REPOLITY
REFORMING POLICE ACCOUNTABILITY IN ITALY

Police Accountability in Italy

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Giuseppe Campesi
Carlo Caprioglio

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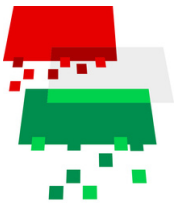

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1. Introduction

The police are among the principal public services provided by the State, tasked with maintaining peace and internal order. In a democratic state governed by the rule of law, these objectives are closely linked to the protection of individuals' fundamental rights and freedoms. To carry out this crucial mission, the police are granted powers and prerogatives unmatched by any other public institution. The police possess powers that allow them to identify individuals, intrude into private life, restrict freedom of movement, association, or expression, detain persons, and use force against those who resist their orders. This concentration of authority gives rise to a paradox: the very institution entrusted with safeguarding fundamental rights and freedoms can become their primary threat. The police represent both a potential threat to individual rights and a means of protecting them. For this reason, the oversight of police activity is essential to the rule of law and serves as a key indicator of the democratic quality of a country's political and civil institutions.[1] This research report explores the relationship between policing, democracy, and rights, with a particular focus on the strengths and weaknesses of the Italian system of police accountability.

The term *accountability* is broad and encompasses at least two main dimensions.[2] The first refers to the exercise of control over the powers granted to a specific executive actor. In the context of policing, accountability is often conflated with 'democratic control'[3], which denotes the set of mechanisms intended to guide and regulate police behavior, limit discretionary authority, and ensure compliance with political directives.[4]

In a democracy, it is legitimate to expect police activity to be subject to democratic

[1] Jones T., Newburn T., Smith D. J. (1996), "Policing and the Idea of Democracy", *British Journal of Criminology*, 36(2), p. 187.

[2] Goldring J., Wettenhall R. (1980), "Three perspectives on the responsibility of statutory authorities", in *Politics*, 15(2), pp. 136-150.

[3] Jones T. (2012), "The Accountability of Policing", in Newburn T. (ed.), *Handbook of Policing*, Routledge, Abingdon, p. 694.

[4] Rowe M. (2020), *Policing the Police. Challenges of Democracy and Accountability*, Policy Press, London, p. 100.

control—meaning that it should be guided by principles and rules established through democratic processes, which define and limit the scope of police action. However, this model carries an inherent risk: political authorities may use their influence to steer policing toward partisan objectives. This is where the second meaning of accountability—closer to the term's original sense—becomes essential. Accountability also implies that executive agents must answer for how they exercise the powers granted to them by law.[5] In this context, *accountability* refers to transparency: police forces must be open to scrutiny and prepared to answer for their actions, both politically and legally, as well as for the outcomes they produce.

Of course, the mechanisms and processes of police accountability are very different depending on whether they are aimed at controlling the functioning of the organisation or the behaviour of individual officers.[6] The control of the police as an organization primarily concerns the constitutional framework within which policing is conducted. This framework defines both the powers legally conferred upon the police and the mechanisms of political and administrative oversight through which policing can be steered toward specific political goals and priorities. The oversight of individual police officers' conduct is carried out through procedures that differ from those used to control the organization as a whole. While the political and institutional context undeniably shapes officers' actions, these mechanisms primarily serve to assess, *ex post*, whether police conduct has complied with the applicable rules—and to impose sanctions in cases of misconduct. Police officers may be held individually accountable through disciplinary proceedings when they violate orders, and through judicial proceedings when their actions infringe upon the rights of others.

This research report examines both dimensions: the forms of political and administrative control over police forces, and the legal frameworks governing the liability of individual officers under the Italian system.

[5] Rowe M. (2020), *Policing the Police*, cit., p. 14.

[6] About the distinction between *organistational* and *individual accountability*, see Jones T. (2012), "The Accountability of Policing", cit.; Cheung J. (2005), "Police accountability", in *The Police Journal*, 78(2), pp. 3-36.

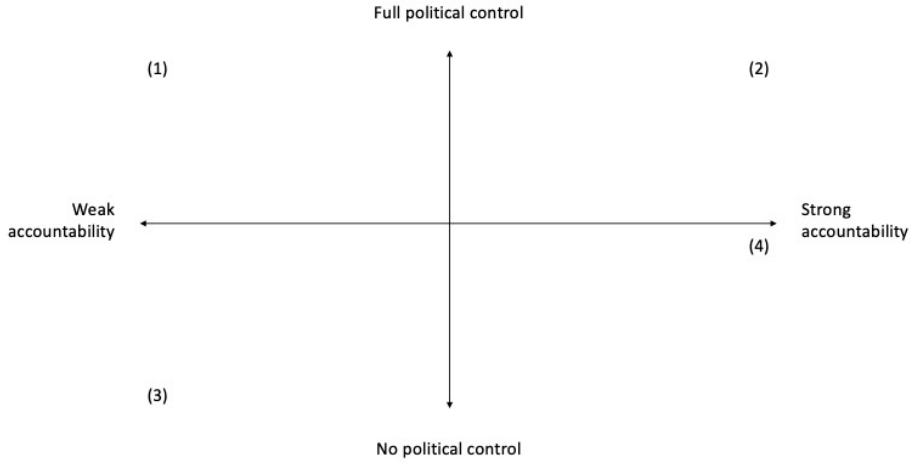
The way in which political-administrative control interacts with individual accountability mechanisms gives rise to different institutional models of police organization. These models can be classified according to the framework presented in the figure below, which we have revised and adapted from a typology originally proposed by Philip Stenning.[7]

This classification identifies the most problematic institutional models of police in positions (2) and (3) of the diagram. The first refers to a model in which the police are entirely directed and controlled by political authorities—so much so that existing accountability mechanisms are themselves politicized, functioning primarily as instruments to ensure that the police serve political ends. The second model, by contrast, describes police forces that operate in complete autonomy, with no effective political oversight or accountability, eventually functioning as quasi-independent political actors—almost a State within the State.

The model of police located in position (1) is equally problematic, regardless of the degree of political control exerted by the government. It is typically characterized by inefficiency, corruption, and occasional violence. By contrast, the model in position (4) offers the most balanced configuration between political oversight and accountability, and corresponds to the ideal of democratic policing. In this model, the police maintain a degree of independence from direct political control while remaining subject to democratic scrutiny. Their relative autonomy is counterbalanced by robust administrative and judicial accountability mechanisms, which ensure that the exercise of police powers is subject to review.

In the following analysis, we will attempt to situate the Italian policing system within one of these institutional models.

[7] Stenning P. (2011), "Governance of the police: independence, accountability and interference", *Flinders Law Journal*, 13 (2), pp. 241-265


Full political control
(1)
(2)
Weak accountability
Strong accountability
(4)
(3)
No political control

2. Political and administrative control over the Italian police forces

Political-administrative control of police forces refers to the authority to direct and oversee police activities. Two main models of control are typically distinguished.[8] The first places the police under the direct supervision of representative bodies, which may elect the heads of police services or otherwise exert significant influence over their operations. The second model assigns responsibility for police direction and oversight to civil servants, with representative bodies exercising only indirect control—primarily through the political accountability of government ministers. In general, decentralized systems tend to facilitate more direct interaction between police forces and political authorities, sometimes even incorporating elements of 'community' control.[9] Conversely, centralized systems typically place the police under the authority of the Ministry of the Interior, where the relationship between the police and representative political bodies is mediated by civil servants who form the administrative backbone of the police apparatus.[10]

In this chapter, we examine the forms of political and administrative control exercised over the Italian police forces, beginning with an overview of their organizational structure. Following this introductory analysis, we will explore, in turn, the mechanisms of political oversight and the degree of administrative autonomy granted to police authorities. The chapter will also consider recent developments that have enhanced the role of local, mostly municipal, authorities in police governance. In the concluding

[8] Bayley D. (1979), "Police Function, Structure, and Control in Western Europe and North America: Comparative and Historical Studies", *Crime and Justice*, 1, p. 130.

[9] Stone C. E., Ward H. (2000), "Democratic policing: A framework for action", *Policing and Society*, 10(1), pp. 11-45; Jones T. (2012), "The Accountability of Policing", in Newburn T. (ed.), *Handbook of Policing*, Routledge, Abingdon, pp. 693-724.

[10] Bayley, D. (1975) "The police and political developments in Europe", in Tilly C. (ed.), *The Formations of Nation States in Europe*, Princeton University Press, Princeton (NJ), p. 335; Bayley D. (1979), "Police Function, Structure, and Control in Western Europe and North America", cit., p. 131; Jones T., Newburn T., Smith D. J. (1996), "Policing and the Idea of Democracy", *British Journal of Criminology*, 36(2), p. 195.

section, we will summarize the main findings and highlight the key shortcomings of the current system of political and administrative control of the Italian police.

2.1. The Structure of the Italian Police System

The Italian police system is highly centralised, embodying the defining features of the so-called 'continental' model of policing.[11] In this model, the Ministry of the Interior assumes primary responsibility for the political oversight and strategic direction of police services.[12] This function has traditionally formed the core of the Ministry's mandate, contributing to its status as one of the most powerful institutions within the Italian public administration. While it may no longer be considered the "engine of the State," the Ministry continues to exercise comprehensive authority over matters of public order and security.[13]

According to Article 95(2) of the Italian Constitution, the Minister of the Interior is "individually responsible" for the Ministry, meaning that the administration of public security rests on the Minister's political supremacy.[14] Article 1 of Law No. 121/1981 further defines the Minister as "responsible for the protection of public order and security" and as "the national public security authority." The same provision entrusts the Ministry of the Interior with the "high direction" (*alta direzione*) of public order and security services, the "coordination" of police forces, and the authority to adopt "measures" for the protection of public order and security.

[11] Bayley, D. (1975) "The police and political developments in Europe", cit.; Mawby, R.I. (1992) "Comparative police systems: searching for a continental model", in Bottomley K. et al. (eds.), *Criminal Justice: Theory and Practice*. London: British Society of Criminology/ISTD, pp. 108-132; Mawby R.I. (2012) "Models of Policing", Newburn T. (ed.), *Handbook of Policing*, cit., pp. 17-46; Brodeur J.P (2007), "Policing in continental Europe", In Green J.R. (ed.), *The Encyclopedia of Police Science*, Routledge, Abingdon, pp. 257-263.

[12] Article 14 of Legislative Decree No. 300/1999.

[13] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza tra politica, amministrazione e coordinamento", in Giupponi T. (a cura di), *L'Amministrazione di Pubblica Sicurezza e le sue responsabilità*, Bononia University Press, Bologna, p. 39.

[14] Ursi R. (2022), *La sicurezza pubblica*, Il Mulino, Bologna, p. 97.

The political primacy of the Minister of the Interior was reinforced by Law No. 121/1981, which restructured the administration of public order and security. Before this reform, the system relied primarily on provincial and local authorities, and the Minister's authority in the field of public order and security was exercised indirectly, through a hierarchical chain in which local offices were subordinated to prefects, who in turn reported to the Ministry.[15] However, it would be a mistake to view the 1981 reform as merely formalizing powers already exercised in practice. Rather, the law aimed to clarify and explicitly define the Minister's responsibilities in accordance with Article 95(2) of the Italian Constitution, which states that each minister is "individually responsible for the acts of their own ministry". Indeed, the Minister's individual responsibility—including potential criminal liability—can only be invoked where such responsibilities are clearly established by law.[16]

The 1981 reform preserved the powers of the Council of Ministers in matters of public order and security, as provided by current legislation.[17] As a result, the Minister of the Interior must coordinate the political and administrative direction of police services within the broader policy framework set by the Government, for which the President of the Council of Ministers is responsible.[18] In carrying out these functions, the Minister is accountable to Parliament and is required to submit an annual report on police activities and the overall state of public security in the country.[19] Additionally, both the Minister and other public security authorities may be called before parliamentary commissions, which exercise functions of inquiry, oversight, and information.

