Fiesta parked in a side street, within an area open to the public belonging to third-party premises. Two accomplices entered in disguise carrying a knife and a toy pistol lacking a red tip, threatening the owner, his wife, and his daughter, while the third entered from the rear carrying a duffel bag. Surveillance cameras, set one hour ahead of real time, recorded the critical sequence over four seconds. At **17:41:34**, the three exited through the rear while the owner retrieved a .38 Special revolver from a drawer; at **17:41:35**, he collided with his wife in the showroom, moving her aside; at **17:41:38**, he appeared at the doorway while the robbers were boarding the car.[1]

§ 5 Having reached the vehicle outside, the owner fired four shots at close range. The first struck the driver's side from half a metre away with the engine running, shattering the window and side mirror, while the next two hit the other two accomplices on the right side within one and a half metres. The fourth shot wounded the driver in the right knee, after which he fled on foot. Autopsy reports established shots fired into bodies leaning forward, striking the right flank with cardiac injury and the right scapula with pulmonary laceration. Cartridge cases nos. 4 and 5 of the five chambers bore a **double firing-pin impression**, consistent with video frames showing an outstretched arm after ammunition was spent. This was followed by pointing the weapon at a wounded man's face, three kicks to the other's face, a call to 112 emergency services, and placing the jewels back onto the car.

§ 6 By judgment of 4 December 2023, the Court of Assizes of Asti sentenced the defendant to seventeen years' imprisonment, accessory penalties, damages, and provisional awards for two counts of completed intentional homicide, attempted homicide, and unlawful carrying of a firearm. The court recognised a continuous offence, generic mitigating circumstances, and provocation. On 3 December 2025,

the Court of Assizes of Appeal of Turin reduced the sentence to fourteen years and nine months solely on the continuity enhancements, upholding criminal capacity and the denial of justification. The Italian Supreme Court of Cassation, Criminal Division, dismisses all sixteen grounds of appeal, ordering the appellant to pay court costs and reimburse the civil parties.

§ 7 As a preliminary matter, all procedural and evidentiary objections fail. Grounds one and 1-bis concerning the replacement of an alternate lay judge under Article 26 of Law no. 287/1951 are unfounded by operation of law. The second and third grounds (summary statements under Article 63 and omitted warning under Article 199 of the Italian Code of Criminal Procedure) are barred by non-use and time-bar of relative nullity; the fourth fails due to the voluntary revocation of summary trial under Article 438 of the Code of Criminal Procedure. The fifth and sixth grounds are overcome by agreed admission under Article 493(3) of the Code of Criminal Procedure of forensic DVR copies and ballistic expert reports under Article 360, concerning alterable exhibits and without newly discovered evidence under Article 603.

§ 8 On the merits, the eighth ground regarding the assisted witness under Article 197-bis of the Code of Criminal Procedure lacks decisiveness, whereas the ninth and tenth confirm the admissibility under Article 237 of television interviews and under Article 236 of the 19 December 2007 plea bargain for armed threats committed in 2005. The eleventh and twelfth grounds uphold the psychiatric examination under Article 507 of the Code of Criminal Procedure and the irrelevance of a mild post-traumatic disorder from 2015. Shots fired into vital organs prove **homicidal intent** under Article 575 of the Italian Criminal Code (seventh ground). The fourteenth ground upholds unlawful carrying on a public street under Article 38 of the Consolidated Public Security Act (T.U.L.P.S.), while the fifteenth denies both Article 62(1)(5) of the Criminal Code—referred to by clerical error in paragraph 16 as Article 61(5)—and the maximum reduction for generic mitigating circumstances in light of asset seizures. Finally, the sixteenth ground excludes review of **provisional civil awards** under Article 539 of the Code of Criminal Procedure and the related constitutional challenge.

03. LIMITS OF SELF-DEFENCE AFTER FLIGHT BETWEEN STATUTORY TEXT AND IMMINENT DANGER

3.1 — Imminent Danger, Necessity, and Lawful Alternatives in the Text of Article 52 of the Italian Criminal Code

§ 9 The architecture of Article 52(1) of the Italian Criminal Code rests upon three cumulative conditions that strictly circumscribe non-punishability. The actor must respond out of the “necessity to defend a right of one's own or of another” against the “imminent danger of an unlawful offence”, subject to the requirement “provided that the defence is proportionate to the offence”. According to the Italian Supreme Court of Cassation, Criminal Division, Judgment no. 40408/2026[1], the **imminence of danger** separates immediate protection from retaliation: once the **harmful action is exhausted**, the need to neutralise the offence vanishes. The provision does not authorise private capture. Absent a present or impending threat, firing a weapon loses all justificatory cover.

