

# The Institution of the Judicial Police in the Modern Rule of Law: Examples from continental Europe and prospects for Cyprus

EVANGELOS DIAMANTIS<sup>1</sup>

## Abstract

*The present study examines the institution of the judicial police in the modern State of Justice. The aim of the article is to submit an applicable proposal for the establishment of judicial police in Cyprus. For this purpose, with the methodology of the legal science, the concept of the police in general and the institution of the judicial police in the conceptual classes of continental Europe are examined. In France, the institution of judicial police was born and the general principles of its operation were developed. In Italy, the judicial police is constitutionally enshrined. In Germany, the judicial police is systematically organized at the central and regional levels. Finally, in 2022, a judicial police force was established in Greece under the influence of the mandates of the Treaty of Lisbon, for judicial and police cooperation between the Member States of the European Union. The main characteristics of the judicial police of the above States are attempted to be included in the proposal to establish judicial police in Cyprus, so that the Republic of Cyprus emerges as an efficient, modern and European state of justice.*

**Keywords:** police, Cyprus Police, judicial police, Rule of Law, State of Justice.

## 1. Prologue

This paper aims to highlight the role and importance of the judicial police in the modern Rule of Law. In this paper, a judicial police in Cyprus is proposed to be set up, according to the standards of other European members, in order to make the administration of justice in our island more effective.

The analysis follows the doctrinal view of Law Enforcement. The doctrine of Law Enforcement synthetically uses, perhaps more than any other branch of law, the find-

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<sup>1</sup> Professor, Hellenic Police Officers School.

ings of Constitutional Law and especially the General Theory of Fundamental Rights and criminal doctrine.<sup>2</sup>

First, our study, for the sake of scientific consistency, investigates the concept of the police itself, attempting to define it.<sup>3</sup> The inquiry then turns to the classical doctrine of public law to focus on the judicial police, as a public service and as an armed force. Third, comparative law is utilized and the police systems of France, Germany, Italy and Greece, in which judicial police have been established and operate, are analysed.

Finally, the general principles of distinguishing the administrative police from the judicial police followed by the conceptual classes of the above countries, but also the rest of the useful scientific data that will be gathered, will help in formulating the proposal for the establishment of a judicial police in Cyprus.

## 2. The Challenges of Defining the Concept of ‘Police’

The study will begin with the question of how intimate the concept of ‘police’ itself is, in order to study the institution of judicial police later. However, even from the commencement of the scientific legal approach, impediments arise. The science of law is unable to provide a single, coherent, and generally accepted definition of the concept of police.<sup>4</sup> There are as many terms that define the police as there are aspects of social life (tourist police, economic police, judicial police, etc). Also, changes have been observed historically in the concept of the police.<sup>5</sup> The impossibility of a single definition of the police results in the polysemy of the latter, as the theory emphasizes.<sup>6</sup> Nevertheless, the definition is the one that ensures the finding and the certainty

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<sup>2</sup> Christina Zarafonitou, *Empirical Criminology, (Εμπειρική Εγκληματολογία)* (Athens: Nomiki Bibliothiki ,2023) 187 (in Greek), Konstantinos Dimopoulos, *Criminology (Εγκληματολογία)* (Athens: Nomiki Bibliothiki, 2022) 97 (in Greek), Kalliopi Spineli, *Criminology Modern and older directions (Εγκληματολογία Σύγχρονες και παλαιότερες κατευθύνσεις)* (Athens: Nomiki Bibliothiki, 2022) 6 (in Greek), Maurice Cousson, *Modern Criminology (Συγχρονη Εγκληματολογία)* (Athens: Nomiki Bibliothiki, 2009) 175 (in Greek).

<sup>3</sup> Sofia Vidali, *Police Crime Control and Human Rights, (Αστυνομία Έλεγχος του Εγκλήματος & Ανθρώπινα Δικαιώματα)* (Athens: Nomiki Bibliothiki. 2012) 186 (in Greek).

<sup>4</sup> See Etienne Picard, *The notion of administrative police (La notion de police administrative)*, Vol. I, (Paris: Libraire générale de droit et de jurisprudence 1984), 125 (in French) who emphasizes that the contradictions of the very concept of the police contribute to the impossibility of defining it.

<sup>5</sup> Fritz Werner, ‘Change in the concept of police?’ (‘Wandlung des Polizeibegriffs?’) (1957), 23 *Deutsches Verwaltungsblatt* 806 (in German).

<sup>6</sup> See Charles-Edouard Minet, *Administrative police law (Droit de la police administrative)* (Paris: Vuibert, 2007) 7 (in French).

of the connecting link that is necessary to carry out the (deductive) judicial reasoning, so that the concept of the police, which after all, has a certain legal consequence, can be transferred from the rule of law in the case under consideration. In addition, jurisprudence has not yet devoted itself to the definition of the concept by approaching the police, rather positively, through the imperfect provisions of the legislator or its competences (Befugnis) and duties (Aufgabe), as manifested police measures in each case under consideration. The Professor of Law School of the University Paris 1 Panthéon-Sorbonne, Étienne Picard, in his voluminous two-volume doctoral thesis, on the concept of administrative police states in a rather pessimistic tone the following: ‘one must know that it is undoubtedly futile to want at all costs to determine a single valid criterion for actions, police or not, such as searches, arrests, detentions, confiscations, as administrative and judicial acts, as there is no previous definition of the concept of police and the existing definitions are characterized by many contradictions’.<sup>7</sup>

### 3. The Police, as an Armed Force and as a Public

The police is a state service. However, it shows some particularities in relation to the other services of the State. In public law, the police is characterized as a public service (service public),<sup>8</sup> not ceasing to be an armed force (force publique).<sup>9</sup> The police, as a public service lies in the satisfaction of the collective needs that according to Léon Duguit is justified as a coercive force only insofar as it provides services to citizens.<sup>10</sup> The modern theory of French administrative law emphasizes the impossibility of classifying the constantly appearing new social functions of the State

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<sup>7</sup> See Picard (no 3) 126.