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[15] Chiappetti A. (1987), "Polizia (dir. Pubblico)", in *Enciclopedia del diritto*, vol. 34, Giuffré, Milano, pp. 120-158.

[16] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., p. 43.

[17] Article 1 of Law No. 121/1981.

[18] Article 2 of Law No. 400/1988. Although public order is no longer among the responsibilities of the Council of Ministers, the law assigns the President of the Council several key prerogatives relating to "security services and state secrets" (Article 5(2)(g) of Law No. 400/1988).

[19] Article 113 of Law No. 121/1981. Since 2003, this report has been presented alongside the report on organised crime and the activities and outcomes of the Anti-Mafia Investigation Department (Article 5 of Decree-Law No. 345/1991); the report on results achieved in the areas of immigration and border control (Article 3 of Legislative Decree No. 286/1998); and the report on initiatives aimed at enhancing citizen security (Article 17(5) of Law No. 128/2001).

The Minister exercises authority through the administrative structure of the Department of Public Security. Acting on the basis of the Minister's "directives" and "orders," the Department is responsible for implementing public order and security policies, coordinating the operations of police forces, managing and administering the Italian State Police (*Polizia di Stato*), and overseeing the technical and administrative infrastructure that supports both the police and the broader functions of the Ministry of the Interior.[20] The Department is also responsible for allocating the necessary resources for the organization of the 'judicial police' (*polizia giudiziaria*)—that is, police services acting as auxiliaries to the judiciary in criminal investigations—as determined by the Minister of the Interior in agreement with the Minister of Justice.[21]

The Department of Public Security is headed by a prefect who holds the dual position of Chief of the State Police and Director General of Public Security.[22] Although the Chief's powers are not explicitly defined, they can be inferred from the functions assigned to the Department—particularly in relation to the activities of the *Polizia di Stato*—and from the hierarchical relationship with the Minister of the Interior[23], to whom the Director General is directly subordinate.[24] The Director General is appointed by presidential decree, following a decision of the Council of Ministers and upon the proposal of the Minister of the Interior.[25]

The strong centralization of public security administration is intended to ensure coherence within a complex system involving multiple administrative levels and distinct police forces operating under different structures.[26] On one hand, the public security apparatus continues to be organized according to a principle of hierarchical subordination, centered on the duty of obedience established by Article 65 of Law No.

[20] Article 4 of Law No. 121/1981.

[21] Article 17 of Law No. 121/1981.

[22] Article 5 of Law No. 121/1981.

[23] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., p. 49.

[24] Article 65 of Law No. 121/1981.

[25] Article 5 of Law No. 121/1981.

[26] Caia G. (1996), "Polizia di stato", in *Digesto delle discipline pubblicistiche*, vol. XI, Utet, Torino, p. 344.

121/1981.[27] On the other hand, the decision to retain multiple, institutionally distinct police forces—some of which as we shall see fall outside the Ministry of the Interior's hierarchical structure—necessitates a framework for regulating their interactions. In these cases, coordination must rely on mechanisms other than direct command and control. The hierarchical principle, which governs vertical relationships between different administrative levels, is complemented by the principle of coordination, which regulates horizontal relationships of functional dependence among the various actors involved in the administration of public security.[28]

At the local level, the two main authorities responsible for public security are the Prefect and the *Questore*—the provincial head of the *Polizia di Stato*. Until 1981, the relationship between the two was hierarchical, and the local administration of public security followed a pyramidal structure, with the police headquarters forming its base.[29] Today, both the Prefect and the *Questore* are formally designated as "provincial authorities" for public security, but they perform distinct functions, resulting in a de facto diarchy.

The Prefect is entrusted with the "general responsibility" for public order and security in the province[30], while the *Questore* holds "technical-operational responsibility" for police services.[31] This arrangement means that there is no hierarchical relationship between the two at the local level—unlike the structure at the national level, where the Minister of the Interior exercises authority over the Director General of Public Security. The *Questore* is subject to the hierarchical control of the Director General of Public Security and, through that chain of command, to the Minister. The Prefect, by contrast,

[27] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 110.

[28] Ursi R. (2022), *La sicurezza pubblica*, cit., pp. 111-112.

[29] Article 2 of Royal Decree No. 635/1940 assigned the Prefect the responsibility of "supervising" public oreder and security. Article 3 of the same decree granted the *Questore* the "technical direction of all police and public order services in the province", while specifying that this role was to be exercised "under the authority" of the Prefect.

[30] Article 13(2) of Law No. 121/1981.

[31] Article 14(2) of Law No. 121/1981.

acts as the government's representative in the province[32] and reports directly to the Minister[33], periodically providing updates on the implementation of public order and security policies.[34]

By eliminating the hierarchical link between the Prefect and the *Questore*, the 1981 reform sought to enhance the autonomy of the latter, effectively removing the *Questore* from the "prefectural womb"[35] in which he had previously been embedded. The reform sought to establish a system that clearly distinguishes between technical-operational responsibilities and the political functions entrusted to the Prefect.[36] While the Prefect retains important governance functions, including the authority to define objectives and expected outcomes, the *Questore* exercises operational autonomy in determining the most appropriate technical and tactical means to achieve those goals. In particular, the *Questore* has the power to adopt a broad range of police "measures," some of which may directly impact individuals' personal liberty. He or she is also responsible for directing and coordinating public order and security services, as well as managing the deployment of all police forces at the provincial level.[37]

One of the defining features of the Italian system is the presence of multiple police forces. Although this has often been criticized as a source of inefficiency, the 1981 reform chose not to restructure the organization of the Italian police system. Instead, it preserved a model based on the coexistence of several police forces—a model that dates back to the pre-unification period.[38] As a consequence, in addition to the *Polizia di Stato* two other national forces operate: the *Arma dei Carabinieri* (hereafter,

[32] Article 1 of Presidential Decree No. 380/2006.

[33] Article 13 of Law No. 121/1981.

[34] Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore nell'Amministrazione della pubblica sicurezza, in Gallo N., Giupponi T. (a cura di), *L'ordinamento della sicurezza: soggetti e funzioni*, Milano, Franco Angeli, p. 14; : Chiusolo A. (2017), "Prefetto, Questore e Autorità locali: Responsabilità a confronto nella gestione territoriale della pubblica sicurezza", Giupponi T. (a cura di), *L'Amministrazione di Pubblica Sicurezza e le sue responsabilità*, cit., p. 58; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 127.

[35] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 131.

[36] Chiusolo A. (2017), "Prefetto, Questore e Autorità locali, cit., p. 64.

[37] Article 14 of Law No. 121/1981.

[38] Chiappetti A. (1987), "Polizia (dir. Pubblico)", cit., p. 148.

Carabinieri) and the *Guardia di Finanza*. Of these, only the Carabinieri and the *Polizia di Stato* have a general mandate for public order and security.[39] By contrast, the *Guardia di Finanza* is a specialized force primarily tasked with combating financial crimes, enforcing customs and tax regulations, and carrying out border control duties—although it also contributes to broader public security operations when needed.

While the 1981 reform chose to preserve a system based on multiple police forces, it also aimed to strengthen the principle of horizontal integration by assigning coordination responsibilities to the highest levels of the public security administration.[40] As a result, although the *Carabinieri* and the *Guardia di Finanza* remain institutionally affiliated with the Ministry of Defence and the Ministry of Economy and Finance, respectively, they are functionally subordinate to the public security administration under the Ministry of the Interior when carrying out duties related to public order and security.[41] At the central level, Article 4 of Law No. 121/1981 assigns the Department of Public Security the responsibility for ensuring the "technical-operational coordination" of the various police forces. This task is carried out primarily through the Office for the Coordination and Planning of Police Forces, which acts as a common platform for inter-agency coordination and works closely with the headquarters and central directorates of each force.[42] At the local level, Article 14 of the same law assigns the *Questore* the responsibility for coordinating police operations within the province. In this capacity, the *Questore* ensures the technical-operational alignment of all police forces involved in public security at the local level.

[39] Article 16(1)(a) of Law No. 121/1981.

[40] Caia G. (1996), "Polizia di stato", cit., p. 344; Corso G. (1996), "Polizia di sicurezza", in *Digesto delle discipline pubblicistiche*, vol. XI, Utet, Torino, p. 336.

[41] Article 3(c) of Law No. 121/1981. The *Carabinieri*, in particular, constitute an armed force placed under the supreme command of the President of the Republic, pursuant to Article 87(9) of the Italian Constitution. While they are functionally subordinate to the Minister of the Interior for matters related to public order and security, they remain under the authority of the Chief of the Defence Staff for military operations, and under the Ministry of Defence for matters concerning personnel management, administration, and logistics (Article 162 of Legislative Decree No. 66/2010).

[42] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 142; Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., p. 47.

Given the distinctive organizational structure of the Italian police system, both the Director General of Public Security and the *Questore* occupy an inherently ambiguous position: they serve simultaneously as the administrative head of the *Polizia di Stato* and as the public security authority responsible for coordinating the operations of all other police forces.[43] The position of "functional supremacy"[44] held by public security authorities might suggest that they exercise directive and supervisory powers over personnel from all police forces.[45] However, this does not constitute a true hierarchical relationship of subordination. Aside from the obligation of local commanders from other forces (such as the *Carabinieri* and the *Guardia di Finanza*) to keep the *Questore* informed on matters relating to public order and security[46], there are no explicit duties of obedience to public security authorities beyond those owed to their own superiors within their respective chains of command.[47]

It is likely in response to this structural weakness that the 1981 reform also assigned significant coordination powers to public security authorities with stronger political standing. The Minister of the Interior, who—as noted—exercises the "high direction" of public order and security services, is also empowered to coordinate "the tasks and activities of the police forces".[48] In this capacity, the Minister may issue directives and orders to, for example, "establish connections between police operations centers" or "set up joint operations rooms".[49] At the local level, the Prefect is responsible for

[43] Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore", cit., p. 20; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 105.

[44] Chiappetti A. (1991), "Polizia (forze di)", in *Enciclopedia giuridica*, vol. XXIV, Treccani, Roma, p. 7; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 132.

[45] For instance, Article 3(c) of Law No. 121/1981 states that all police officers and agents perform their duties "under the direction" of the central and provincial public security authorities. The *Questore*, in turn, exercises his coordination role by issuing service orders that carry binding authority (Article 37 of Law No. 782/1985).

[46] Article 14 of Law No. 121/1981.

[47] Article 16 of Law No. 121/1981 states that the other forces may perform police functions "without prejudice to their respective regulations and chains of command"; consequently, they remain subject to their own disciplinary frameworks (Carrata E. (1986), "Pubblica sicurezza (sanzioni disciplinari)", in *Novissimo Digesto italiano*. Appendice VI, Utet, Torino, pp. 167-172).

[48] Article 1 of Law No. 121/1981.

[49] Article 21 of Law No. 121/1981.

ensuring unified direction and coordination of the tasks and activities carried out by police forces within the province. To fulfil this function, the Prefect must be promptly informed by the *Questore* and the provincial commanders of the other police forces of any matters concerning public order and security within the territory.[50]

In the absence of a shared and unified chain of command among the various police forces, effective coordination relies on the active participation of all relevant actors in shaping political and administrative guidelines.[51] One of the key innovations introduced by the 1981 reform was the creation of collegiate coordinating bodies that bring together the heads of police forces and public security authorities with political and administrative responsibilities. At the central level, the National Committee for Public Order and Security—chaired by the Minister of the Interior—is composed of an Undersecretary of State appointed by the Minister, along with the heads of the various police forces.[52] At the local level, each prefecture hosts a Provincial Committee for Public Order and Security, which includes the Prefect, the Mayor of the provincial capital, and the provincial commanders of the police forces.[53]

Both bodies serve in an advisory capacity, supporting the political and administrative responsibilities of the Minister and the Prefect. In particular, they facilitate the joint development of policies for coordinating police activities and provide a forum for discussing broader issues related to the structure and organization of the police forces.[54] As advisory bodies, the committees' opinions are not binding: neither the Minister nor the Prefect is formally required to follow them. In the case of the Minister, this reflects the constitutional principle that holds ministers individually responsible for the acts of

[50] Article 13 of Law No. 121/1981.

