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The Organization and Responsibilities of the Italian Judicial Police

In consonance with legal terminology, Italian police manuals classify the police as the Public Force and proceed to consider it from the perspective of its technical functions: security police, administrative police, judicial police, and confinement police [1]. The first two functions fall under the purview of the pertinent executive departments of the government and the last two are subject to the jurisdiction of the judicial branch.

This article is intended to serve as an introduction to the organization and responsibilities of the judicial police, which is necessarily the most complex and exacting function of the Public Force. The objective of this survey cannot, however, be adequately achieved without taking notice of the nature of Italian government with particular attention to its judicial system.

The Italian Constitution of 1947 sets forth the norms pertaining to the "organization of the Republic." In so doing, it provides, first, for the fundamental modern-state distribution of political power among the legislative, executive, and judicial branches of government, and second, for the distinction between central and local government.

By affirming that the Republic is "one and indivisible," Article 5 of the Constitution attributes to the Italian nation the character of a unitary state as opposed to a federal one. The ensuing provisions of the constitutional text, which call for the division of the national territory into regions, provinces, and communes, do not in any way detract from the unitary nature of the Republic of Italy, since such local bodies of government must exercise their legislative and regulatory competence "within the limits of the general fundamental principles established by the law of the State." The regions, provinces, and communes are therefore totally devoid of sovereignty and enjoy only limited autonomy.²

Organization of the Public Force Under the Executive Branch

Although police forces are organized by, and operate within, the local bodies of government, especially at the communal (municipal) level, their resources are generally limited and their functions are basically administrative, dealing with traffic control and the enforcement of local ordinances.

At the national level there are five major police organizations, which carry out their functions throughout the national territory and whose powers relating to the enforcement of the Criminal Code and complementary statutes also extend to the entirety of the national territory. These forces are organized and administered by the respective ministry (department) of the executive branch to which they are assigned by law, but for purposes

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²In addition to Article 5, the organization of the Italian government is set forth by the Constitution of 1947 under Part II, entitled "The Organization of the Republic" and comprising Articles 55 through 139.

of public order, security, and safety their employment is coordinated by the Ministry of the Interior.

The oldest and most prestigious of these national police forces is the Arma dei Carabinieri, generally referred to simply as the Carabinieri, which is vested with both military and civil jurisdiction. In conjunction with its military duties, it operates as the military police branch of the Italian armed forces. With respect to its civil jurisdiction, it has full police powers vis-à-vis the civilian population throughout the state.³ Because of its essentially military composition and structure, it falls under the Ministry of Defense. Specific civil responsibilities of the Carabinieri include the maintenance of order in the courts under the supervision of the judiciary.

The second national police force in order of numerical strength and actual variety of police functions is the Corpo delle Guardie di Pubblica Sicurezza, usually referred to as Pubblica Sicurezza or just P.S. The P.S. is organized under the Ministry of the Interior, whose structure and responsibilities lack an American counterpart. This ministry is responsible for public order, security, and safety. It exercises its functions at the local level through a system of prefecture, which are established in every province and represent in their respective area of jurisdiction the executive branch of the central government. The prefects, who head the prefecture, besides supervising the police (the entire Public Force), perform many administrative duties that overlap those of other ministries and agencies.⁴ In cases of "urgent necessity" the prefects are empowered to adopt special measures in the public interest. The P.S. is the police force at the immediate disposal of the Ministry of the Interior (and its peripheral organs), which, however, draws upon the other police forces as well to carry out its public order functions. The P.S. is in the process of being reorganized as a totally civil police force, in contrast with its present militarized structure.

The Guardia di Finanza, also a national police force, is employed under the guidance of the Ministry of Finance. Although it shares with the Carabinieri and the P.S. jurisdiction over the enforcement of criminal laws, it is specifically organized for the prevention and repression of crimes related to tax evasion. This force consists of approximately 40 000 officers and men.