<sup>8</sup> Francois Dieu, Xavier Latour, Christian Vallar, *Gendarmerie, public service, service to the public (Gendarmerie, service public, service au public)* (Paris: Éditions mare & martin, 2016) 123 (in French).

<sup>9</sup> See Cedric Moreau de Bellaing, *Public Force (Force Publique)* (Paris: Economica, 2015) 37 (in French), who links the legalization of violence to the perception of the police as an armed force of coercion, while earlier, Dominique Monjardet, *What the police do. Sociology of law enforcement (Ce que fait la police. Sociologie de la force publique)* (Paris: La dé couverte, 1996) 820 (in French), who, after empirical, and field research, found that the police is a public service, in the interest of all, but also an armed force, with its own interests and stereotypes, its official goals which are not always combined with the values of the police.

<sup>10</sup> See Dimitrios Papanikolaïdis, *General introduction to administrative police theory (Introduction générale a la théorie de la police administrative)* (DPhil thesis, University of Paris 1, 1960) 17 (in French), with further reference to Leon Duguit, *Constitutional Law Treaty (Traité de droit Constitutionnel)* (Paris: Ancienne librairie Fontemoing & Editeurs, 1923) 58 (in French).

and their further simplification, as forms of police competence.<sup>11</sup> Therefore, today, instead of social needs, the public interest defines the public service as an activity undertaken directly or indirectly, by a public legal entity, to satisfy a collective need of public interest under the status even partially of public of law. However, as George Dupuis stresses, the risk of a random and subjective assessment from the legislator, that they will choose those activities, which in their free assessment, satisfy the public interest more substantially, is more than obvious.<sup>12</sup> This risk is greater when this public service is the police itself. Then, as aptly pointed out by Didier Truchet, the public interest can not only limit, but also harm the individual liberties and rights of citizens. Therefore, the public interest can become a dangerous tool in the hands of the police.<sup>13</sup> In conclusion, the very attempt to assist in defining the concept and operation of the judicial police clashes with the impossibility of defining the concept of the police itself.

#### **4. Comparative Consideration of Police Systems**

The same polysemy of the police concept is reflected on all legal orders, as demonstrated by the comparative method of considering the police organization systems of the various legal orders.<sup>14</sup>

##### ***A. The Judicial Police in France***

###### **1. Public Order as a Determination of State Action as Police**

In France, the term ‘police’ is characterized by two conceptual elements. The first element is public order (ordre public) and the other element is the public service (service public). Public policy determines and delimits the responsibilities of state agencies as police or non-police, for this reason French jurisprudence has emphasized its constitutional origin and clarified its conceptual content.<sup>15</sup> The responsibilities of

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<sup>11</sup> See Picard (no 3) 125.

<sup>12</sup> George Dupuis, Marie Jose Guédon, *Administrative Law (Droit administratif)* (Paris :Armand Colin, 1988) 400 (in French).

<sup>13</sup> Didier Truchet, *The functions of the notion of general interest in the case law of the Council of State (Les fonctions de la notion d'intérêt général dans la jurisprudence du Conseil d'État)* (Paris: Presses universitaires de France, 1977) 45 (in French).

<sup>14</sup> Jacques De Maillard, *Polices compared (Polices comparées)* (Paris: Librairie générale de droit et de jurisprudence, 2017) 15 (in French).

<sup>15</sup> Christian Vimbert, ‘Public order in the case law of the Constitutional Council’ (‘L'ordre public dans la jurisprudence du Conseil constitutionnel’), (1994) 24 *Revue du droit public* 90 (in French), Pierre de

state authorities related to public order are the protection of peace, safety, and health, which is called the classic triptych of public order, while the protection of morals and the protection of human dignity constitute the so-called intangible element of public order.<sup>16</sup> Public order is a concept that we feel more than we understand, emphasizes Ronald Drago.<sup>17</sup> Thus, in France, public order is perceived empirically, more sensibly, in the spirit of the legal positivism of the French explanatory School, than mentally, as it happens in Germany, under the influence of a conceptual view of law. The police in France, depending on the object they are called upon to regulate, are called health police, water police, foreigners police and so on. Thus far, it could be argued that the five elements of public policy identify a judicial or administrative action as a police action. But what happens when the current legislator intervenes and includes in the protection of public order new components that need police protection by invoking the economic, climate, energy and any other new crisis? This legislative choice has the effect of having as many police bodies as the legislator decides each time, such as financial police, environmental protection police, energy security police, and so on.<sup>18</sup> As the theory points out, the legislator's intervention in the constitutionally protected concept of public order is impermissible, as its concept expands uncontrollably, but also softens, if the concept of the police itself is not relativized, so that state agencies are equipped with more and more police powers, with whatever this implies for the freedoms and rights of citizens.<sup>19</sup>

## 2. Constitutional Foundation of Judicial Police

The roots of the distinction between the judiciary and the administrative functional activity of the police can be found in the French Revolution and specifically, in the political thought of Montesquieu, for the principle of the distinction of functions.<sup>20</sup> The French have always been skeptical towards concentrating power in one person, after

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Montalivet, *The objectives of constitutional value (Les objectifs de valeur constitutionnelle)* (Paris: Dalloz, 2006) 89 (in French).

<sup>16</sup> Marie-Odile Peyroux -Sissoko, *Intangible public order in French public law (L'ordre public immatériel en droit public français)* (Paris: Librairie générale de droit et de jurisprudence, 2018) 291 (in French).