[51] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 114.

[52] Article 18 of Law No. 121/1981.

[53] Article 20 of Law No. 121/1981.

[54] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 137. According to Article 19 of Law No. 121/1981, the National Committee is tasked with providing its opinion on all matters relating in particular to the organisation of the police forces, budgetary planning, the management of administrative and logistical support services, and the formulation of general guidelines for the education, training, and specialisation of personnel.

their ministry.[55] By contrast, the Prefect is generally expected to provide specific justification when departing from the opinion expressed by the Provincial Committee.[56]

The work of the Provincial Committee is operationally translated into action through the 'technical committee', which the *Questore* may convene to coordinate the various police forces. Although these committees lack a clear legal basis[57], they serve as the primary tool through which the *Questore*, in collaboration with the provincial commanders of the other police forces, defines the organization of police services and operations at the local level—including the assignment of responsibilities, allocation of personnel and equipment, and the setting of operational objectives.[58]

2.2. Political Authority and Control over the Italian Police

The relationship between political institutions and the police has traditionally been problematic. This holds true even in systems like Italy's, where the police are not directly controlled by representative or political bodies. On the one hand, in a democratic society, it is reasonable to expect that guidelines for police action should be set by democratically elected bodies or institutions with democratic legitimacy. On the other hand, placing the police under the direct control of the political majority of the moment risks a dangerous drift toward partisanship. While it is true that the police should operate in accordance with the political directives of democratically elected bodies, their legitimacy also depends on the assumption that they act impartially to protect the

[55] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., p. 51.

[56] When the committee fails to reach unanimity—particularly when this results from the expressed dissent of one of the provincial heads of the police forces—a specific procedure established by the Ministerial Directive of 12 February 2001 is typically initiated. Under this directive, the reasoned dissent is forwarded to the hierarchical superior, who then informs the head of the relevant police force. If the dissent is deemed justified, the matter is referred to the National Committee, which in turn reports directly to the Minister and notifies the Chief of Police as well as the general commanders of the other police forces (Ursi R. (2022), *La sicurezza pubblica*, cit., p. 141).

[57] Some guidance on the functioning of this 'technical committee' is provided in the Minister of the Interior's Directive of 12 February 2001 on the implementation of coordination and unified direction of the Police Forces.

[58] Chiusolo A. (2017), "Prefetto, Questore e Autorità locali, cit., p. 66; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 143.

rights of all individuals.[59] This means that the police must be able to disregard political directives when they conflict with the law, and, if necessary, exercise their powers against those in authority when they themselves violate legal norms.[60]

In a democratic State governed by the rule of law, the impartiality and independence of the police are primarily guaranteed by the principle of legality. Specifically, any interference by the police with individual rights must be strictly regulated by law. The issue we now wish to address concerns the technical and operational independence the police should have in deciding whether—and how—to exercise their legal powers. In other words, the challenge lies in clearly defining the boundary between political direction and oversight, on the one hand, and operational decision-making, on the other. To what extent can political authorities influence operational decisions without undermining the independence and impartiality of police action?

In common law countries, this issue is often addressed through the doctrine of *constabulary independence*.[61] According to this doctrine, the heads of police forces should be shielded from any form of political interference when making operational decisions—particularly those involving the exercise of powers that may affect individual liberties.[62] While it is widely accepted that the exercise of such powers should be subject only to judicial oversight by bodies external to the police organization, it remains more difficult to determine precisely which types of operational decisions ought to be insulated from political influence.[63]

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[59] Bowling B., Reiner R., Sheptycki J. (2019), *The Politics of the Police*, Oxford University Press, Oxford, p. 233.

[60] Bayley D. (2009), "Democratic Policing", in Wakefield A., Fleming J. (eds.) *The SAGE Dictionary of Policing*, Sage, London, pp. 23-25.

[61] Stenning P. (2006), *The idea of political independence of the police: international interpretations and experience*, Paper prepared for the Ipperwash Inquiry, Toronto; Stenning P. (2009), "Independence of the constable", in Wakefield A., Fleming J. (eds.) *The SAGE Dictionary of Policing*, cit., 168-170; Collen L. (2009) "Accountability", in Wakefield A., Fleming J. (eds.) *The SAGE Dictionary of Policing*, cit., pp. 1-3.

[62] They are usually defined as *quasi-judicial* o *law enforcement decisions* (Stenning P. (2006), *The idea of political independence of the police*, cit.).

[63] Stenning P. (2011), "Governance of the police: independence, accountability and interference", *Flinders Law Journal*, 13 (2), pp. 241-265; Rowe M. (2020), *Policing the Police. Challenges of Democracy and Accountability*, Policy Press, London, p. 18.

In a democracy, it would be difficult to justify granting the police complete independence in matters such as organizational structure, the setting of operational priorities, and the allocation of resources. These decisions typically fall within the realm of political prerogatives and are not generally considered forms of undue interference—even though they can significantly shape the overall framework within which the police operate.[64] The rationale behind the doctrine is not grounded in the principle of separation of powers, but rather in the principle of separating levels of decision-making. Its purpose is to delineate a sphere of operational independence relating to the implementation of political directives and guidelines. This operational level of decision-making is considered technical in nature and should be insulated from political interference.

In civil law countries with highly centralised police systems, the issue of police independence has traditionally been addressed in a different way. This helps explain why the doctrine of constabulary independence is largely unknown in these contexts. Instead, the principle is effectively subsumed under the broader doctrine of separation of powers. In the continental tradition, the exercise of police powers in the context of criminal proceedings—commonly referred to as 'judicial police' (*polizia giudiziaria*)—falls under the functional authority of the judiciary, which exercises not only *ex-post* legality oversight but also direct powers of supervision over police investigations.

Although the judicial police do not have independent administrative or operational structures—since their functions are carried out by the ordinary police forces—the Italian legal system establishes a separate legal framework specifically for judicial police activities, distinct from that governing other policing functions. This legal framework is designed to ensure that judicial police functions are carried out under the control and direction of the judicial authority.[65] This principle is explicitly affirmed in Article 109 of the Constitution and reiterated in Article 17 of Law No. 121/1981 and Article 56 of the

[64] Rowe M. (2020), *Policing the Police*, cit., p. 18.

[65] Corso G. (1996), "Polizia di sicurezza", cit., p. 334; Caia G. (2003), "L'ordine e la sicurezza pubblica", in Cassese S. (a cura di), *Trattato di diritto amministrativo. Diritto amministrativo speciale*. *Tomo primo. Le funzioni di ordine e le funzioni di benessere*, Giuffré, Milano, p. 287.

Code of Criminal Procedure. Together, these provisions establish a model in which the judicial police operate under both the strategic and operational authority of the judiciary, which also holds disciplinary powers over officers who fail to execute, or delay in executing, the orders issued by judicial authorities.[66]

Undoubtedly, the executive branch retains a degree of control over the operational capacity of the judicial police, as the Ministry of the Interior—acting in agreement with the Ministry of Justice—is responsible for determining the number of officers assigned to judicial police services.[67] However, this significant prerogative is counterbalanced by the power of the judiciary to direct the functional assignment of the personnel allocated to judicial police duties. This helps prevent these units from being rendered ineffective or stripped of their authority.[68]

While the framework established by the Italian Constitution provides safeguards to keep judicial police activities free from undue political interference by the executive, police activity cannot be confined to investigative functions alone. Judicial police work represents only one aspect of policing, which also includes a broad array of administrative tasks aimed at crime prevention and the maintenance of peace and public order—functions that extend far beyond the mere repression of criminal offences. These are the functions traditionally referred to in Italian public and administrative law as 'public security policing' (*polizia di sicurezza*). In exercising these functions, police can profoundly affect individual and collective freedoms, and this raises the issue of how to ensure the political impartiality and independence of police actions outside the field of criminal investigations.

The Italian Constitution does not appear to provide a specific regulatory framework for the management of public security—perhaps reflecting the fact that, at the time of its drafting, the issue was not seen as central to ensuring the impartiality and political

[66] Article 59 of Presidential Decree No. 447/1988 (Italian Code of Criminal Procedure); Article 16 of Legislative Decree No. 271/ 1989 (Implementing Provisions of the Italian Code of Criminal Procedure).

[67] Article 17 of Law No. 121/1981.

[68] Article 59(3), of Presidential Decree No. 447/1988 (Italian Code of Criminal Procedure); Article 14, of Legislative Decree No. 271/ 1989 (Implementing Provisions of the Italian Code of Criminal Procedure).

independence of the police.[69] Nonetheless, one of the most significant contributions of the 1981 reform was its attempt to reinforce the distinction between the strategic direction of the police—entrusted to authorities or bodies with a stronger political character—and operational policing activities, which were assigned to more technical and administrative bodies.[70] The aim was to establish a sphere of autonomy and independence for the operational implementation of political directives, entrusted to the Department of Public Security at the central level and to the *Questure* at the local level. However, this objective has only been partially achieved, primarily due to the enduring dominance of the hierarchical principle as the foundation of the public security administration.

Hierarchical structures continue to shape the relationship between political and administrative authorities at both the central and local levels. For example, Article 1 of Law No. 121/1981 defines the Minister as the "national public security authority"—a designation that is far from symbolic. It positions the Minister at the apex of the police administration, establishing a hierarchical relationship with all other public security authorities. This top-down structure is further reinforced by Article 65 of the same law, which imposes a "duty of subordination" on all members of the police administration. Notably, the Director General of Public Security is appointed on the Minister's recommendation, making the role particularly susceptible to political influence.[71]

The framework established by Law No. 121/1981 appears to grant the Minister a role that goes far beyond setting general political guidelines for police activity. The Minister is positioned as the head of the public security apparatus, with powers to adopt "measures" for the protection of public order and security[72], issue "directives" to coordinate police operations[73], and review—or even annul—acts and measures taken

[69] Corso G. (1996), "Polizia di sicurezza", cit.

[70] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 108.

[71] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., p. 49.

[72] Article 1 of Law No. 121/1981.

[73] Article 21 of Law No. 121/1981.

by local authorities if deemed unlawful or "not based on a reason of public interest".[74] This effectively makes the Minister a political authority with the power to influence operational decisions in the field of public order and security—an influence that has few parallels in other areas of public administration.[75] It also establishes a direct line of dependence between the Minister and the police administration, enabling significant political influence over police activity.

At the local level, the Prefect is responsible for implementing the Minister's political guidelines for police activity. However, the legal powers assigned to the Prefect appear to extend well beyond the mere exercise of political direction. Although the 1981 reform sought to clarify and distinguish the respective roles of the Prefect and the *Questore*, areas of ambiguity remain—particularly concerning the Prefect's continued direct relationship with the various police forces.[76] For instance, as the authority responsible for public order and security at the provincial level, the Prefect "directs" police officers and agents[77], exercises "authority" over the police and any other force which is placed at his or her disposal, and coordinates their activities.[78] In this capacity, provincial commanders of the police forces are required to report to the Prefect in a manner comparable to their reporting duties toward the *Questore*.[79]

The contradictions inherent in the 1981 reform were further exacerbated in the years that followed—particularly with the introduction of Legislative Decree No. 152/1991, which added a paragraph to Article 13 stating: "the Prefect shall ensure the unity of direction and coordination of the tasks and activities of the police officers of the

[74] Article 10 of Royal Decree No. 635/1940.

[75] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 119.

[76] Chiappetti A. (1987), "Polizia (dir. Pubblico)", cit., pp. 145- 146; Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore", cit., p. 32; Chiusolo A. (2017), "Prefetto, Questore e Autorità locali, cit., p. 59.