§ 10 Applying these criteria to the video recordings, the Court rules out any residual danger from the moment the robbers exit through the rear at 17:41:34 to enter the car with the engine running. The defence hypothesis of a return into the shop to harm witnesses is dismissed as **uncorroborated conjec-**

ture, contradicted by proximity to the vehicle and possession of the loot. Nor does it matter that, when the weapon was taken from the drawer, only one accomplice had already exited. Four seconds later, all three were outside, and it was there that the owner chose to pursue them.

§ 11 With respect to **defensive necessity**, the judges identify a concrete **lawful alternative conduct** capable of protecting those present without risk. Securing the **closure of the entrances** of the jewellery shop and immediately calling law enforcement would have sufficed. This finding links the dismissal of the thirteenth ground to that of the fourteenth concerning **unlawful carrying of a firearm** under Article 38 of the Consolidated Public Security Act. A possession declaration authorises keeping the revolver inside the commercial premises, not carrying it along a public street during an unjustified pursuit.

§ 12 The outcome confirms the line laid down by the Italian Supreme Court of Cassation, Criminal Division, Judgment no. 260 of 5 January 2026[2], which excludes both preventive defence and **private vengeance**. In that case, after a verbal altercation, the defendant returned to his car to arm himself and fire six shots despite being able to drive away and call the police. The Court denied imminent danger in the face of the other party's flight, reaffirming the balance between available means and endangered interests. In both disputes, a practicable shelter severs defensive necessity.

3.2 — Presumption of Proportionality in the Commercial Domicile and Exterior Space

§ 13 Paragraphs 2, 3, and 4 of Article 52 of the Italian Criminal Code strengthen protection within the home and assimilated premises, yet do not abolish the core pillars of the justification. Paragraph 2 provides that “the requirement of proportionality always subsists” where a lawfully held weapon is used to defend personal safety or property. For the **protection of property**, the statute expressly requires “when there is no desistance and there is a danger of aggression”. Paragraph 3 extends this regime “inside any other place where a commercial, professional, or entrepreneurial activity is carried out”. Paragraph 4 further specifies that “a person who performs an act to repel an intrusion committed with violence or threat of use of weapons or other means of physical coercion by one or more persons always acts in a state of self-defence”.

§ 14 According to Judgment no. 40408/2026, the adverb *always* consolidates a **presumption of proportionality** limited to the interior of the protected premises, while leaving intact the requirements of imminent danger and the absence of lawful alternatives. Paragraph 4 likewise covers repelling an **ongoing violent intrusion**, not pursuing individuals who have already exited. Here lies the sharp divide between the **ratio decidendi** and the spatial layout: the exterior parking area open to the public belongs to another building and falls outside the **boundaries of the commercial domicile**. The absence of imminent danger nonetheless absorbs any doubt regarding the **domicile justification**.

§ 15 The Italian Supreme Court of Cassation, Criminal Division, Judgment no. 1346 of 16 January 2023[3], had already ruled in convergent terms regarding leased agricultural land. The intruder had initially struck the tenant from behind, yet the tenant disarmed him before striking him back with the stick and kicking him on the ground. The Court denied the justification under paragraph 4, finding that the blow reflected a **punitive intent** rather than the necessity to repel an intrusion. Without an ongoing risk, *animus defendendi* lacks objective support.

§ 16 The rejection of automatic presumptions runs across the entire criminal justice system. In the field of preventive property seizure, Attilio Taverniti observed in Metodo Giuridico[D1] how the duty to state

concrete reasons on *periculum in mora* under Article 321(2-bis) of the Code of Criminal Procedure bars automatisms detrimental to property proportionality. Mirroring that principle, Article 52 of the Italian Criminal Code enforces a **rejection of automatic presumptions** of permanent danger in workplaces, requiring an actual risk at the moment of firing.

§ 17 Outside commercial premises and absent violent resistance at the entrance, the tension between recovering stolen goods and taking human life reverts to the general rule of proportionality. The limits of self-defence after flight preclude an **imbalance between life and property** against those moving away.

> ***The presumption of proportionality in the commercial domicile does not turn the shop threshold into a licence for armed pursuit: once the assault ends with flight, defence gives way to punitive action.***

3.3 — Putative Justification, Severe Disturbance, and Culpable Excess under Article 55 of the Italian Criminal Code

§ 18 **Putative justification** under Article 59(4) of the Italian Criminal Code requires an **excusable mistake of fact** assessed *ex ante*, subjective fear recorded in an expert report being insufficient. The judgment refutes three defence claims. The alleged abduction of the wife conflicts with the 17:41:35 video frame, showing the defendant moving her aside inside the shop, as well as with shots fired into the car cabin. The claim that the toy gun was aimed also fails—disproved by video footage and shots fired from the side and rear into leaning bodies—as does the return hypothesis. Empty-chamber clicks, kicks to the wounded man, and television interviews instead reveal an **intent to take the law into one's own hands**.