<sup>17</sup> See Roland Drago, 'Breaches of public order' ('Les atteintes à l'ordre public'), in R. Polin, *Public Order (L'ordre public)*, (Paris: Presses universitaires de France, 1996) 47 (in French).

<sup>18</sup> See Rene Séve, *The measure of public order (La mesure de l'ordre public)* in *Public Order (L'ordre public)* (Paris: Dalloz, 2015) 6 (in French).

<sup>19</sup> See Picard (no 3) 545.

<sup>20</sup> Evangelos Diamantis, *Police Action and Citizen Protection Theoretical and Jurisprudential Approach (Αστυνομική Δράση και Προστασία του Πολίτη Θεωρητική και Νομολογιακή Προσέγγιση)* (Athens: Nomiki Bibliothiki, 2021) 7 (in Greek).

the monarchy was contested. Thus, there was negation towards the exercise of state functions by a single state service, from which the police did not escape.<sup>21</sup>

Following the above, the principle of distinction between the administrative and judicial police was legislated. The legislative distinction between judicial and administrative police naturally follows from the constitutional principle of the distinction of functions.<sup>22</sup> This principle of law which was proclaimed for the first time, after the French Revolution, by the laws of 16-24 August, 'sur l'organisation judiciaire', presupposes initially that 'judicial functions are distinct and will always remain segregated from administrative functions' and that 'judges cannot, on pain of nullity, interfere in any way with the functions of administrative bodies, nor summon before them commanders, because of their duties'. Therefore, 'the courts, in the context of exercising their administrative function must declare themselves incompetent before the administrative authorities'.<sup>23</sup>

On the other hand, the principle of the distinction between administrative and judicial police requires that the commissioners not interfere in matters dependent on the judicial function. Any existing justice administration bodies of the administrative function recognize their incompetence, vis-à-vis the measures concerning the judicial police. In fact, this action of the administration falls under the judicial function and falls under the jurisdiction of the court, defined as competent, in the Code of Criminal Procedure of France (articles 13 and 224). Therefore, the competence of the French administrative judge is not limited to all matters concerning the action of the judicial police, which is subordinate to the judicial function.<sup>24</sup>

Consequently, the principle of distinction between administrative and judicial police action, the conceptual content of which is formulated here, in its original and simplest form, historically, as the theory points out, led to a Caesarism in the exercise of police power. This principle of law, during the first period of its application, was designed in a uniform manner, as evidenced by the drafting of articles 16 to 20 of the famous revolutionary 'Code des délits et des peines du trois Brumaire, an quatre (25 octobre 1795) Contenant les Lois relative à l' instruction des affaires criminelles'. This legislative text appears to make only a purely technical separation between two aspects of the same activity or institution of the police. In particular, the police are established to maintain public order, liberty, property, and personal security (Article

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<sup>21</sup> See Picard (no 3) 113.

<sup>22</sup> See Picard (no 3) 198.

<sup>23</sup> See Picard (no 3) 136.

<sup>24</sup> Ibid.

16). Its main character is alertness. Society, considered as a whole, is the object of its mission (Article 17). The police is divided into administrative police and judicial police (Article 18). The purpose of the administrative police is the usual maintenance of public order in every place and in every department of the general administration. Its main purpose is the prevention of crime. The laws concerning it are part of the Civil Administration Code (Article 19). The judicial police investigate crimes that the administrative police could not prevent from being committed, collects the evidence and delivers the perpetrators to the courts charged by law with their punishment (Article 20). The judicial police is exercised in accordance with the descriptions that will be established. By the commissioners of police, by constables and rangers, by justices of the peace, by the foremen of the grand jury, and by the captains and lieutenants of the national gendarmerie (section 21). All judicial police officers are under the general supervision of the prosecutor, who prosecutes their negligence, abuse of power and offenses against the law (Article 21,22,23).<sup>25</sup>

In conclusion, the modern statutory definition of the concept of judicial police does not seem to be very different to the general provisions of articles 12-14 of the French Code of Criminal Procedure. The origins of the principle of the distinction between administrative and judicial police, as found in the French Revolution, influenced the legislation of other countries as a result of which it is a permanent institution in the establishment of police powers in the modern Rule of Law.<sup>26</sup>

### 3. Structure & Responsibilities of Judicial Police

The police in France is divided into functional, administrative, and judicial. The administrative police (police administrative) ensures the maintenance of public order, as analyzed above. The judicial police (police judiciaire) has as its mission the investigation of crimes and the arrest of their perpetrators.<sup>27</sup> The Central Directorate of the Judicial Police is a directorate of the French National Police for the investigation and fight against serious crimes. It was established in 1907 by the Minister of Interior, Georges Clemenceau, and then structured according to the decree of 5 August 2009 with central and regional Services.<sup>28</sup> Among the responsibilities of the judicial

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<sup>25</sup> Ibid.

<sup>26</sup> See Picard (no 3) 137.

<sup>27</sup> For the judicial police in France, from the point of view of police law, see Herve Vlamynck, *Police Law (Droit de la police)* (Paris: Vuibert, 2021) 158 (in French).

<sup>28</sup> Aleksander Olech, *French and Polish fight against terrorism*, (Poznan: Kontekst Publishing House, 2022) 90 (in English).



police are the investigation of crimes against persons and property, missing persons, arms trafficking, international fraud, counterfeiting, white collar crimes, drugs, cybercrimes and others. This segregation of the French legal order influenced the police organization systems of many States of the world.