[77] Article 3(2)b of Law No. 121/1981.

[78] Article 13 of Law No. 121/1981. In certain circumstances, the law allows the deployment of armed forces in ordinary public security operations to address specific and exceptional crime prevention needs. In such cases, it is the Prefect who is responsible for requesting their use and overseeing their coordination (Article 7-bis of Law Decree No. 92/2008).

[79] Article 13 of Law No. 121/1981.

province, promoting the necessary measures". In light of this provision, it has become increasingly difficult to clearly distinguish the nature of the Prefect's coordination powers from those assigned to the *Questore*.[80]

Finally, it is important to note that both the Minister[81] and the Prefect[82] retain broad authority to issue emergency ordinances (*ordinanze di necessità e urgenza*) and adopt any measures deemed necessary to protect public order and security in exceptional circumstances. This framework confirms that the Italian public security system continues to prioritise institutions with a strong political character, granting them significant powers to direct police operations and restrict individual freedoms. Such an arrangement inevitably raises concerns about the impartiality of police action. To strike an appropriate balance between democratic control and the protection of fundamental rights, the management of operational decisions and the exercise of police powers should be entrusted to technical bodies. These bodies, being less subject to the influence of political majorities, offer stronger guarantees of neutrality and professionalism.[83] The operational autonomy of the Italian police remains, however, limited, as it is constantly exposed to direct interference from political authorities.

2.3. On the Administrative Autonomy of the Italian Police

Police forces must be protected from undue political interference, and this requires granting them a degree of operational independence and technical discretion. However, such autonomy does not exempt them from being held accountable for how they exercise their powers. Legal and judicial oversight over the exercise of police powers remains essential, and the next chapter will examine these dimensions in more detail. However, sociological and criminological research has shown that much of police work

[80] Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore", cit., p. 24; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 126.

[81] Article 216 of Royal Decree No. 773/1931.

[82] Article 2 of Royal Decree No. 773/1931.

[83] Chiappetti A. (1987), "Polizia (dir. Pubblico)", cit., pp. 145-146; Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore", cit., p. 31

consists of activities that do not involve the direct exercise of legal authority—or involve discretionary decisions not to enforce the law—that often fall outside the scope of judicial review. [84] These are inherently discretionary decisions, involving choices about which interests to prioritise—choices that should, in some way, be made transparent to the public.[85]

An excessive degree of independence and autonomy in police forces poses a symmetrical and opposite risk to that of direct political control—one that can lead to equally harmful consequences. Police forces that operate without meaningful accountability risk becoming an autonomous political actor, capable of exerting undue influence over the democratic life of the country. The key challenge, therefore, lies in striking the right balance between ensuring police independence and impartiality on the one hand, and securing political legitimacy and democratic oversight on the other.[86]

One of the key factors reinforcing the political self-referentiality of the police is its hierarchical and militarised administrative structure. Police forces function, to some extent, as entities distinct from broader society. Their members operate within organisations that exert strong internal control through training, career advancement, rigid hierarchies, and disciplinary systems.[87] This control extends beyond the professional sphere, influencing officers' behaviour even in their private lives. While this hierarchical and militarised structure is intended to enhance the efficiency of police action, it also risks reinforcing the self-referential nature of police forces, turning them into organisations increasingly detached from democratically legitimised authorities. The principles of absolute obedience to superiors and loyalty to the corps risk becoming

[84] Goldstein J. (1960) "Police Discretion Not to Invoke the Criminal Process: Low-visibility Decisions in the Administration of Justice", Yale Law Journal 69, pp. 543-594; LaFave W. R. (1962) "The Police and Nonenforcement of the Law. Part One", Wisconsin Law Review, pp. 104-137; LaFave W. R. (1962) "The Police and Nonenforcement of the Law. Part Two", Wisconsin Law Review, pp. 179-239.

[85] Waddington P.A. (1999), *Policing citizens: authority and rights*, Routledge, Abington, p. 195.

[86] Walsh D., Conway V. (2011), "Police governance and accountability: overview of current issues", *Crime, Law and Social Change*, 55(2-3), p. 71.

[87] Waddington P.A. (1999), *Policing citizens*, cit., p. 202; Rowe M. (2020), *Policing the Police*, cit., p. 87.

dominant, at the expense of competing values that in some cases could even require disobedience.[88]

Clearly, the degree of militarisation of police forces varies, and scholars remain divided on whether there is a direct relationship between the military character of police institutions and the quality of democracy in a given country.[89] Many well-established democracies have retained military or militarised police forces without any apparent impact on the functioning of democratic institutions. Similar arguments have often been made in the case of Italy, where military police forces continue to operate despite the provisions of Article 52 of the Italian Constitution.[90] Some have argued that whether police forces are organised along civilian or military lines largely reflects the institutional history of each country and does not necessarily influence the democratic nature of policing.[91] Others argue that concerns about the military status of certain Italian police forces are overstated[92], suggesting that their military organisation has, in fact, reinforced their institutional identity, fostered a sense of tradition and reliability, and ensured a higher degree of independence from political interference.[93]

Such arguments—often asserted in a rather dogmatic fashion with reference to the organisation of the *Carabinieri*—stand in clear contrast to the views of those who have highlighted the deeply political significance of the post-war decision to retain the military character of Italy's other general-purpose police force, the former Public Security Guards (*Guardie di Pubblica Sicurezza*).[94] At the time, this decision was widely

[88] Stone C. E., Ward H. (2000), "Democratic policing", cit., p. 24.

[89] Stone C. E., Ward H. (2000), "Democratic policing, cit. p. 19; Bayley, D. (1975) "The police and political developments in Europe", cit., p. 366; Mawby R.I. (2012) "Models of Policing", cit., p. 22.

[90] Article 52 of the Italian Constitution seems to limit the role of the armed forces to the "defense of the homeland".

[91] Di Raimondo M. (1984), *Il sistema dell'amministrazione della pubblica sicurezza*, CEDAM, Padova.

[92] Carrer F. (2014), "La Polizia di Stato dall'Unità ad oggi", in Carrer F. (a cura di), *La polizia di Stato a trent'anni dalla legge di riforma*, Franco Angeli, Milano, p. 47.

[93] Caia G. (1996), "Polizia di stato", cit., p. 340.

[94] The Public Security Guards were militarised by Royal Decree-Law No. 687/1943 to meet the requirements of maintaining order and security during wartime. After the Italian Constitution was enacted, Law No. 178/1949 reaffirmed their military status, officially designating them as an armed corps

seen as inconsistent with the Italian Constitution and primarily motivated by the desire to militarily suppress the demands for social change expressed in street protests.[95] The militarised police force came to be viewed as a repressive apparatus of the status quo, one that deepened the divide between the police and society. The 1981 reform was mainly intended to bridge this gap by redefining public order and security as a civil function in service of democratic society.

The limited scope of the 1981 reform reflects, to some extent, the contradictions within expert opinion. Italy not only retained the dualistic police model that had defined it since national unification—preserving both a general-purpose military police force (the *Carabinieri*) and a civilian counterpart (the *Polizia di Stato*)—but also failed to move beyond the "hierarchical canon"[96] that continues to underpin the organisation and functioning of all police forces. One of the main objectives of the reform was indeed to democratise the Italian police by reshaping their internal structures along more participatory and accountable lines. This ambition rested on two key pillars. First, it aimed to loosen the principle of absolute obedience by promoting demilitarisation and introducing limited forms of internal democracy, such as unionisation. Second, it intended to empower police leadership by granting them greater operational autonomy in implementing political directives—laying the groundwork for a new model of police governance.[97] Yet, in both respects, the reform has largely failed to deliver on its promises.

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of the State under the authority of the Ministry of the Interior, tasked with safeguarding public order and security.

[95] Chiappetti A. (1987), "Polizia (dir. Pubblico)", cit., p. 6; Corso G. (1996), "Polizia di sicurezza", cit., p. 335; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 105; Carrer F. (2014), "La Polizia di Stato dall'Unità ad oggi", cit.

[96] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 110.

[97] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 111; Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., pp. 40-41.

2.3.1. Demilitarisation and the quest for internal democracy

Members of the police force continue to enjoy a special legal status that sets them apart from other civil servants. This is true even for officers of the *Polizia di Stato*, who no longer hold military status. Although formally part of the civil administration, the administration of public order and security has retained a "special status"[98], which, according to some commentators, is intended to preserve the effectiveness of police operations.[99] As a result, two of the most progressive elements introduced by the 1981 reform—the shift from a principle of blind obedience to one of "loyal and conscious obedience"[100] and the recognition of trade union rights—have been significantly curtailed in practice.

As previously noted, the duty of subordination is a defining feature of military-style organisations. It entails an obligation to promptly carry out orders from superiors without question. While allowing subordinates to question orders may reduce administrative efficiency, it also plays a crucial role in preventing unlawful actions, fostering a form of horizontal and bottom-up oversight of police conduct. In contrast, a structure that enforces uncritical obedience stifles internal accountability and weakens institutional safeguards against illegitimate or illegal practices. Members of the Italian police forces remain bound by a stringent duty of obedience[101], reinforced by both criminal and disciplinary sanctions.[102] However, between the 1970s and 1980s, two

[98] Article 3 of Law No. 121/1981.

[99] Chiappetti A. (1991), "Polizia (forze di)", cit., p. 5; Caia G. (1996), "Polizia di stato", cit., p. 346; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 108.

[100] Iafrate C. (2016), "Obbedienza, ordine illegittimo e ordinamento militare", *Diritto & Questioni Pubbliche*, p. 323.

[101] Article 66 of Law No. 121/1981 defines the hierarchical relationship within the civil administration of the Ministry of the Interior and the *Polizia di Stato*, stating that personnel are required to comply with instructions issued in connection with their official duties. Similarly, for police forces with military status, Article 1346 of Legislative Decree No. 66/2010 stipulates that "in order to achieve and maintain discipline, the relative positions of superiors and subordinates, their functions, duties, and responsibilities are defined". While military discipline is often said to carry an "ethical connotation" (Ursi R. (2022), *La sicurezza pubblica*, op. cit., p. 111) that is absent in the civil structure of the *Polizia di Stato*, it remains unclear whether this alleged difference has any practical impact on its operational functioning.

[102] Disobedience constitutes an offence for both members of the Polizia di Stato (Article 72 of Law No. 121/1981) and those of police forces with military status (Article 173 of Royal Decree No. 303/1941, Military Penal Code of Peace). However, while military personnel are sanctioned in all cases where they

reforms of "fundamental importance" began to temper this rigid framework.[103] In particular, officers now have the right to request confirmation of any order they deem unlawful. For members of the *Polizia di Stato*, this confirmation must be provided in writing.[104] Moreover, officers have a legal obligation to disobey orders they believe to be "manifestly" criminal or subversive and must promptly report such orders to superiors.[105]

Members of the Italian police forces are thus granted only a limited right to question the legitimacy of orders they receive. Except in cases where an order is clearly criminal or subversive, any directive reiterated by a superior must be executed without further challenge—failure to do so may result in serious criminal or disciplinary consequences. This creates a fundamental tension: officers are simultaneously expected to obey without hesitation, while also being required to evaluate the legality of orders, often based on complex and ambiguous legal norms.[106] In an institutional culture, particularly within militarised forces, where discipline and obedience are heavily emphasised, it is not hard to imagine that compliance will almost always prevail—even when orders may violate fundamental rights, so long as they do not 'manifestly' constitute a criminal offence.

The right to form trade unions is a cornerstone of internal democratisation within police forces. It enables officers not only to safeguard their professional interests, but also to contest strategic and operational decisions made at the highest political and administrative levels. Crucially, it helps establish a mechanism of horizontal

"refuse, neglect, or delay" compliance with orders relating to service or discipline, members of the *Polizia di Stato* are penalised only when disobeying orders or instructions received "during police operations or while serving in organised units".

