



E41 The New Italian Law on Legitimate Defense: New Scenarios on the Crime Scene

*Maria Silvestre, MD**, Section of Legal Medicine, University of Foggia, Foggia 71122, ITALY; *Francesca Maglietta, MD**, University of Foggia, Forensic Pathology, Foggia 71122, ITALY; *Giuseppe Bertozzi, MD**, Department of Forensic Pathology, Foggia 71121, ITALY; *Francesco Sessa, MS**, University of Foggia, Forensic Pathology, Foggia 71100, ITALY; *Mauro A. Ciavarella, University of Foggia, Forensic Department, Foggia 71121, ITALY*; *Pierrantonio Ricci, PhD, University of Catanzaro, Catanzaro, ITALY*; *Luigi Cipolloni, MD, PhD, Department of Forensic Medicine Sapienza Rome, Rome 00161, ITALY*

Learning Overview: The objective of this presentation is to analyze the innovative aspects of the new Italian law on legitimate defense approved in the Italian Senate on March 28, 2019, and entered into force beginning May 18, 2019.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by focusing on a much-discussed topic, the legitimate defense. Particular attention will be paid to the new Italian law and to the new changes and perspectives emerging in this legislative framework.

In the Italian legal system, self defense occurs if an individual is in imminent danger and must defend him or herself when no time is available to contact local authorities. Self defense should not be confused with revenge. The self defense institution is governed by Article 52 of the Criminal Code, entitled “legitimate defense” which reads: “It is not punishable who has committed the fact to have been forced by the need to defend a right of his own or others against the current danger of an unjust offense, provided that the defense is proportionate to the offense.” For a self defense instruction, there must be the sudden unjust onset of danger caused by unjustified aggression. The danger must be an immediate threat to either self or family. The amount of force used in self defense must be proportional to the aggression. The modification of Article 52 of the Italian Criminal Code extended self defense to include guests in another person’s home, a commercial residence, or in protection of personal belongings. It further allows the defender to use a weapon or other item to defend self or others.

The new Italian law, which consists of nine articles, incorporates traditional home defense and crimes against property. Article 1 of the law states that “there is always a proportional relationship” in cases of legitimate defense at home or in the workplace if someone “uses a legitimately held weapon or other suitable means to defend: a) their own or others’ safety; b) own property or that of others, when there is no resistance and there is danger of aggression.” Further, the law states, ‘he always acts in a state of legitimate defense who performs an act to reject the intrusion carried out with violence or threat of use of weapons or other means of physical coercion.’ Article 2 protects a person from penalty if they acted for the safety of themselves or others.

The law increases penalties for the offenses of home invasion theft, robbery, or housebreaking. The law excludes civil compensation for injury the home invader may have incurred, even if acquitted of the offenses in criminal proceedings. The law also allows for reimbursement or expenses for those acquitted based upon self defense. Finally, the law prioritizes the cases in the judicial system.

A recent example that used the new law was a recent argument between two neighbors, one of which murdered the other with a firearm. The assailant was acquitted because the decedent invaded the neighbor’s home and destroyed windows using a golf club. In this case, the courts found that the aggression and need for self defense were justified, in compliance with the new law.

Italian Law, Legitimate Defense, Crime Scene