### ***B. The Judicial Police in Germany (Kriminalpolizei)***

In Germany, the concept of the police has a threefold dimension, the substantive, the formal and the institutional. According to the latter, the police as an institution determines the organization and structure of the police (Polizei im institutionellen oder organizational Sinn). The police, in a substantive sense (Polizei im material Sinn) refers to all state actions to prevent risks. Finally, the police, in a formal sense (Polizei im formels Sinn) includes all the powers and duties that according to the law and the Constitution are assigned and exercised by the police, in an institutional sense regardless of whether they have preventive or repressive content. The German legal order, in recent years, has focused on the formal concept of the police, from which the distinction between administrative and judicial police derives.<sup>29</sup>

In 1799, six plainclothes police officers were stationed to the Prussian Kammergericht (higher court of the city of Berlin for criminal and civil cases) to investigate particularly serious crimes. A few years later, the service became an independent branch of the police service, and officers serving in the judicial police were given the rank of Kriminalkommissar as investigators, distinct from the uniformed police called Schutzpolizei.<sup>30</sup>

Currently, in Germany, the Federal Criminal Police Service operates (Bundeskriminalamt - BKA), which is subordinate to the Ministry of the Interior, while in the States there is the Landespolizei. Kriminalpolizei officers investigate crimes and

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<sup>29</sup> For her above discrimination, see Wolf-Rüdiger Schenke, *Police Law (Polizei- und Ordnungsrecht)* (Heidelberg: CF Müller, 2011) 1 (in German), Bodo Pieroth, Bernhard Schlink, Michael Kniesel, *Police Law with Assembly Law (Polizei- und Ordnungsrecht mit Versammlungsrecht)* (München: Verlag CH Beck, 2012) 8 (in German), Volkmar Götz, *General police and regulatory law (Allgemeines Polizei- und Ordnungsrecht)* (München: Verlag CH Beck, 2013) 11 (in German) Markus Thiel, *Police Law (Polizei- und Ordnungsrecht)* (Baden Baden: Nomos, 2016) 31 (in German), Manfred Möllef, Gunter Warg *General police and regulatory law with compulsory administration and notification technology (Allgemeines Polizei- und Ordnungsrecht mit Verwaltungszwang und Bescheidtechnik)* (Stuttgart: Kohlhammer Deutscher Gemeinde Verlag, 2012) 7 (in German).

<sup>30</sup> See Sandra Geithner, Thomas Geithner, Karlhans Liebl, *Cooperation between the protection and criminal police: prejudices, deficits and evaluations (Die Zusammenarbeit zwischen Schutz- und Kriminalpolizei: Vorurteile, Defizite und Wertungen)* (Rothenburg: Fachhochschule für Polizei Sachsen University of Applied Sciences) (2005) 8 (in German).



incidents individually or in teams, without wearing uniform. Judicial police officers are graduates of police schools and, based on their performance in criminology and criminal sciences, they follow an additional three-year course at the police academy, in order to acquire the specialization of investigator.<sup>31</sup>

BKA is constitutionally enshrined, located in the State of Hesse and maintains Services in Berlin and nearby, Bonn. Its responsibilities concern, among others, the prevention and suppression of terrorism, forgery, the international trade in drugs and weapons, money laundering from criminal activities, the investigation of crimes, following the order of the investigator, the protection of the direct organs of the State (President of the Republic, Federal Parliament, and Federal Constitutional Court), the protection of federal witnesses, the coordination with liaison officers at Europol and Interpol of international and European judicial cooperation, the management and analysis of intelligence on crime and the provision of administrative and international assistance to other services.<sup>32</sup>

The BKA is currently organized into eleven departments. The President of the BKA is supported by a staff Service called '*Leitungsstab*'. Also, the BKA has established an Operations Center, Criminal Service, Department of judicial and police cooperation with Europol and Interpol, Departments for the investigation of criminal sexual crimes, fraud, terrorism, drugs and other crimes. In addition, the BKA operates, among others, a Joint Counter-Terrorism Center that coordinates police/judicial services and Intelligence Services on terrorism issues, a Joint Center for the Prevention of Terrorism and Extremism located in Cologne and focusing on politically motivated crimes such as right-wing and left-wing extremism, Islamic fundamentalism, terrorism, and espionage, National Cyber Threat Prevention Center, Joint Illegal Immigration Strategy and Analysis Center, Joint Financial Crimes Investigation Unit.<sup>33</sup>

### *C. Judicial Police of Italy*

In Italy, the concept of police is multifaceted. From the so-called normative profile of the police as a set of principles and rules came the Police Law. The objective profile

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<sup>31</sup> See Erhard Denninger, Ralf Poscher, *Police and Justice (Polizei und Justiz)*, in Erhard Denninger, Hans Lisker, *Police Law Manual (Handbuch des Polizeirechts)* (München: C.H. Beck, 2012) 99 (in German).

<sup>32</sup> Ibid.

<sup>33</sup> See Erwin Quambusch, 'Hunting criminals with amateurs? Or: a vital criminal investigation into the next millennium', ('Mit Dilettanten Verbrecher jagen? Oder: eine vitale kripo ins nächste jahrtausend?') (1999) 27 *Kriminalistik* 99 (in German).

of the police refers to the fields in which the latter intervenes. Here, police actions in public and private accidents and the administrative resolution of private disputes by the police are included. Another facet of the Police in Italy is its structural profile in the sense of public security organization. Also, the police appear with the operational profile related to the coordination of police forces. Finally, the police is presented with the profile in terms of content determined by the typology of police measures during the manifestation of the police operation. Consequently, these many aspects of the police persona add to its concept a strong subjective element.<sup>34</sup>