[103] This refers in particular to Law No. 382/1978 on military discipline—now incorporated into Legislative Decree No. 66/2010—which preceded and, to some extent, inspired the provisions on unlawful orders introduced by Law No. 121/1981.

[104] Article 66 of Law No. 121/1981; Article 729(2) of Presidential Decree No. 90/2010.

[105] Article 66 of Law No. 121/1981; Art. 1349(2) of Legislative Decree No. 66/2010; Article 729(2) of Presidential Decree No. 90/2010.

[106] Iafrate C. (2016), "Obbedienza, ordine illegittimo e ordinamento militare", cit., p. 320.

accountability within police institutions—offsetting the hierarchical subordination of individual members through the collective strength of union representation.

However, the recognition of this right—granted to the *Polizia di Stato* in 1981 and more recently extended to military police forces[107]—remains heavily constrained. Police officers are prohibited from striking[108], and police unions are barred from affiliating with broader trade union confederations.[109] In the case of military police forces, unions are further restricted by a narrowly defined mandate that excludes "matters concerning military organisation, training, operations, logistics, hierarchical and functional relationships, or the deployment of personnel on duty".[110] This framework effectively limits police unions to the role of professional associations, denying them the capacity to exert meaningful influence over technical-operational planning and key organisational decisions made at the highest political and administrative levels.

2.3.2. A new model of police governance?

One of the most significant transformations in the policing systems of major Western democracies has been the emergence of a new model of administrative and managerial accountability, inspired by broader public administration reforms.[111] This shift has profoundly reshaped models of police governance. The core objective has been to hold senior police leadership accountable for achieving politically defined goals, while

[107] It was only with Constitutional Court ruling No. 120/2018 that the right to form trade unions was fully recognised for members of the armed forces. This right was subsequently codified by Law No. 46/2022 and Legislative Decree No. 192/2023, which amended Legislative Decree No. 66/2010 (Code of Military Law), replacing the former military representative bodies with independent trade unions outside the military hierarchy.

[108] Article 84 of Law No. 121/1981 and Article 1476-quater(b) of Legislative Decree No. 66/2010.

[109] Article 83 of Law No. 121/1981 and Article 1476-quater(g) of Legislative Decree No. 66/2010.

[110] Article 1476-ter(3) of Legislative Decree No. 66/2010.

[111] Chan J.B.L. (2003), "Governing police practice: limits of the new accountability", *The British Journal of Sociology*, 50(2), p. 254; Collen L. (2009) "Accountability", cit., p. 2; Punch M. (2009), *Police Corruption. Deviance, accountability and reform in policing*, Routledge, Abingdon, p. 196.

preserving their operational independence and, thus, upholding the constitutional principle of constabulary independence.[112]

Although the development of this model of accountability was driven more by the rise of a new public management paradigm—focused on efficiency and cost-effectiveness—than by a specific theory of the police–politics relationship[113], it seemed nonetheless to offer a potential solution to the enduring challenge of balancing democratic oversight with the independence and impartiality of police action. Under this model, while administrative heads of police forces are not directly subordinate to political authorities, they are still required to justify how they exercise their discretionary powers. Independence does not imply the absence of oversight; on the contrary, those responsible for police services are subject to evaluation processes designed to assess the effectiveness of their administrative performance.

The 1981 reform appeared to move in this direction, particularly in its effort to draw a clear line between the political domain—reserved for governing bodies—and the technical-operational domain—entrusted to the top levels of the administrative apparatus. This intention was especially evident in the attempt to clarify the relationship between the two main provincial public security authorities, aiming to eliminate any implication that the administrative head of the police forces (the *Questore*) was subordinate to politically affiliated bodies such as the Prefect. However, the distinction between government and administration—later established as a foundational principle of the Italian administrative system[114]—was only partially incorporated into the organisation of the police forces. Due to their institutional specificities, these forces have maintained a structure firmly anchored in traditional bureaucratic models.[115] This

[112] Stenning P. (2006), *The idea of political independence of the police*, cit.

[113] Chan J.B.L. (2003), "Governing police practice", cit.; Stenning P. (2006), *The idea of political independence of the police*, cit.

[114] It is now defined in general terms by the Legislative Decree No. 165/2001.

[115] Pedrini F. (2017) "La responsabilità 'apicale' in materia di pubblica sicurezza", cit., pp. 40-41; Chiusolo A. (2017), "Prefetto, Questore e Autorità locali, cit., p. 74; Ursi R. (2022), *La sicurezza pubblica*, cit., p. 115. Article 3(1) of Legislative Decree No. 165/2001 excludes military and police personnel from the general regulations governing employment relations in the public administration. Article 15(1) of the same decree further affirms the application of "special provisions" to the highest ranks of the police and armed forces.

is reflected in the rigid hierarchical framework that continues to govern the personnel of the public security administration, still subject to the duty of subordination set out in Article 65 of Law No. 121/1981.

The enduring dominance of the hierarchical principle significantly shapes the relationship between political and administrative bodies, both centrally and locally. In a pyramidal administrative structure, command and control mechanisms tend to encroach upon the technical and operational autonomy that should be granted to administrative leadership. The result is a hybrid system: while it adopts some features of the privatised management model used for public administration executives, it nonetheless fails to release police leadership from strict hierarchical subordination. On the one hand, police leaders are held accountable for achieving the objectives set by political authorities[116]; on the other, they remain bound by a duty of obedience that often reduces them to mere executors of the directives they receive. Given the wide-ranging powers granted to political authorities—including the ability to intervene directly in operational matters—the extent of decision-making autonomy afforded to police leadership remains both ill-defined and inconsistently applied. In practice, it often hinges on how assertively governing bodies choose to exercise their authority.[117]

The consequences of this hybrid model of police governance are potentially paradoxical. On the one hand, it aims to enhance accountability by evaluating police leadership based on their ability to meet objectives set by governing bodies. On the other, it fails to grant them full autonomy, as they remain embedded in a system that continues to prioritise hierarchical command and control. The result is a substantial weakening of top-level accountability, coupled with a reinforced dependence on political authorities.

[116] Although exempt from the general evaluation system for public managers (Article 21(3) of Legislative Decree No. 165/2001), senior police officers remain subject to the rules governing managerial responsibility (Article 19 of Presidential Decree No. 748/1972) and to the annual evaluation procedures introduced in 2000 as part of broader public management reforms (Article 62 of Legislative Decree No. 334/2000).

[117] Chiusolo A. (2017), "Prefetto, Questore e Autorità locali", cit., p. 76.

2.4. Toward a community-based oversight?

Another way to counterbalance the excessive administrative autonomy of the police is to strengthen their connection to the communities they serve, fostering greater sensitivity to public needs.[118] This approach involves enhancing decentralised forms of oversight as an alternative to traditional top-down political control, and creating direct channels of communication that make the police more responsive to grassroots input.

The idea of establishing forms of 'community control' over the police has gained traction in Anglo-Saxon countries, particularly in the United Kingdom and the United States, largely in response to a legitimacy crisis rooted in the police's troubled relationship with minority communities.[119] In essence, the police were increasingly seen as a force detached from—and even antagonistic to—the very communities they were meant to serve. Shielded by the doctrine of operational independence, they often came to be perceived as instruments of racial oppression, deepening public mistrust.[120] In this context, efforts to rebuild police-community ties were viewed as a return to the classic Peelian model of policing[121], restoring a framework in which the police operate 'through the consent' of the public. These initiatives were also seen as a counterweight to the centralisation of authority, which had eroded local responsiveness.[122]

Although there is no universally accepted definition of community policing, it is generally understood as a model in which the police collaborate with local communities to pursue

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[118] Bayley D. (2006), *Changing the Guard: Developing Democratic Police Abroad*, Oxford University Press, Oxford, p. 20.

[119] Brogden M., Nijar P. (2005), *Community Policing. National and international models and approaches*, Willan Publishing, London; Cordner G. (2014) "Community Policing", in Reisig M., Kane R.J. (eds.), *The Oxford Handbook of Police and Policing*, Oxford University Press, Oxford.

[120] For example, the idea of strengthening local consultation in defining policing priorities had received considerable support from the report of the Scarman inquiry into the Brixton riots of 1981 (Stenning P. (2006), *The idea of political independence of the police*, cit.).

[121] The so-called 'Peelian principles' encapsulate the policing model introduced by Robert Peel, who, as Home Secretary in 1829, established the London Metropolitan Police. These principles form the foundation of the decentralised policing paradigm that has influenced many common law countries (see Reiner R. (1995), "The British Policing Tradition: Model or Myth?", in Shelley L., Vigh J. (eds.) *Social Changes, Crime and Police*, Routledge, Abingdon).

[122] Brogden M., Nijar P. (2005), *Community Policing*, cit., p. 25; Bowling B., Reiner R., Sheptycki J. (2019), *The Politics of the Police*, cit., p. 104; Mawby R.I. (2012) "Models of Policing", cit., p. 37.

shared goals in the field of public security.[123] This approach aligns more naturally with decentralised policing systems, where traditional forms of political oversight are also rooted at the local level. Community policing experiences have promoted greater public involvement in setting the priorities of police activity, thereby opening up the formulation and implementation of public security policies to a broader range of actors beyond the traditional local police authorities.[124] In countries with highly centralised police systems, granting communities a role in overseeing police forces represents a significant shift in governance.[125] Bridging the gap between the public and the institutions responsible for shaping security policies requires far-reaching institutional reforms—sometimes even a complete reimagining of the police system. Nonetheless, in many countries following the so-called 'continental' model of policing, the influence of community policing approaches developed elsewhere has grown over time, encouraging the involvement of local government bodies in the formulation of security policies.

In Italy, the reform of Title V of the Constitution[126], along with the increasing prominence of urban security issues[127], has gradually reshaped the structure of public security administration. Although the system remains highly centralised, these changes have progressively led to the involvement of local authorities in the formulation and implementation of security policies. At the institutional level, this growing "organisational integration"[128] between the State and local authorities has resulted in a series of reforms that have expanded the latter's role in shaping public order and security policies, as well as their direct administrative powers in this field.

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[123] Bayley D. (2009), "Democratic Policing", cit., p. 81.

[124] Stone C. E., Ward H. (2000), "Democratic policing", cit Collen L. (2009) "Accountability", cit., p. 2; Zedner L. (2009), *Security*, Routledge, Abingdon, p. 50.

[125] Brogden M., Nijar P. (2005), *Community Policing*, cit., p. 110; Mawby R.I. (2012) "Models of Policing", cit., p. 23.

[126] Costitutional Law No. 3/2001.

[127] Pitch T. (2000), "I rischi della sicurezza urbana", in *Parolechiave*, 22-23-24, pp.71-97; Stefanizzi S., Verdolini V. (2012), "Le metamorfosi dell'ordine pubblico: il concetto di sicurezza urbana", in *Sociologia del diritto*, 3, pp. 103-136.

[128] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 179.

With regard to the first aspect, the reform of the Provincial Committee for Public Order and Security introduced the participation of the mayor of the provincial capital, as well as the mayors of neighbouring municipalities when matters affect their respective territories.[129] This reform redefined the Committee from a merely consultative body under the Prefect's authority into a venue for genuine political coordination on public order and security issues at the provincial level.[130]

Likewise, the amended Article 118 of the Italian Constitution opened the door to forms of coordination between the State and the Regions in matters of public order and security. Although it took more than fifteen years for this constitutional provision to be operationalised, Decree-Law No. 14/2017 eventually introduced mechanisms and tools to facilitate coordination among the State, Regions, and local authorities in the promotion of so-called "integrated security" policies.[131] It is worth noting, however, that even before the formal implementation of this framework, there had been sporadic—albeit fragmented[132]—experiences of negotiated cooperation between the State and local governments on security matters, particularly during the 1990s and early 2000s.[133]

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[129] Law No. 279/1999.