The fourth national police organization is the Corpo degli Agenti di Custodia, whose specific mission is the maintenance of order within confinement facilities. Its employment, under the supervision of the Ministry of Grace and Justice, is usually limited to the interior and perimeter of state prisons and other confinement facilities. On the outside, including within the courtrooms, prisoners are escorted by the Carabinieri.

The fifth and final police force at the national level is the Corpo Forestale dello Stato, whose specific employment is analogous to that of the United States Park Police. It falls under the Ministry of Agriculture and Forests.

The Judicial System

The autonomy of the Italian judiciary is specifically safeguarded by the Constitution, which also dictates that "judges are subject only to the law."

³For the performance of civil functions, the Carabinieri are structured in a "territorial" organization consisting of a General Headquarters and three divisional headquarters, which have subordinate brigades, legions, groups, companies, and stations. The stations, which are the smallest territorial unit of the force, are located in nearly every commune (municipality). The numerical strength of the Carabinieri is approximately 80 000 officers and men.

⁴In police matters the prefect is assisted by the questore, who is also an official of the Ministry of the Interior as well as the chief of police in each province. As such, he is in charge of the questura (police headquarters). The officers and men of the P.S. are generally under the operational control of the questura or of its subordinate precincts, known as commissariati. These police offices are responsible for a variety of administrative functions, including the issuance of passports and certain types of permits. The P.S. consists of approximately 76 000 officers and men.

In consonance with its unitary-state structure, Italy has a unified national court system, which is part of the central government. No courts have therefore been established as part of the regional, provincial, or communal bodies of government. The Constitution does provide, however, for a judicial organization consisting of ordinary and administrative courts. The adjudication of civil and criminal matters lies within the jurisdiction of ordinary courts.

Jurisdiction is vested in trial and appellate courts, each of which usually has specialized subject-matter sections. The major distinction, functionally speaking, lies between civil and criminal divisions. At the summit of the ordinary judicial pyramid sits the Supreme Court of Cassation, whose function is to pass on points of law rather than fact. As part of its institutional purposes, the Supreme Court should provide uniformity to the interpretation of the law; however, the lower courts are not bound by its decisions, nor is the Supreme Court bound by its previous decisions. Clearly, *stare decisis* is not a principle of Italian law. No court—ordinary or administrative—may rule a law or statute unconstitutional, but it must refer the issue to the Constitutional Court, which is an organ of the central government created by the Constitution of 1947 as a specific safeguard for constitutional legitimacy.

Italian courts having jurisdiction over criminal offenses are the Praetorial Courts, Tribunals, Courts of Assizes,⁵ Courts of Appeal, and, as trier of law, the Supreme Court of Cassation. At the trial level, the competence of the individual court is as a rule dependent on the type of offense with which the defendant is charged. Also, as a rule, venue is determined by the place where the crime has been committed.

Office of the Prosecutor

At the root of the Italian system of criminal procedure lies the fundamental principle of *ne procedat judex ex officio*, that is, no court is empowered to initiate independently criminal proceedings. A "criminal action" may (in fact, must) be brought exclusively by the office of the prosecutor (Article 74, Code of Criminal Procedure). Therefore, in the absence of an indictment resulting from the action of the prosecutor there can be no trial.

In addition to the exercise of the "criminal action," the office of the prosecutor combines various functions, including among the most important the supervision of the judicial police (Article 220, Code of Criminal Procedure; Article 109, Constitution).

Following the enactment of the Constitution of 1947, prosecutors enjoy the status of members of the judiciary (*magistratura*). Although an integral part of the judicial system, their functions are regarded as administrative rather than judicial. It follows that while a member of the judiciary is assigned to the office of the prosecutor he cannot perform judicial functions until such time as he is returned to the bench.

The organization, including jurisdiction and venue, of the office of the prosecutor is parallel to that of the courts: under the title of Procurator General of the Supreme Court of Cassation, a prosecutor is attached to said court; under the title of Procurator General of the Court of Appeal, procurators are attached to each court of appeal; and under the title of Procurator of the Republic, prosecutors are attached to each tribunal. No prosecutors are attached to praetorial courts, which are one-judge courts, since the functions of praetorial judge and prosecutor are in this instance vested in the same magistrate.