### 1. Constitutional Enshrinement & Powers

The Italian Judicial Police, as a service, is described in article 109 of the Constitution of the Italian Republic. After the abuses and atrocities of the fascist regime during the monarchical period, the Italian Constituent Assembly felt the need to constitutionally and legislatively enshrine the Judicial Police Service. Thus, in article 55 of the Code of Criminal Procedure it is defined that ‘the judicial police must, even ex officio, take cognizance of crimes, prevent their further consequences, search for their perpetrators, take the necessary measures to secure the evidence and to collect anything else that may be useful for the prosecution of crimes under the criminal law, carrying out all investigations and activities ordered or assigned to it by the judicial authority’.<sup>35</sup> The Judicial Police today consists of carabinieri and policemen of the state security and economic police who are subordinate to the competent Ministry following the rules of discipline, organization and official status of them. In each Prosecutor’s Office there are Judicial Police units, made up of Judicial Police officers and police officers from various bodies of the Italian police forces and services.<sup>36</sup>

The mission of the Judicial Police in Italy is to know of a crime in any way, to notify it (*notitia criminis*) to the competent judicial authorities and in the search for the perpetrator of the crime, and the useful evidence for bringing him to justice, so that they can be tried and if they are found guilty, to be sentenced to the penalty provided by law, acting ex officio or by order of the public prosecutor, who is in charge of the investigation and to whom a suggestive report of each crime is filed. Also, the judicial police have responsibilities to prevent crimes, arrest absconders and fugitives, verify

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<sup>34</sup> On these, see Arturo Lannuzi, *Police Law From the function to the trials of the Police (Diritto di Polizia Dalla funzione ai provvedimenti di Polizia)*, (Rome: Giuridica Editrice, 2015) 9 (in Italian).

<sup>35</sup> See Vito Ingletti, *Judicial Police Law Paperback (Diritto di polizia giudiziaria Copertina flessibile)*, (Rome: Laurus, 2019) 65 (in Italian).

<sup>36</sup> Ibid.

identities, collect information, conduct searches of places of objects and persons, for every case related to the crime under investigation.<sup>37</sup>

## 2. Constitutional and Statutory limitations

The constitutional enshrinement of the Judicial Police in Italy includes similar constitutional as well as legislative limitations on its action. One of these restrictions is that Judicial Police officers are prohibited from conducting arbitrary personal searches and searches. In addition, the public prosecutor cannot delegate the execution of any procedural act to the Judicial Police officer. Judicial review of these legal restrictions is particularly important. In particular, the Constitutional Court of Italy, by its decision (229/2018), annulled a regulatory act of the police, according to which, ‘the heads of each police station had to report to their own hierarchical scale complaints about crimes within the competence of the judicial function, regardless of the conditions laid down by the code of criminal procedure’.<sup>38</sup> This regulatory act was also accompanied by a corresponding circular with specific instructions issued by the Chief of Police and the Chiefs of other Police Forces. At the same time, the court clarified that ‘Article 109 of the Constitution expressly enshrines the Judicial Police by establishing its functional dependence on the judicial authority, excluding the intervention of other authorities in the conduct of investigations, so that the action of the latter is essentially reserved for the initiative and determination of the judicial authority itself’.<sup>39</sup>

### *D. The Judicial Police of Greece*

#### 1. Historical Review

At the time of the establishment of the Greek State on Ioannis Kapodistrias, there was no Judicial Police. During the period of the absolute Monarchy of Otto, no. 85 of 31.12.1836 Royal Decree was issued, which although never implemented, defined the Judicial Police to be exercised by Mayors, Presidents or Constables and was tasked with examining crimes and misdemeanors, collecting evidence and clues to ascertain the circumstances and to draw up regular protocols for the Ministers.

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<sup>37</sup> Stefano Pesci, ‘The ability of the public prosecutor to effectively guide investigations in relations with the judicial police’ (*‘La capacità del pubblico ministero di effettiva guida delle indagini nei rapporti con la polizia giudiziaria’*) (2018) 1 *Questione Giustizia* 527 (in Italian).

<sup>38</sup> Pesci (no 36) 89.

<sup>39</sup> Giuseppe D’Elia, *Magistrature, polizia giudiziaria e Costituzione* (Magistratura, polizia giudiziaria e Costituzione) (Milano: Giuffrè, 2002) 105 (in Italian).

A century later, in 1939, the International Society of Criminal Law recommended to the League of Nations the assignment to a special Police Corps of the tasks of investigation and arrest of alleged perpetrators of crimes. This Police Force shall be subordinate to and controlled by a judicial authority. At the European level, in February 1990, a European Conference was held in Madrid, with the participation of representatives of the Member States of the European Communities and with the subject of Judicial Police. In Greece, a lively debate developed on the need to establish judicial police, in order to achieve correctness, speed in the awarding of law and the completeness of judicial work, within the framework of the principle of good administration of justice.<sup>40</sup> A first step was taken with article 36 of Law 2145/28.05.1993 in order to issue a Presidential Decree and establish a Judicial Police Service in the District Attorney's Offices of the Territory.

Of course, the developments in the European Union in the past two decades, especially after the Treaty of Amsterdam, gave a great impetus to the debate on the establishment of Judicial Police in Greece. However, the Treaty of Lisbon now makes it necessary to establish a Judicial Police in all EU member states, which acts in the single Area of Freedom, Security and Justice of the EU, within the framework of judicial cooperation between the Member States.<sup>41</sup> At the same time, the integration of the Schengen Treaty into European Legislation, as an *acquis*, assigns to the judicial and especially to the police authorities the responsibility of protecting the borders of the EU.<sup>42</sup> Also, the General Data Protection Regulation in combination with article 16 of the Treaty on the Functioning of the EU is also fully implemented in the field of police and judicial cooperation requiring a strong data protection system to provide

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<sup>40</sup> For the meaning of the principle of good administration of justice see Olivier Gabarda, 'assessment of the administrative penalty' (*L'intérêt d'une bonne administration de la justice*) (2006) 45 *Revue du Droit Public* 153 (in French).