[130] Chiusolo A. (2017), "Prefetto, Questore e Autorità locali", cit., p. 61.

[131] Decree-Law No. 14/2017 goes even beyond the provisions of the Italian Constitution by expanding the concept of integrated security to include not only coordination between the State and the Regions, but also urban security—thereby encompassing coordination between prefectures and local municipal authorities. Integrated security is thus framed as the collaboration of "all levels of government" (see Antonelli V. (2017), "La sicurezza in città ovvero l'iperbole della sicurezza urbana", *Istituzioni del federalismo* 1, p. 45).

[132] Giupponi T. (2017), "Sicurezza integrata e sicurezza urbana nel decreto n. 14/2017", *Istituzioni del federalismo* 1, p. 11.

[133] The practice of signing memoranda of understanding—or 'security pacts'—between the State and local authorities on public safety matters began in the 1990s. A key turning point came with Decree-Law No. 152/1991, which introduced urgent measures to combat organised crime and allowed municipal police forces, upon the mayor's request, to participate in the "coordinated territorial control plans" defined at the provincial level by the Prefect (Art. 12(8)). This framework was expanded by Article 17 of Law No. 128/2001, which extended the validity of these plans to the control of "major urban centres" and required that the involvement of municipal police be formalised through specific agreements with the mayor. Meanwhile, Article 7 of the Prime Minister's Decree of 12 September 2000 tasked the Ministry of the Interior with promoting ongoing collaboration and coordination between State and local authorities through memoranda and agreements aimed at enhancing public safety in both urban and extra-urban areas and safeguarding citizens' security rights. It was within this context that the first wave of so-called 'security pacts' emerged. This process was formalised in Law No. 296/2006, which authorised Prefects—by delegation of the Minister—to sign agreements with local authorities for the implementation of "extraordinary programmes to increase police presence, provide urgent technical support, and enhance

These arrangements gradually drew local municipal police forces into general law enforcement duties, effectively transforming them—according to some observers[134]—into an auxiliary police with broad responsibilities for maintaining public order and security.[135]

With regard to the second aspect, in 2008 mayors were granted broad regulatory powers in matters of public order and security.[136] Their authority to issue ordinances to prevent and address serious threats to "public safety" and "urban security" was later restricted by Constitutional Court ruling No. 115/2011 and subsequently redefined in 2017.[137] However, many observers argue that this authority remains overly broad and insufficiently defined, raising concerns about the scope and limits of local regulatory intervention.[138] Mayors have also been granted the authority to issue measures that directly restrict individual freedoms. This includes the power to ban individuals whose behavior is deemed to "impede access to or use of" public spaces and infrastructure of

citizen safety." Based on this provision, framework agreements were signed in 2007 between the Ministry of the Interior and the National Association of Italian Municipalities (*Associazione Nazionale dei Comuni Italiani*, hereinafter: ANCI), and later with the ANCI Council of Small Municipalities (2008), to guide the development of security pacts. (see Antonelli V. (2010), "L'esperienza dei 'patti per la sicurezza' nel triennio 2007-2009, in Pajno A. (a cura di), *La sicurezza urbana*, Maggioli, Rimini, pp. 133-167).

[134] Palidda S. (2021), *Polizie, sicurezza e insicurezze*, Meltemi, Roma.

[135] As mentioned, Article 12(8) of Decree-Law No. 152/1991 allowed mayors to request the involvement of municipal police in the "coordinated territorial control plans" established by the Prefect at the provincial level. These plans were later extended to "major urban centres" by Article 17(1) of Law No. 128/2001, and subsequently to all municipalities by Article 7 of Decree-Law No. 92/2008. In parallel, Article 54(3) of Legislative Decree No. 267/2000 provided that mayors "shall contribute" to ensuring the cooperation of local municipal police forces with national police forces, in accordance with the coordination directives issued by the Minister of the Interior.

[136] Article 54(4) of Legislative Decree no. 267/2000, as amended by Decree-law No. 92/2008 containing urgent measures regarding public security.

[137] The Constitutional Court ruled that the reformed Article 54 of Legislative Decree no. 267/2000 was illegitimate because it did not limit the mayors' power of ordinance to cases of necessity and urgency only. It also referred to a decree of the Ministry of the Interior, later adopted on 5 August 2008, the definition of the concept of "urban security", thus contravening the principle of legality (Article 23 of the Italian Constitution). Ultimately, Decree-law No. 14/2017 specified that the mayors' ordinances to protect urban security should be aimed "at preventing and combating the emergence of criminal phenomena or illegal activities, such as drug dealing, exploitation of prostitution, human trafficking, begging involving minors and disabled persons, or concerning illegal activities, such as the unlawful occupation of public spaces, or violence, also related to alcohol abuse or the use of narcotic substances" (Article 54(4bis) of Legislative Decree No. 267/2000 as amended by Decree-law No. 14/2017).

[138] Giupponi T. (2017), "Sicurezza integrata e sicurezza urbana nel decreto legge n. 14/2017", cit., p. 20.

particular importance, as well as those found intoxicated, engaging in indecent conduct, illicit street trading, or unauthorised parking services.[139] Additionally, since 2009, mayors—subject to agreement with the Prefect—have been allowed to enlist unarmed citizen associations to report incidents that may threaten "urban security" or indicate "social vulnerability" (*disagio sociale*) to State or local police forces.[140]

This complex process of reforming the administration of public security reflects, as many argue, not only a broader trend toward institutional decentralisation, but also the growing recognition that security policies should be more closely aligned with the specific needs and socio-economic conditions of local contexts.[141] Others have noted that the local dimension of security—particularly in cities—has gained unprecedented prominence in the democratic legitimation of police forces, which are now increasingly called upon to respond to the demands for economic and social regulation voiced by local administrators and politicians.[142] While some observers rightly argue that these shifts toward a community policing model have not fundamentally altered the traditional operational practices of the national police forces[143], it is important to underscore that the reforms introduced over the past twenty-five years have significantly reshaped the fragile equilibrium between police and politics established by the 1981 reform.

Framing security as a distinctly urban issue has clearly expanded the political and institutional space for granting mayors an unprecedented central role in shaping

[139] Article 9 of Decree-Law No. 14/2017 applies specifically to railway stations, ports, airports, and public transport infrastructure. It may also extend—where provided for by local police regulations—to schools, universities, museums, archaeological sites, parks, monuments, cultural complexes, and other areas either frequented by large numbers of tourists or designated as public green spaces. The order to leave such locations remains valid for 48 hours and must be reported to the *Questore*. In cases of repeated misconduct and where there is a risk to public order and security, the *Questore* may impose a ban on accessing the same areas for up to six months, or up to two years for repeat offenders (Article 10 of Decree-Law No. 14/2017).

[140] Article 3(40) of Law No. 94/2009.

[141] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 179.

[142] Palidda S. (2021), *Polizie, sicurezza e insicurezze*, cit., p. 13.

[143] Bertaccini D. (2015), "Polizia all'italiana. Note a margine di tendenze senza modello", in *Criminalia. Annuario di scienze penalistiche*, p. 129.

security policies—and, by extension, in influencing the control of police forces. A directly elected political actor, who historically has held no direct authority over public order and security in the Italian system, now exercises powers that include the adoption of police measures. This shift has had significant implications for the broader organisation of public security administration. Most notably, the rising political prominence of mayors appears to coincide with the growing marginalisation of the *Questori*, to the benefit of the prefects.[144] Indeed, it is the Prefect who increasingly functions as the principal interlocutor of mayors—both within the Provincial Committee for Public Order and Security and in the negotiation of security agreements and ordinances.[145] In this light, the move toward forms of community control over police forces does not simply reflect a spontaneous or "model-less" evolution.[146] Rather, it appears to be embedded in a broader trend towards stronger political control of the police—manifesting at the local level, particularly in larger cities, through the strategic collaboration between mayors and prefects.

2.5. Final remarks

Ensuring that police forces remain subject to democratic oversight while preserving their impartiality presents complex institutional challenges. On one hand, in a democratic State, there is a legitimate expectation that police officers' operational decisions remain free from undue political interference. On the other hand, there is an equally valid expectation that those same officers be held accountable to the public for their actions. In essence, both excessive political control and unchecked administrative autonomy pose serious risks to democratic stability. In the first case, police may wield coercive power in a partisan manner; in the second, they risk becoming an autonomous political force. The key to balancing these competing imperatives lies in promoting a more decentralised structure of police governance. Externally, this involves a clear

[144] Camposilvan C., Conte F. (2014) "I rapporti tra prefetto e questore", cit., p. 26.
[145] In this regard, it is odd that the Mayor is not required to consult the Police Commissioner, who represents the administrative head of the police force and is the authority called upon to implement the Mayor's measures (Ursi R. (2022), *La sicurezza pubblica*, cit., p. 197).
[146] Bertaccini D. (2015), "Polizia all'italiana", cit.

separation between the sphere of political guidance and that of technical and operational decision-making. Internally, it calls for a horizontal redistribution of power within police institutions through meaningful processes of democratisation and demilitarisation.

In many respects, the 1981 reform appeared to move in this direction. One of its central aims was to enhance the administrative autonomy of the police by releasing its top ranks from direct hierarchical subordination to political authorities. At the same time, it aimed to loosen the internal hierarchy by moving beyond the principle of absolute obedience and introducing forms of internal democratisation, notably by recognising the right of police personnel to form and join trade unions.

However, as we have seen, this plan has largely gone unfulfilled. Efforts to introduce internal democratic practices within the police have remained limited, and military police forces were excluded from such reforms until only recently. Most notably, the envisioned shift in the governance model of the Italian police has been effectively undermined. The system of public order and security continues to prioritise the role of political authorities, who still hold the power to directly deploy police forces and to enact measures that may significantly restrict individual freedoms. In some respects, the centrality of political bodies has even been reinforced by the reforms introduced during the first two decades of the 21st century.

Several factors contribute to the trend toward increased political control over the police. Some features—such as the broad ordinance powers assigned to prefects or the Minister's authority to annul measures adopted by other police bodies—are institutional holdovers that sit uneasily within the current constitutional framework. Others—such as the powers related to the coordination of police activities—expose deeper structural flaws in the system established by the 1981 reform, which failed to overcome the historical dualism between Italy's two principal police forces. In our view, however, the decisive factor is the enduring centrality of the 'hierarchical canon' as the organising principle of the Italian police. In an effort to curb the potential risks of granting autonomy to forces that remain largely militarised, political authorities were

placed at the apex of the police hierarchy. This arrangement, however, has ultimately enabled extensive political control and influence over police action.

The centrifugal forces of recent decades have intensified an already unbalanced system. As noted earlier, framing security as a distinctly urban issue paved the way for mayors to take on an increasingly prominent role in shaping and implementing security policies. This has led to an unprecedented development in the institutional history of Italian public security: the attribution of police powers to directly elected political figures. Perhaps as a counterbalance to this accelerated move toward decentralised policing, the role of prefects has been simultaneously reinforced—further entrenching the police's dependence on political authorities.

The risks associated with such an unbalanced system of police governance are manifold. In addition to the obvious danger of political manipulation, there is a significant risk that the administrative leadership of the Italian police may evade accountability. The blurring of boundaries between strategic direction and technical-operational decision-making makes it difficult to clearly assign responsibility—whether for the overall performance of public security services or for the conduct of police forces in specific situations. This ambiguity undermines the fair evaluation of senior police officials, who are often assessed based on outcomes in areas where their autonomy is poorly defined and largely dependent on the approach taken by political authorities. More critically, it opens the door to the overtly politicisation of operational decisions: when such decisions are made by political actors, they may be shielded from judicial oversight, thereby weakening both accountability and the rule of law.

