

Italian legal framework relevant for hate speech and online

Main legal basis:

The ITALIAN CONSTITUTION

IT: <https://www.senato.it/documenti/repository/istituzione/costituzione.pdf>

EN: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

Art. 2 and Art. 3 on right to equality

Art. 21 on freedom of expression.

Law 112/2004 (“Gasparri Law) on regulation of the broadcast media.

<http://www.camera.it/parlam/leggi/04112l.htm>

Art.3 and Art.4,

- on the freedom of expression of every individual, including freedom of opinion
- on respect of freedoms and rights, in particular of the dignity of the persons and banning the airing of programmes containing incitement to hatred on any grounds

Legislative decree 215/2003, contrasting discrimination and harassment on the ground of racial and ethnic origins, and setting-up the National Office Against Racial Discrimination (UNAR)

<http://www.camera.it/parlam/leggi/deleghe/03215dl.htm>

Legislative decree 216/2003 on equal treatment in employment and occupation regardless religion, personal convictions, handicaps, age, sexual orientation.

<http://www.camera.it/parlam/leggi/deleghe/03216dl.htm>

Criminal Law provisions indirectly addressing hate speech:

Law 205/1993 (“Mancino Law”), introducing measures to punish racial, ethnic, and religious discrimination

https://www.diritto.it/materiali/immigrazione/legge_mancino_205.pdf

Law 85/2006 on “Crimes of Opinion” (yet the protected categories are solely those based on racial, ethnic, national or religious grounds)

<http://www.camera.it/parlam/leggi/06085l.htm>

Relevant Jurisprudence of the Supreme Court.

Supreme Courte decision 36906/2015

<https://www.asgi.it/wp-content/uploads/2015/09/Corte-di-Cassazione-sezione-III-sentenza-n.-36906-del-14-settembre-2015-pres.-Franco-est.-Pezzella-Salm%C3%A8-Stefano.pdf>

(Background info: ahead of the 2013 European Parliamentary election, a man distributed leaflets containing hateful and xenophobic messages).

For the first time, the Court used the term “Hate Speech”, defining it as “speech that incites hate, often pronounced by politicians, typically towards minority groups or socially weak people”.

The Court also stated that the notion of hatred punishable by Law does not automatically include “any feeling or manifestation of generic hostility, impatience and rejection, even when they are based on the grounds of race, ethnicity, or religion”, provided that they do not lead to a concrete danger of instigating discriminatory actions.

Supreme Court Decision 41819/2009

<https://www.olir.it/documenti/index.php?documento=5325>

(Background info: a City Councillor organised a petition titled “Sign to send Gypsies away from our city”).

The Court acknowledged that the intent of this petition was not based on any real or presumed necessity to restore public order, and therefore its content was to “propagandise ideas based on racial superiority or racial or ethnic hatred”

Supreme Court Decision 42727/2015 (Case of particular importance with great national visibility)

http://www.deiustitia.it/cms/cms_files/20151028024333_lvrc.pdf

(Background info: following a case of rape committed by a black man, a district councillor of the Northern League Party posted on her Facebook page the picture of the then Minister of Integration, Ms Cecile Kyenge (an Italian citizen with Congolese background) with the following comment: “Is anyone ever going to rape her? So she will understand how the victim of such terrible crime feels. Shame!”.

The Court declared that (I) given the fact that there was no connection between the Minister and the rapist, the only link made between the two was based on racial prejudice; (II) **the means used (i.e. Facebook) to diffuse such instigation “ensured a capillary diffusion and a heated debate”, making the instigation “even more dangerous”**, finally, the Court rejected the position of the defendant who claimed to have exercised her right of freedom of expression, as protected by Art. 21 Constitution, by stating that such right must be balanced with other protected rights, such as the right to equality, protected by Art. 3 Constitution.

This was the first case of online hate speech dealt by the Supreme Court.

Given the lack of *ad hoc* Laws to contrast hate speech (and consequently online hate speech), the Supreme Court has referred to different Criminal Law Provision which restrict hate speech, albeit indirectly and without having been originally written for such purpose.

Some examples:

- Decision 33179/2013, where Article 416 of the Criminal Code (on Criminal Conspiracy) was used to condemn online hate speech propaganda by a neo-Nazi/far-right online group
- Decision 24431/2015, where Article 595 of the Criminal Code (on Defamation) was used to acknowledge that the use of internet (in this specific case a defamatory comment shared on Facebook) to commit defamation is in itself an aggravating circumstance
- Decision 563/2011, where Article 612 of the Criminal Code (on Threats) was used to acknowledge that threats based on racial or ethnic hatred do represent an aggravating circumstance.

Relevant legislative proposals still pending:

(N.B: Italy ratified in 2001 the CoE Convention of Cybercrime. However, the country has not ratified yet the 2003 Additional Protocol to the Convention (covering offences of racist or xenophobic propaganda)

Law 1052/2013, on “combatting homophobia and trans-phobia”. This law aims at extending the number of protected categories against hate speech and discrimination (which so far include only ethnic origin, nationality, religion), introducing criminal provision against the propaganda of ideas based on homophobia or transphobia.

After approval of the Chamber of Deputies, the law is still pending discussion in the Senate.

<https://www.senato.it/service/PDF/PDFServer/DF/295345.pdf>

The controversial proposal for Law 2688/2017 on prevention of fake news (“dispositions on web transparency”). This law would apply to those means of communication not registered as publishers (social networks, websites, blogs, etc.)

It was extensively criticized as it imposes an excessive monitoring burden on the online platforms, as well as prior censorship provisions to verify in advance the truthfulness and reliability of the information and online contents before their uploading and publication.

<https://www.senato.it/japp/bgt/showdoc/17/DDLPRES/0/1006504/index.html>