<sup>41</sup> See Anna Benaki, 'Towards a European Criminal Law? Thoughts on the Draft Treaty for the Establishment of a Constitution for Europe' ('Προς ένα Ευρωπαϊκό Ποινικό Δίκαιο; Σκέψεις με αφορμή το Σχέδιο Συνθήκης για τη θέσπιση Συντάγματος της Ευρώπης') (2003) 53 *Ποινικά Χρονικά* 961 (in Greek), Dimitris Tsilikis, 'The cross-border collection of electronic evidence in the EU area – Problems for the planned legislative regulation of electronic evidence', ('Η διασυνοριακή συλλογή ηλεκτρονικών αποδείξεων στον ενωσιακό χώρο – Προβληματισμοί για την σχεδιαζόμενη νομοθετική ρύθμιση της ηλεκτρονικής απόδειξης') (2021) 71 *Ποινικά Χρονικά* 241 (in Greek).

<sup>42</sup> See C-520/2020, where it is emphasized that '*SIS II should be a compensatory measure which contributes to maintaining a high level of security within the area of freedom, security and justice of the European of the Union.*'.

equivalent protection to all natural persons and to protect their rights.<sup>43</sup> The further cooperation of Europol, Eurojust, the European Public Prosecutor's Office and the rest of the criminal enforcement bodies necessitates the establishment of the Judicial Police, which in the Member States is charged with its coordination.<sup>44</sup> An example is the special investigative acts, such as the execution of the European Investigation Warrant, which constitutes an institutional form of judicial assistance in the field of gathering evidence and is acted upon in the EU countries by the Judicial Police, for the sake of the more effective collection of these in the criminal procedure.

## 2. Law 4963/2022

In the above context, Law 4963/2022, Establishment of the Judicial Police and other urgent provisions of the Ministry of Justice, was passed, which aims to assist the work of the judicial and prosecutorial authorities and ensuring the orderly operation of the judicial services, by assigning to specialized personnel of the Ministry of Justice police tasks, as well as tasks that require special scientific knowledge to speed up the administration of justice and efficiency in its administration. Until now, the above tasks were carried out by the staff of the Greek Police and private individuals, creating problems in the functional distribution of responsibilities among the justice sectors, breaking up the service cohesion necessary for the organization and operation, in order to fulfill the principle of good administration of justice.

In Greece there was no Judicial Police. The services with police responsibilities of a judicial nature fall under the administrative and not the judicial function. The police services in Greece are governed by the phenomenon of functional division.<sup>45</sup> The legal content of the functional division lies in the fact that the police services, although they fall under the administrative function and should perform only administrative

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<sup>43</sup> See Antonios Veneris, 'The restriction of the processing of personal data in Directive 2016/680/EU: Right of the data subject or right of the competent authorities?' ('Ο περιορισμός της επεξεργασίας των δεδομένων προσωπικού χαρακτήρα στην Οδηγία 2016/680/ΕΕ: Δικαίωμα του υλοκειμένου των δεδομένων ή δικαίωμα των αρμοδίων αρχών;') (2018) 17 *Ελληνική Επιθεώρηση Ευρωπαϊκού Δικαίου* 477 (in Greek).

<sup>44</sup> See Maria Caiaphas-Gpadi, 'Coordinating bodies for the fight against organized crime in the EU: From police to judicial coordination – The perspective of the protection of constitutional rights', ('Συντονιστικά όργανα για την καταπολέμηση του οργανωμένου εγκλήματος στην ΕΕ: Από τον αστυνομικό στον δικαστικό συντονισμό – Η προοπτική της προστασίας των θεμελιωδών δικαιωμάτων') (2003) 53 *Ποινικά Χρονικά* 165 (in Greek).

<sup>45</sup> For the functional division, instead of many, see Panagiotis Tsoukas (ed.), *Legal Studies of Apostolos Papalamprou (Νομικές Μελέτες Απόστολου Παπαλάμπρου)* (Athens: Nomiki Bibliothiki, 2008) 103 (in Greek).

tasks (guarding state buildings, guarding persons, being present at public meetings), nevertheless in the context of the intersection of functions they also perform judicial powers, i.e. powers which, according to the principle of separation of functions, are exercised only by the competent judicial authorities according to the Constitution.<sup>46</sup> In relation to the functional element, domestic agencies with police powers exercise a dual function (*Doppelfunktionalität der Polizei*), that is, while the rest of the public Services perform only administrative services, the Greek Police Services simultaneously perform judicial and administrative services. The above analysis leads us to the conclusion that the Judicial Police of Greece from an operational point of view, although it falls under the judicial function, it is not a judicial Service, but is characterized as a police Service, which, however, also exercises judicial powers.

On the other hand, according to the organic criterion, the employees of the Greek Police Services have a dual nature.<sup>47</sup> This means that the same person with police responsibilities is, at the same time, an administrative officer who is hierarchically subordinate to the political and if they are a militarily organized body to their physical leadership, but also a judicial officer falling within the hierarchy of judicial function, under the supervision of the Prosecutor.<sup>48</sup> Because the responsibilities of the police officers of the judicial police action concern the investigation, to solve the crime, in the context of the preliminary investigation, they are called investigative officers.<sup>49</sup> Depending on the extent of this authority, for the investigation of each crime or a specific category of crimes, general and special investigative officers are called respectively. In case of confusion of responsibilities, the specialists are taken over, as opposed to the general ones, because they are presumed to be more experienced and specialized in the investigation of the crime. The employees of the judicial police in Greece are accurately, under the new law, special investigative officers (Article four).