3. Frameworks of Individual Accountability for Italian Police Officers

The police are bound by the legal framework that governs their actions through a series of mechanisms and procedures designed to sanction unlawful acts and misconduct by individual officers.[147] In Italy, the exercise of police powers is subject to the ordinary principles of judicial review.[148] This means that courts may assess the legality of police actions and measures, particularly when they impact individual liberty.[149] In such cases, police actions must either be authorised in advance by the judicial authority or, in urgent circumstances, validated retrospectively.[150] The judiciary also exercises broad oversight over police investigations, with the power to exclude evidence obtained unlawfully. This function not only upholds the principles of due process but also acts as a deterrent against the use of coercive or violent investigative tactics.[151]

The most incisive form of oversight over police activity lies in procedures designed to prevent or sanction unlawful conduct by individual officers.[152] As noted in the introduction, these mechanisms typically focus on individual accountability and differ depending on whether they are internal to the police or subject to external scrutiny. They also vary in purpose: some are designed primarily to impose sanctions, while others aim to review operational practices in order to prevent future misconduct through institutional learning.

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[147] Bowling B., Reiner R., Sheptycki J. (2019), *The Politics of the Police*, Oxford University Press, Oxford, p. 244; Rowe M. (2020), *Policing the Police. Challenges of Democracy and Accountability*, Policy Press, London, p. 100.

[148] Article 113 of the Italian Constitution.

[149] Ursi R. (2022), *La sicurezza pubblica*, Il Mulino, Bologna, p. 93.

[150] Chiappetti A. (1987), "Polizia (dir. Pubblico)", in *Enciclopedia del diritto*, vol. 34, Giuffré, Milano, p. 129.

[151] Dixon D. (1992), "Legal Regulation and Policing Practice", in *Social & Legal Studies* 1, pp. 515-541.

[152] Stone C.E., Ward H. (2000), "Democratic policing: A framework for action", *Policing and Society*, 10(1), p. 34; Jones T. (2012), "The Accountability of Policing", in Newburn T. (ed.), *Handbook of Policing*, Routledge, Abingdon, p. 694; Rowe M. (2020), *Policing the Police*, cit., p. 47.

This distinction is crucial. As public servants, police officers are subject to multiple forms of liability: on the one hand, for unlawful acts committed against third parties; on the other, for breaches of the duties and obligations inherent to their role within the public security administration. In such cases, officers may face criminal, civil, or disciplinary sanctions under standard forms of individual liability. At the same time, identifying instances of misconduct can serve a broader institutional purpose by exposing structural issues within policing practices. This may prompt a review of protocols and standard operating procedures, regardless of whether individual liability is established. Such reviews can be carried out through external monitoring—typically entrusted to human rights bodies or independent oversight authorities—or through internal monitoring mechanisms, which may accompany or follow disciplinary proceedings.

	Internal control	**External control**
Sanction mechanisms	Disciplinary liability	Criminal/civil liability
Review of operational procedures and practices	Internal monitoring	External monitoring

This chapter explores the main forms of individual accountability applicable to Italian police personnel, beginning with the most significant: criminal liability. It then addresses civil and financial liability, followed by the disciplinary framework. The final section outlines the principal shortcomings of the current accountability system.

3.1. Criminal liability

Criminal law serves as the primary mechanism for addressing police misconduct and the excessive use of force. In addition to its general preventive function—which applies to all citizens, including police officers—it operates as a reactive tool, triggered after an unlawful act has occurred, to determine individual criminal responsibility before a court.

Italian police officers are subject to the ordinary system of criminal liability, albeit with certain exceptions and specific provisions.[153]

Members of the Italian police forces are liable for ordinary criminal offences, but unlike private citizens, they are also subject to the aggravating circumstance of abuse of power or breach of official duties, as set out in Article 61(2) of the Italian Criminal Code. According to established case law[154], it is sufficient for this aggravating circumstance to apply that the offender's status as a public official merely facilitated the commission of the offence. It is not necessary to demonstrate a direct functional link between the unlawful conduct and the official duties of the perpetrator. However, this aggravating factor does not apply when the abuse of public authority is already an inherent element of the offence itself. The Italian Criminal Code also includes other specific aggravating circumstances related to an officer's status—for example, in cases of kidnapping.[155]

More broadly, the legal status of police officers as public officials gives rise to a distinct regime of criminal liability aimed at protecting public interests from breaches of official duties.[156] Accordingly, police personnel are subject to so-called breach-of-duty offences (*reati propri* in Italian), which criminalise any conduct that violates the responsibilities inherent in their role as public officials.[157] The law also establishes specific offences only applicable to police personnel, depending on whether they serve in civilian or military-status forces. Law No. 121/1981 outlines a range of offences that can be committed only

[153] See Fragola S.P. (1982), "L'assoggettamento alla giurisdizione penale ordinaria degli appartenenti alla amministrazione della Pubblica Sicurezza e l'esecuzione delle pene detentive", in *Rivista di Polizia*, 1, pp. 7-11; Abagnale M., Domenicali C., Ponzetta L. (2017), "Le declinazioni della responsabilità penale in materia di pubblica sicurezza: aspetti problematici e soluzioni giurisprudenziali", in Giupponi T. (a cura di), *L'Amministrazione di Pubblica Sicurezza e le sue responsabilità. Tra dettato normativo e prassi*, Bononia University Press, Bologna, pp. 81-120.

[154] See Court of Cassation, Judgment No. 9102/2019; No. 20870/2009; and No. 4062/ 1999.

[155] Article 605(2)(b) of the Italian Criminal Code.

[156] Gustapane A. (2023), *La responsabilità penale dei pubblici ufficiali*, Bononia University Press, Bologna, p. 11. For the purposes of criminal law, the definition of a public official is set out in Article 357 of the Italian Criminal Code. See Plantamura V. (2008), "Le qualifiche soggettive pubblicistiche", in Cadoppi A., Canestrari S., Manna A., Papa M. (a cura di), Trattato di diritto penale, Parte Speciale II, UTET, Torino, pp. 897-934.

[157] This includes the offences set out in Book II, Title II, Chapter I of the Criminal Code, as well as certain offences contained in Chapter III of Title VII. See Amato G. (2005), I reati dell'operatore di polizia, Laurus Robuffo, Rome.

by members of the *Polizia di Stato*, many of which are modelled on provisions from the Italian Military Criminal Code.[158]

Some offences are however particularly relevant for the prevention and prosecution of police abuse, such as those concerning the unlawful deprivation of liberty and the crime of torture. At the same time, statutory criminal defences (*scriminanti* in Italian) define the boundaries of criminal liability, particularly in cases involving the use of weapons or coercive measures, or the execution of unlawful orders.

3.1.1. Unlawful Detention and Mistreatment of Detainees

The Italian Criminal Code provides safeguards against the abuse of police powers by defining a set of specific offences (*reati propri*) that can only be committed by police officers in their capacity as public officials authorised to use public force.[159] These offences are designed to protect individual rights from the misuse of state authority—especially the power to detain—and to ensure that officers are held accountable for unlawful conduct.[160]

A key example is the offence of unlawful detention committed through the abuse of powers associated with the role of public official, as set out in Article 606 of the Italian Criminal Code. This offence concerns the improper use of a power to arrest that is legally recognised and regulated. From a subjective standpoint, it requires that the officer acted with the intention of placing the detained person at the disposal of the judicial authorities. In essence, the offence sanctions the misuse of the power to arrest in the absence of the specific legal conditions—namely, the occurrence of a crime and the

[158] These provisions are set out in Articles 72 to 78 of Law No. 121/1981. On the subject, see Latagliata A.R. (1982), "Le fattispecie penali e disciplinari del nuovo ordinamento dell'amministrazione di pubblica sicurezza", in *Rivista di Polizia* 1, pp. 3-6.

[159] Articles 606 to 609 of the Italian Criminal Code. See Abagnale M., Domenicali C., Ponzetta L. (2017), "Le declinazioni della responsabilità penale", cit., pp. 83-86.

[160] Mantovani F. (2022), *Diritto penale. Parte speciale*, VIII ed., CEDAM, Padova, p. 344.

existence of a state of flagrancy or near flagrancy—that must be satisfied for an arrest to be lawful.[161]

Unlike aggravated kidnapping—where a public official unlawfully detains someone with the primary intent of depriving them of personal liberty, and any abuse of public authority is merely incidental—the offence of unlawful detention specifically involves a violation of the strict legal conditions governing the power of arrest.[162] The distinct legal interests protected by these offences—and their differing elements—explain the disparity in punishment. Unlawful detention carries a relatively lenient sentence, especially when compared to the far harsher penalties for ordinary kidnapping. Yet, given the gravity of unlawful detention, this disparity effectively grants police officers a form of legal privilege that is hard to justify.[163] This privilege also increases the likelihood that ordinary grounds for extinguishing criminal liability—such as the statute of limitations—or exceptional measures like amnesty or pardon may apply.

Another key example is the offence of abuse of authority against arrested or detained persons, as set out in Article 608 of the Italian Criminal Code. This offence was frequently invoked during the so-called *Years of Lead*—a period of intense socio-political unrest in Italy from the late 1960s to the early 1980s, marked by widespread political violence—in connection with cases of torture involving alleged members of armed groups.[164]

The lawful deprivation of personal liberty is the necessary precondition for this offence: the police officer's conduct must target a person already in custody, resulting in an additional and unlawful aggravation of their detention conditions.[165] As for the acts

[161] Court of Cassation, Judgment No. 6773/2005. The Court of Cassation found a group of *Carabinieri* guilty of unlawful arrest for detaining in a police cell a driver who had tested positive for alcohol, noting that the law does not permit arrest in cases of drunk driving (Court of Cassation, Judgment No. 17955/2020; and No. 30971/2015).

[162] Court of Cassation, Judgment No. 234001/2005.

[163] Fiandaca G., Musco E. (2004), *Dritto penale. Parte speciale*, IV ed., Zanichelli, Bologna, p. 200.

[164] On the interpretation of Article 608 of the Italian Criminal Code in relation to its application in the "Dozier case", see Pulitanò D. (1984), "L'inquisizione non soave tra pretese 'necessità' e motivi apprezzabili", in *Foro italiano*, 2, p. 230 ss.

[165] See Fiandaca G., Musco E. (2004), *Dritto penale*, cit., p. 204; Mantovani F. (2022), *Diritto penale*, cit., pp. 350-351; Antolisei F. (2022), *Manuale di diritto penale*, XVII ed., Giuffré, Milano, p. 180.

covered by the offence, some scholars argue that the "measures of rigour not authorised by law" mentioned in paragraph 1 of Article 608 refer exclusively to those exceeding the limits established by prison regulations. These measures must impose a further restriction on personal freedom beyond that already entailed by the lawful custodial measure in place.[166] According to this narrower interpretation of the offence, various acts that may harm the detainee—such as insults, assault, or bodily injury—may instead be prosecuted under other provisions, either separately or in combination. By contrast, a broader interpretation sees the offence as protecting the moral integrity of the detainee. From this perspective, it includes any conduct that constitutes an abuse of powers granted by law, such as coercive or violent acts intended to extract information or confessions, thereby violating the principle of personal inviolability.[167]

According to long-established case law of the Court of Cassation, Article 608 of the Criminal Code is violated—possibly in conjunction with other offences such as assault or bodily harm—when the use of force against a detainee imposes an additional restriction beyond the lawful deprivation of liberty already being suffered.[168] In other words, "measures of rigour not permitted by law" include all acts of violence, harassment, or humiliation that go beyond what is inherent in lawful custody.

3.1.2. Torture

The offence of torture is arguably one of the most important legal instruments for preventing police violence. At the core of the concept of torture lies the "perversion of the relationship between authority and the individual" and the destruction of the victim's "status as a citizen and as a person".[169] In Italy, the offence was introduced

[166] Mantovani F. (2022), *Diritto penale*, cit., p. 351; Antolisei F. (2022), *Manuale di diritto penale*, cit., 181; Pierro L. (1954), "Abuso di autorità contro arrestati e detenuti e lesioni aggravate cagionate da un pubblico ufficiale ad un arrestato. Principi informatori", in *Giustizia penale*, 1, p. 139 ss.