§ 19 Nor do culpable excess or non-punishability under Article 55 of the Italian Criminal Code apply. Paragraph 1 operates where "one culpably exceeds the limits established by law or by order of the Authority or imposed by necessity". Paragraph 2 excludes punishment in cases falling under Article 52(2)–(4) due to impaired defence or "in a state of severe disturbance resulting from the ongoing dangerous situation". Both provisions presuppose an actual or excusably supposed justificatory situation. Where lawful defence is absent at the outset, no yardstick of imprudence survives.

§ 20 Article 55(2) of the Italian Criminal Code further requires a direct **causal link** between **ongoing severe disturbance** and present danger, rendering pre-existing emotional conditions irrelevant. The Italian Supreme Court of Cassation, Criminal Division, Judgment no. 19926 of 19 May 2021[4], had already denied Article 55 to a person who struck an alcohol-impaired patron on the head to prevent him from re-entering the bar. As in Judgment no. 1346/2023, a **conscious and voluntary punitive choice** rules out culpable excess.

THE OBJECTIVE PERIMETER OF PUTATIVENESS AND EXCESS UNDER ARTICLE 55(2)

The severe disturbance clause and putative justification do not replace Article 52 of the Italian Criminal Code: the former requires an ongoing danger as the immediate cause of the emotional state, while the latter demands objective facts capable of justifying the mistake.

JUDGMENT / AUTHORITY	STANCE	SUMMARY PRINCIPLE
Italian Supreme Court of Cassation, Criminal Division, no. 40408/2026	Under review	Excludes ordinary, domicile, and putative self-defence as well as Article 55(2) in case of pursuit of fleeing robbers.
Italian Supreme Court of Cassation, Criminal Division, no. 260/2026	Consistent	Denies justification where the attacked person can drive away and call the police instead of arming himself and shooting.
Italian Supreme Court of Cassation, Criminal Division, no. 1346/2023	Consistent	Excludes Article 52(4) and Article 55 where an intruder is struck after being disarmed with punitive intent.
Italian Supreme Court of Cassation, Criminal Division, no. 19926/2021	Consistent	Excludes culpable excess in the presence of a voluntary punitive reaction following another's unlawful act.

04. REASONING SCRUTINY, DISTINGUISHING, AND EVIDENTIARY DEFENCE IMPLICATIONS

4.1 — When Distinguishing Applies Against an Aggressor Who Has Not Yet Departed

§ 21 **Distinguishing** from the limits of self-defence after flight arises where an armed aggressor retreats while keeping a weapon aimed toward the premises or physically prevents locking the entrances. In such circumstances, the **danger remains ongoing** and no risk-free shelter is practicable. Conversely, where all robbers reach the car to depart, the conduct falls into punishable pursuit.[1]

§ 22 The logical soundness of the reasoning rests on the critical four-second segment between 17:41:34 and 17:41:38. Had shots been fired at the inner threshold while an accomplice was still inside, a grey area would have emerged; yet the Court anchors the *ex ante* review to the **actual moment of firing** outside. At the rear doorway, the owner gained **direct visual perception** of the three men crouched near the car without threatening gestures and could have shut the door instead of shooting. Compared with Judgment no. 260/2026 of the Italian Supreme Court of Cassation, Criminal Division[2]—where the actor returned to his car to arm himself—here the trigger stemmed from an armed robbery, yet the **availability of a lawful alternative** still prevails. Compared with the disarming on agricultural land decided by Judgment no. 1346/2023[3], the event extinguishing the risk differs. What remains identical is the **exclusion of justification** for mere recovery of property.

4.2 — Evidentiary Criteria and Defence Burdens Governing Ex Ante Assessment at Trial

§ 23 The *ex ante* assessment of putative justification and severe disturbance demands **verifiable objective facts** at the moment of firing, purely internal fears remaining sterile. The defence therefore bears a strict **burden of factual allegation** regarding external signs of imminent danger, coupled with careful management of trial admissions and out-of-court statements.[4]

§ 24 Regarding **homicidal intent** under Article 575 of the Italian Criminal Code, the judgment avoids shortcuts tied to firearm possession and grounds proof on specific material findings. Close-range firing from half a metre to one and a half metres, aim toward vital organs of leaning persons, and double firing-pin impressions on cartridge cases nos. 4 and 5 rule out negligence and preterintentional homicide.