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<sup>46</sup> For the functional division of police bodies, instead of many, see the doctoral thesis of Remy Guérin, *The administrative police and the judicial police under the Fifth Republic: the game of the separation of powers (La police administrative et la police judiciaire sous la Ve République: le jeu de la séparation des pouvoirs)*, (DPhil thesis University Paris 8, 1982) 48-59 (in French).

<sup>47</sup> See For the dual nature, instead of many, see Dimitrios Papanikolaïdis, *System of Administrative Law (Σύστημα Διοικητικού Δικαίου)* (Athens: Sakkoulas 1992), 146 (in Greek).

<sup>48</sup> See Andromachi Markantonatu Skaltsa, *Public Administration & Collective Bodies (Δημόσια Διοίκηση & Συλλογικά Όργανα)* (Athens: Ant. Sakkoulas 2005) 51 (in Greek).

<sup>49</sup> See Theocharis Dalakouras, *Criminal Procedural Law, (Ποινικό Δικονομικό Δίκαιο)* (Athens: Ant. Sakkoulas, 2012) 184 (in Greek).

Until today, in Greece, the police services have the abovementioned characteristics.<sup>50</sup> In Greece, this option was proposed, because it was considered better from an organizational point of view to simultaneously have administrative and judicial responsibilities exercised by the same Service. However, the employees of the judicial police, by legislative choice, are subordinated hierarchically, only to a judicial officer in order to secure independence in their action. Judicial police officers have a dual status, since they are both civil servants and investigative officers, although as mentioned above they are only subordinate to the judicial function for reasons of independence in their action. Therefore, the position that the judicial police has only judicial powers is not correct, and it exhibits, however, all the characteristics of a police service manifesting at the same time measures of administrative and criminal procedural coercion.

The police sector consists of uniformed and armed personnel and exercises, in accordance with Article four of the law, preventive and repressive powers, among which are a) the service of indictments and procedural documents, b) the execution of the decisions of the criminal courts, c) the good order of court sessions, the guarding of court offices, but also of judicial and prosecutorial officers, inside and outside the courts, when it is judged by the supervisor of the regional service that there are security reasons connected to the exercise of their duties, d) the assistance to judicial and prosecutorial officers and their colleagues in the civil sector, when they carry out a preliminary examination or preliminary investigation.

Consequently, paragraph five of article two of the new law establishes a parallel or concurrent authority to conduct a preliminary investigation, both by the already competent police authorities and by the judicial police, providing the prosecutor with the option of choosing the most appropriate Service. In case of doubt, the matter should be resolved according to the principle of the more specific rule of law, since court officials have the necessary expertise and experience to investigate certain crimes.

In addition, par. six of article two of the law establishes the administrative assistance of all state services to the judicial police. In any case, the special conditions for the provision of administrative assistance by the Police Services of the law should be observed in accordance with Presidential Decree 141/1991 and always in the spirit of the principle of proportionality, so that their orderly operation is not disturbed.

Worthy of mention is the provision of par. one of article 43 of Law 3528/2007 according to which, for all matters not regulated in the founding law of the Judicial

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<sup>50</sup> See Zoe Papaioannou, *Police Law (Αστυνομικό Δίκαιο)* (Athens: Sakkoulas 2006) 393.



Police, the Code of Status of Public Political Administrative Officers and Employees of the Legal Entity of Public Law shall be applied proportionally.

### *E. The Lack of Judicial Police in Cyprus*

#### **1. The Organization of the Cyprus Police**

Cyprus, although an independent European State, still lacks judicial police as an independent Service. The judicial powers of the Cyprus police are exercised by an entity, the Cyprus Police, which also exercises administrative police powers.<sup>51</sup>

The judicial powers of the Cyprus Police are divided into various services. The Crime Combating Department (TKE) in the Cyprus Police operates at a central level, which essentially exercises most of its police powers. The existence of a Prosecutor's Office in the Crime Fighting Department is worth mentioning, which promotes cooperation between Police Departments and the Office of the Attorney General, providing legal advice. Criminal cases of particular gravity are forwarded to the Prosecutor's Office, which, after being examined, others are forwarded to the Attorney General's Office with specific recommendations or for legal advice and the rest are returned to the Police Directorates with instructions for criminal prosecution of those involved or for final classification. The Criminal Investigation Department (TAE) also has an auxiliary role in the execution of the judicial powers of the judicial police. Of course, there are also some specialized services, such as the Cybercrime Subdivision and the Drug Law Enforcement Service (YKAN). At a regional level, the judicial powers of the Cyprus Police are exercised by the Provincial Police Directorates and the Port and Maritime Police.<sup>52</sup>

The basic source and boundaries of the action of the police of Cyprus is certainly the Constitution, which is explicitly guaranteed in article 130 as the security force of the Republic.<sup>53</sup> According to the Police Law of 2004, as amended and in force today, the judicial powers of the Cyprus police are determined by the competence of the police to investigate crime and arrest and prosecute lawbreakers. For the execution of these duties, members of the Police have the right to carry weapons. Besides, any

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<sup>51</sup> Artemis Savvidou, 'An Outline of Criminal Law and the Working of Judicial System in Criminal Cases' (1989) *Cyprus Law Review*, 4016 (in English).

<sup>52</sup> Dennis Campbell (Ed), *Introduction to Cyprus Law A. Neocleous & CO*, (New York: Yorkhill Law Publishing, 2000) 465 (in English).