The Ministry of Justice, which prior to the enactment of the 1947 constitution exercised operational control over the office of the prosecutor, now merely oversees the legitimacy of

⁵The Courts of Assizes are actually specialized exclusively in the administration of criminal justice. It is worth noting that these courts are composed of two members of the judiciary and six laymen selected from the population. There is no jury system in Italy. The Assizes Courts are the only cases where lay members sit as part of the bench.

its functions. Moreover, the prosecutors at each level of jurisdiction are functionally independent of their colleagues at higher levels. There is, of course, a hierarchical structure within the office of the prosecutor at each individual level of jurisdiction (intra-office jurisdiction). Such autonomy within the structure of the office of the prosecutor is due to the fact that prosecutors, as part of the judiciary, enjoy the same constitutional prerogatives as judges.

Criminal proceedings, under Italian law, begin as soon as the prosecutor or the judicial police becomes aware of the *notitia criminis* (knowledge of the commission of a crime). However, the criminal trial itself is made up of two stages, the preparatory stage (*istruzione*) and the decisional state (*giudizio*). Consequently any investigative activity conducted by the prosecutor or the judicial police prior to the preparatory stage is solely preliminary and not part of the trial.

The Judicial Police: Organization

The term "judicial police" is a purely functional one. It is assumed by elements of the police forces and other governmental entities, including public officials, in the conduct of police activities following the commission of a crime.

The Italian Code of Criminal Procedure (Article 221) distinguishes between "officers" and "agents" of the judicial police. It attributes the qualification of officers to the Public Security officials of the Ministry of the Interior; to the field-grade officers, company-grade officers, and noncommissioned officers of the Carabinieri, P.S., Guardia di Finanza, and Corpo degli Agenti di Custodia; and to the mayors of communes where none of the previously indicated officers are stationed. The Code attributes, moreover, the qualification of agent to the enlisted men of the Carabinieri, P.S., Guardia di Finanza, Corpo degli Agenti di Custodia, and to the provincial and municipal policemen.

In addition to the members of these police forces, the Code recognizes as judicial police officers or agents all other persons charged by complementary laws and regulations with the investigation of specific classes of crimes. The qualification of such individuals as judicial police officers or agents is limited to the performance of their responsibilities in connection therewith.

The foregoing is indicative of the existence of two categories of officers and agents of the judicial police. The first category includes officers and agents generally vested with police powers in relation to every type of crime. The second category includes a wide variety of public officials vested with the power to investigate and repress only specific criminal offenses.

Purely by way of illustration and not completeness, officers of the latter category are the officers and noncommissioned officers of the Corpo Forestale dello Stato and of the Corpo dei Vigili del Fuoco (firefighters), certain consular representatives overseas, customs officials, provincial and communal technical officials, clerks-of-court with respect to registration tax laws, postal inspectors, labor inspectors, port authority officials, airport directorate officials, and captains of vessels. As a rule, judicial police agents of this category are the subordinates of the above officials. (For a nearly exhaustive listing of judicial police officers and agents of the second category, see Ref 2.)

Individuals occasionally called upon to assist the judicial police (such as interpreters and technical experts) are considered "auxiliaries" thereof, but they do not assume the qualification of judicial police officers or agents. Nor are private citizens in the performance of a "citizen's arrest" recognized as operating, even for the duration of such activity, as judicial police.

The judicial police has been organized primarily for the purpose of providing the office of the prosecutor with a viable means of uncovering crimes, searching for criminals, collecting evidence, and performing other operations in the interest of forestalling further

consequences arising from the commission of a criminally illegal act. The judicial police must therefore be conceptually and practically distinguished from the security police, a function of the Public Force directed at crime prevention.

The Code of Criminal Procedure places the officers and agents of the judicial police under the direction and supervision of the office of the prosecutor. The Procurators General of the courts of appeal and the Procurators of the Republic head the judicial police in their respective districts. The highest ranking officer of the judicial police must report to the prosecutor in each district. No transfer, suspension from judicial police functions, or promotion of judicial police officers and agents may take place without the concurrence of the prosecutor to whose district they are assigned.