Against concurring lower-court convictions, a defect in reasoning requires a decisive distortion of evidence rather than alternative conjectures.

§ 25 On the procedural plane, three decisive constraints shape defence strategy. Agreed admission under Article 493(3) of the Italian Code of Criminal Procedure of DVR and ballistic reports under Article 360 perfects a **procedural evidentiary agreement** that forecloses late objections absent signs of tampering. Forfeiture of relative nullities under Article 199, revocation of summary trial under Article 438, and the weight of **out-of-court interviews** under Article 237 further narrow appellate margins.

§ 26 Similar rigour governs the court-ordered psychiatric examination under Article 507 of the Code of Criminal Procedure. Any challenge must contest the **absence of a causal link** relative to lucid conduct before, during, and after the event, rather than relying on prior diagnoses. Finally, real estate gifts or foreign transfers made after the offence curtail generic mitigating circumstances under Article 62-bis of the Italian Criminal Code, whereas **immediately enforceable provisional awards** under Article 539 of the Code of Criminal Procedure remain unreviewable before the Court of Cassation.

05. CONCLUSIONS

§ 27 Judgment no. 40408/2026 of the Italian Supreme Court of Cassation, Criminal Division,[1] defines the limits of self-defence after flight with strict systematic coherence. Neither **domicile self-defence** nor the **severe disturbance** clause legitimises gunfire once robbers have already left the premises. **Imminent danger** and the impossibility of locking entrances while calling the authorities remain indispensable conditions.

§ 28 In criminal litigation, this imposes a precise rule of evidentiary method. Invoking Articles 52, 55, or 59(4) of the Italian Criminal Code requires objective facts contemporaneous with the shooting and disciplined management of technical and testimonial evidence from the investigative stage.

AUTHORITIES & REFERENCES

Table of Authorities & References Cited

I. STATUTORY PROVISIONS

Article 52 of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) – Ordinary and domicile self-defence

Article 55 of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) – Culpable excess and ongoing severe disturbance

Article 575 of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) – Intentional homicide

Article 59(4) of the Italian Criminal Code (Royal Decree no. 1398 of 19 October 1930) – Putative justification

Article 38 of Royal Decree no. 773 of 18 June 1931 (Consolidated Public Security Act, T.U.L.P.S.) – Possession and carrying of firearms

II. CASE LAW CITED

[1] **Italian Supreme Court of Cassation, Criminal Division, Judgment of 17 November 2026, no. 40408 (hearing 15 July 2026)** OUTCOME: dismissed the appeal and ordered the appellant to pay court costs and reimburse the legal expenses of the joined civil parties and the party admitted to state legal aid. PARA.: excludes ordinary, domicile, and putative self-defence as well as Article 55(2) of the Italian Criminal Code for a person who pursues fleeing robbers outside despite being able to lock the entrances and alert the authorities.

[2] **Italian Supreme Court of Cassation, Criminal Division, Judgment of 5 January 2026, no. 260 (decision 4 December 2025)** OUTCOME: quashed the challenged judgment without remand on criminal counts due to supervening limitation period (prescrizione) and dismissed the appeal on civil counts. PARA.: excludes actual and putative justification where the attacked person can drive away and call the police rather than arm himself and shoot, denying relevance to future fears in the presence of another's flight.

[3] **Italian Supreme Court of Cassation, Criminal Division, Judgment of 16 January 2023, no. 1346** OUTCOME: declared the appeal inadmissible and ordered the appellant to pay court costs, EUR 3,000 to the Fines Fund (Cassa delle ammende), and the civil party's legal costs. PARA.: denies domicile self-defence under Article 52(4) and Article 55 of the Italian Criminal Code where the intruder is struck after being disarmed with punitive intent.

[4] **Italian Supreme Court of Cassation, Criminal Division, Judgment of 19 May 2021, no. 19926** OUTCOME: declared the appeal inadmissible and ordered the appellant to pay court costs, EUR 3,000 to the Fines Fund (Cassa delle ammende), and the civil party's legal costs. PARA.: holds that a voluntary violent reaction for punitive purposes after the other party's assault has ceased is incompatible with culpable excess under Article 55 of the Italian Criminal Code.

III. LEGAL SCHOLARSHIP CITED

[D1] Attilio Taverniti, Sequestro preventivo e periculum in mora nei reati contro la P.A. [Preventive Seizure and Periculum in Mora in Offences Against the Public Administration], in Metodo Giuridico, 14 August 2026. Examines the strict reasoning duty on concrete periculum in mora and proportionality in property protection under Article 321(2-bis) of the Italian Code of Criminal Procedure, compared with the rejection of automatic presumptions of danger under Article 52 of the Italian Criminal Code.

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