<sup>53</sup> Konstantinos Kompos, *Cypriot Constitutional Law: Theory, Organization and Practice*, (Κυπριακό Συνταγματικό Δίκαιο: Θεωρία, Οργάνωση και Πράξη) (Athens: Nomiki Bibliothiki, 2021) 176 (in Greek).

member of the Police from the rank of Sergeant or higher, may arrest or order the arrest of any other member of the Police, who is not of the same rank or higher, who commits any spontaneous offense punishable by imprisonment in violation of the aforementioned Law.<sup>54</sup>

It follows from the above that Cyprus does not have a Judicial Police. In other words, in Cyprus there is no separate body, independent of the existing Cyprus Police, which exercises exclusively judicial police powers.

## 2. *Proposal for the Establishment of Judicial Police in Cyprus*

Dealing with new forms of crime, preventing, and suppressing organized crime and terrorism is best done by a specially trained Judicial Police in Cyprus. The judicial police officers of Cyprus with special knowledge in law, criminology, sociology and other related sciences will be able to help in the fight against new forms of crime.

The Judicial Police of Cyprus will have its own Headquarters. Also, the Judicial Police of Cyprus will not be subordinate to the Ministry of Justice and Public Order, but to the Legal Service of the State. The Chief of the Judicial Police of Cyprus will be accountable only to the Attorney General of the Republic of Cyprus. The Chief of the Judicial Police will be appointed by the President of the Republic of Cyprus, based on the proposal of the Attorney General and the Assistant Attorney General.<sup>55</sup>

The organization of the Judicial Police Services of Cyprus is proposed to be provided for in a separate prefecture. The Judicial Police in Cyprus will organize a Central Service and Regional Services. It is proposed that the judicial police officers fall under two Departments. The Armed Department will exercise operational powers, arrests, investigations, confiscations and more. The unarmed Department will be staffed by police officers, graduates of Legal Science, who will assist in the investigative work of the Attorney General and the Assistant Attorney General.<sup>56</sup>

The Cyprus Judicial Police of the Legal Service will cooperate with the Cyprus Police of the Ministry of Justice and Public Order. Finally, the Judicial Police of Cy-

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<sup>54</sup> Kostas Paraskevas, *Cypriot Constitutional Law Fundamental Rights & Freedoms (Κυπριακό Συνταγματικό Δίκαιο Θεμελιώδη Δικαιώματα & Ελευθερίες)* (Athens: Nomiki Bibliothiki, 2015) 150 (in Greek).

<sup>55</sup> Christos Lottidis, *The Constitution of the Republic of Cyprus, its complexity and the unsuccessful attempt to revise it, in 1963, (Το Σύνταγμα της Κυπριακής Δημοκρατίας, η πολυπλοκότητα του και η ανεπιτυχής προσπάθεια αναθεώρησής του, το 1963)* (Athens: Sakkoulas, 2009) 97 (in Greek).

<sup>56</sup> Despina Kyprianou, *The role of the Cyprus attorney general's office in prosecutions: Rhetoric, Ideology and practice* (London: ProQuest LLC, 2014) 203 (in English).

prus will cooperate with Europol and Interpol and the European Public Prosecutor's Office.

In general, the establishment of the Judicial Police in Cyprus will contribute to the consolidation of the Rule of Law and the more effective administration of Justice.<sup>57</sup>

## 5. Conclusion

The Judicial Police is a police service that belongs to the narrow core of the State and its employees enjoy greater guarantees of independence, because they are hierarchically subordinate to the judicial function. Nevertheless, the Judicial Police, like any state agency with police powers, exercises judicial as well as administrative powers, acquiring a dual function, while its employees have a dual character, resulting in the requirement to describe and distinguish their administrative from their judicial powers.

In the French conceptual order, the rule applies that the powers of the judicial police must be distinguished from the powers of the administrative police. This rule comes from the principle of the distinction of liturgies, as it was formed during the times of the French revolution.

Indeed, in Italy the institution of judicial police is constitutionally enshrined. This is because the judicial police must enjoy a degree of independence, as is the case with the judiciary, in order to effectively fulfill its mission.

In Germany the judicial police is systematically organized into central and regional Services to deal with contemporary crime.

In Greece, the judicial police was established in 2022. European integration, in particular, after the Treaty of Lisbon and the establishment of judicial and police cooperation, between the member states of the European Union, in a single area of security, freedom, and justice is the main reason for the establishment of the Greek judicial police parallel to the operation of the European Prosecutor in Greece.

In Cyprus there is no autonomous and independent service that serves as a judicial police. The judicial powers of the Cyprus Police are exercised by Police Services that are subordinate to the Ministry of Justice and Public Order. The Police Services of Cyprus exercise parallel judicial and administrative powers. We hope that this paper will help in its dialogue on the establishment and operation of judicial police in Cyprus, as a member state of the European Union.

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<sup>57</sup> Angelo Constantinou, *Applied Research on Policing for Police The case of Cyprus* (Berlin: Springer Editions, 2021) 109 (in English).

It is proposed to establish the Judicial Police of Cyprus. The new Police will be directly subordinate to the Legal Service of the State and not to the Ministry of Justice and Public Order.

Judicial police officers will be specially trained and with appropriate knowledge of science to fulfil their mission.

The selection of the Chief by the President of the Republic of Cyprus and the Heads of the Legal Service of the State will help to select the most suitable person for the specific position.<sup>58</sup>

In general, the establishment and organization of a Judicial Police in Cyprus helps to combat specific forms of crime, and to more effectively protect the fundamental rights of citizens in a modern European State of Law.

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<sup>58</sup> I. Tzivaras, *Comparative overview of Greek and Cypriot Constitutional Law (Συγκριτική επισκόπηση Ελληνικού και Κυπριακού Συνταγματικού Δικαίου)*, (Athens: Sakkoulas 2010) 107 (in Greek).

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