Since the judicial police receives directives from the Procurator General, the Procurator of the Republic, and the Praetorial Judge in each court of appeal district, it must abide, in the event of conflicting orders, by the directives of the highest or higher ranking prosecutor.

It is worth noting that the Arma dei Carabinieri, which has the most capillary organization in Italy, has established, in the form of specialized units, judicial police "detachments" in each court of appeal district and judicial police "squads" in tribunal and praetorial court districts.

The members of the national police forces vested with judicial police functions do not lose their judicial police status when assigned to other police duties such as security police or administrative police. Obviously, while assigned to or performing other duties, they are not under the supervision of the office of the prosecutor, but report to their ordinary chain of command.

The Judicial Police: Responsibilities

As noted previously, the judicial police is responsible for the investigation and repression of criminal conduct. However, because of the protection afforded by the Constitution to the individual rights of citizens and aliens subject to Italian jurisdiction, the functions of the judicial police comprise two classes of acts: acts which it can perform of its own initiative and acts which it can perform as directed by, or with the participation of, the judiciary.

The judicial police is therefore charged with the autonomous performance of the following institutional responsibilities:

- (1) to gather evidence of the crime or preserve the traces thereof;
- (2) to interrogate arrested or detained persons;
- (3) to conduct line-ups (in the presence of defense counsel);
- (4) to make necessary sketches of the scene of the crime;
- (5) to question witnesses;
- (6) to interrogate suspects not under arrest or detention;
- (7) to conduct inspections;
- (8) to take notice of the appointment of defense counsel, or, in the absence of voluntary appointment, to request the prosecutor to appoint one *ex officio*;
- (9) to apprise defense counsel of all acts in the conduct of which he has the right to be present; and
- (10) to transmit immediately to the prosecutor the record of interrogations, seizures, inspections, and searches.

No additional acts may be performed autonomously by the judicial police.

With respect to the other class of acts, judicial police responsibilities whose performance requires an order of the prosecutor, or of the competent court, include searches, seizures,

entry to telephone offices and installations, verbal summonses, and execution of coercive judicial measures.

In the absence of a warrant, which is always issued by the judiciary, the judicial police must or may proceed to arrest or detain in accordance with the following rules:

1. Arrest by the judicial police is mandatory whenever an individual is caught flagrantly committing an offense punishable by confinement to a term of at least three years or to life imprisonment.

2. Arrest by the judicial police is optional whenever an individual is caught flagrantly committing an offense punishable by confinement to a term of at least two years, or to a term of not less than six months in the case of certain categories of criminals.

3. Detention by the judicial police is permitted whenever these conditions are met: there are grounds to believe that the suspect will flee; there is strong circumstantial evidence against the detained person; and the crime is one for which a mandatory warrant of arrest is prescribed. Moreover, in cases of detention the judicial police must immediately apprise the office of the prosecutor, who is responsible for upholding the state of detention.

There are finally certain acts that the judicial police can perform in cooperation with the prosecutor. These are primarily administrative. For example, officers of the judicial police are often called on to act as secretary of the prosecutor in the drawing up of records.

Ordinary breaches of professional conduct by the officers and agents of the judicial police are subject to disciplinary action by the office of the prosecutor to which they are assigned. For violations of the law, however, the members of the judicial police are subject to ordinary criminal proceedings. (For an exhaustive study of the position and role of the judicial police in the administration of criminal justice, see Ref 3.)

Conclusion

Although no sound criticism can be made against the classification of the judicial police as a technical function of the Public Force, the attentive observer should take note of a more substantial service performed by the judicial police: its contribution to the principles of separation of powers and of checks and balances.

The fact that the judicial police, as part of the Public Force, is subject to the executive branch of the government and simultaneously carries out its technical responsibilities under the supervision of the judiciary constitutes a major safeguard for the rights of the citizenry under the rule of law.

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