[167] See Brasiello T. (1963), "Libertà personale (delitti contro la)", in *Novissimo Digesto Italiano*, UTET, Torino, p. 856; Fiandaca G., Musco E. (2004), *Dritto penale*, cit., 205.

[168] Court of Cassation, Judgment No. 26022/2018; No. 22203/2017; No. 29004/2012; and No. 31715/2004.

[169] Padovani T. (2016), "Tortura: adempimento apparentemente tardivo, inadempimento effettivamente persistente", in *Criminalia*, p. 28. Si veda anche: Lobba P. (2017), "Punire la tortura in Italia. Spunti

relatively recently, with the enactment of Article 613-bis of the Criminal Code in 2017. This came after a protracted legislative process[170], marked by considerable political resistance and influenced by rulings of the European Court of Human Rights, which condemned Italy for the absence of adequate legal provisions to prevent and punish acts of torture and inhuman or degrading treatment.[171] The definition of the offence of torture under Italian law, however, diverges from the standards set by the UN Convention Against Torture, both in terms of the qualification of the perpetrator and of the constitutive elements of the offence.[172]

A key point of concern in the offence of torture introduced into the Italian legal system is that Article 613-bis differentiates between ordinary torture, which can be committed by any individual, and the more serious offence of State torture, committed by a public official or a person performing a public service, through an abuse of power or in breach of official duties. These two categories reflect a gradation in the gravity of the offence: while both forms aim to protect the victim's moral freedom, physical and psychological integrity, and human dignity, State torture also infringes upon legal interests related to the legitimacy of public authority.[173] This broader scope of harm justifies the significantly more severe penalties associated with State torture.[174]

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ricostruttivi a cavallo tra diritti umani e diritto penale internazionale", in *Diritto penale contemporaneo*, 10, p. 231, which highlights that, under international law, the "specific reprehensibility of torture" stems precisely from the fact that it is committed by an individual acting in an official capacity.

[170] Gonnella P. (2017), "Storia, natura e contraddizioni del dibattito istituzionale che ha condotto all'approvazione della legge che criminalizza la tortura", in *Politica del diritto*, 8(3), pp. 415-443.

[171] ECtHR, *Cestaro v. Italy*, No. 6884/11, Judgment of 7 April 2015. See Cassiba F. (2015), "Violato il divieto di tortura: condannata l'Italia per i fatti della scuola 'Diaz-Pertini', in *Diritto penale contemporaneo.* Available at https://archiviodpc.dirittopenaleuomo.org/d/3873-violato-il-divieto-di-tortura-condannata-l-italia-per-i-fatti-della-scuola---diaz-pertini- (last access: 25.10.2024). In 2017, the ECHR reaffirmed its conclusions in two different judgements on the events of Genova 2001.

[172] Court of Cassation, Judgment No. 277544/2019. See Lobba P. (2017), "Punire la tortura in Italia", cit.; Lattanzi F. (2018), "La nozione di tortura nel codice penale italiano a confronto con le norme internazionali in materia", in *Rivista di diritto internazionale*, 1, pp. 151-184; Colella A. (2019), "La risposta dell'ordinamento interno agli obblighi sovranazionali di criminalizzazione e persecuzione penale della tortura", in *Rivista italiana di diritto e procedura penale*, 62(2), pp. 811-858.

[173] Marchi I. (2017), "Prime riflessioni a margine del nuovo art. 613-bis c.p.", in *Diritto penale contemporaneo*, 7-8, p. 157. See also Court of Cassation, Judgment No. 32380/2021.

[174] Galluccio A., Ubiali M.C. (2021), *Codice penale commentato, Tomo III*, V Ed., Wolters Kluwer, Milano, p. 1960.

Although not in explicit contradiction with international standards, this formulation of the offence of torture provides judges with a degree of interpretive discretion that risks minimising the scope of the reform and shielding police forces from potential prosecution.[175] The central interpretive issue concerning Article 613-bis of the Italian Criminal Code relates to the legal classification of State torture. In practice, it remains unsettled whether acts of torture committed by a public official constitute an aggravating circumstance of the ordinary offence, or a distinct criminal offence.[176] The implications of either interpretation are significant. If State torture is considered an aggravating circumstance of ordinary torture, the increased penalty may be offset through the balancing of aggravating and mitigating circumstances—particularly in cases where the public official has no prior criminal record.[177] Conversely, if classified as a separate offence, this could paradoxically preclude the application of the aggravating factors set out in the subsequent paragraphs.[178]

The jurisprudence of the Italian Court of Cassation on this crucial issue has been inconsistent. In Judgment No. 50208/2019, the Court interpreted State torture as an aggravating circumstance of ordinary torture.[179] This interpretation was subsequently confirmed in Judgment No. 1243/2023, which dealt with acts of torture committed within a prison. By contrast, Judgment No. 32380/2021 interpreted Article 613-bis of the Italian Criminal Code as a provision with a variable structure, establishing "two independent grounds for criminal liability—and therefore two distinct and autonomous

[175] Lattanzi F. (2018), "La nozione di tortura", cit., p. 182.

[176] Per una sintetica ricostruzione del dibattito sul punto: Mazzi G., Lecce M. (2022), "Art. 613-bis - Tortura", in Lattanzi G., Lupo E. (a cura di), *Codice penale*, Giuffré, Milano, pp. 703-704.

[177] Manna A. (2020), *Manuale di diritto penale*, Giuffré, Milano, p. 382. Si veda anche: Mazzi G., Lecce M. (2022), "Art. 613-bis - Tortura", cit., p. 703; Pugiotto A. (2018), "Una legge 'sulla' tortura, non 'contro' la tortura (Riflessioni costituzionali suggerite dalla l. n. 110 del 2017", in *Quaderni costituzionali*, 2, p. 402.

[178] Amato S., Passione M. (2019), "Il reato di tortura", in *Diritto penale contemporaneo*, pp. 12 ss. Disponibile a www.archiviodpc.dirittopenaleuomo.org/d/6407-il-reato-di-tortura (ultimo accesso, 28.10.2024).

[179] For a critical analysis see Colella A. (2020), "La Cassazione si confronta, sia pure in fase cautelare, con la nuova fattispecie di 'tortura' (art. 613-bis c.p.)", in *Sistema Penale*. Disponibile a www.sistemapenale.it/it/scheda/cassazione-2021-32380-colella-tortura-di-stato (ultimo accesso, 25.10.2024).

offences—of increasing severity based on the personal status of the perpetrator."[180] A key argument in the reasoning of the Court of Cassation in its 2021 judgment is that, if State torture were considered merely an aggravating circumstance of the basic offence of torture, Italy could risk breaching its international obligations to impose an effective penalty for acts of State torture.[181]

The offence of torture introduced into the Italian legal system raises several issues with respect to its constituent elements. A first critical point concerns the requirement that, for the offence to be established, the perpetrator must have caused the victim either "acute physical suffering" or a "verifiable psychological trauma." On the one hand, this wording reflects the legislator's intent to limit the scope of the offence to "the most violent and despicable acts, inherently linked to a heinous and dehumanising practice".[182] On the other hand, interpreting the expression "verifiable psychological trauma" as requiring a mandatory medico-legal diagnosis significantly narrows the scope of application, restricting it to cases in which a pathological condition can be formally identified in the victim.[183] This interpretation risks complicating the evidentiary assessment of trauma and the causal link—especially in light of the often-protracted duration of criminal proceedings—while effectively leaving unpunished forms of torture that inflict psychological harm not resulting in a clinically certifiable condition.[184]

The case law on this point remains unsettled, although it tends to favour an interpretation that extends the applicability of the offence to cases in which the trauma suffered is not certified or certifiable. According to the Italian Court of Cassation, the offence of torture does not necessarily require that the victim suffer bodily injury. Indeed, the fact that torture "also" results in bodily harm constitutes an aggravating circumstance under paragraph 4 of Article 613-bis of the Italian Criminal Code.

[180] Court of Cassation, Judgment No. 32380/2021, para. 3.2.

[181] On the issue, see Bondi G. (2024), "L'art. 613 bis c.p. e gli obblighi positivi di tutela penale nella CEDU. Sulla identità autonoma o circostanziale della tortura c.d. pubblica", in *Giurisprudenza Penale WEB*, 7-8.

[182] Marchi I. (2017), "Prime riflessioni a margine del nuovo art. 613-bis c.p.", cit., p. 163.

[183] Cf. Lobba P. (2017), "Punire la tortura in Italia", cit., pp. 232 ss.

[184] Marchi I. (2017), "Prime riflessioni a margine del nuovo art. 613-bis c.p.", cit., p. 164; Padovani T. (2016), "Tortura", cit., pp. 29-30.

Psychological trauma, moreover, need not be permanent and may be proven in court on the basis of "symptomatic indications of psychological distress that can be inferred from the victim's statements," similarly to the evidentiary standard applied in cases involving the offence of stalking (*atti persecutori*).[185]

In the context of police misconduct, the provision also raises important questions concerning the objective preconditions for the offence of torture. Article 613-bis of the Italian Criminal Code refers variously to a qualified relationship between the perpetrator and the victim, the victim's deprivation of personal liberty, or a state of diminished self-defence. The latter typically involves a situation of particular vulnerability—assessed on a case-by-case basis in light of the environmental and personal circumstances that impaired the victim's capacity to resist or facilitated the perpetrator's dominance. By contrast, the interpretation of the other two preconditions—the existence of a relationship of trust and the deprivation of liberty—remains more legally complex and contested.

In its original wording, the provision required that the victim of torture be deprived of personal liberty or, *in any case*, placed under the custody, authority, supervision, or control of the perpetrator. This phrasing was broader than the version ultimately adopted. By removing the phrase "in any case," the final text appears to exclude from the scope of Article 613-bis those instances of torture that occur before the establishment of a "genuine relationship of *auctoritas* or *potestas* over the victim".[186] In particular, this interpretation would exclude from the scope of the offence of torture all informal interactions between police officers and individuals that occur prior to a formal arrest. This includes public order operations where personal liberty may be significantly curtailed—such as so-called "minor arrests" for identification purposes—and instances of violence that may occur before or during the exercise of police powers to detain someone. Even the notion of "deprivation of personal liberty," if interpreted in a narrow

[185] Court of Cassation, Judgment No. 32380/2021, para. 3.3. See also Court of Cassation, Judgment No. 47672/2023, which upheld the conviction for torture of three *Carabinieri* involved in the 'Levante barracks' case in Piacenza.

[186] Amato S., Passione M. (2019), "Il reato di tortura", cit., p. 6.

and formalistic manner, introduces an implicit requirement for the existence of an official measure restricting the victim's freedom. This interpretation risks the paradoxical outcome of excluding from the offence's scope the instances of violence against unlawfully detained individuals—precisely the kind of cases that led to Italy's condemnation by the European Court of Human Rights.[187]

A substantive interpretation therefore appears preferable, both to ensure the effectiveness of the provision and to maintain consistency with constitutional and supranational obligations.[188] This view is supported by the case law of the Italian Court of Cassation, which—consistent with the legal interests protected by the provision—has held that the offence does not require the deprivation of personal liberty to result from a judicial order. Rather, it extends protection to all instances of unlawful deprivation of liberty or restriction of freedom of movement by the perpetrator. This interpretation aligns with Article 13 of the Italian Constitution, which protects against any form of personal liberty restriction.[189]

3.1.3. The execution of unlawful orders

As discussed in the previous chapter, the law imposes a general obligation on public officials to refrain from executing orders that would result in criminal conduct. In this respect, a public official has both the duty and the authority to assess the substantive and formal legality of an order. Accordingly, both the official who issues an unlawful order and the one who carries it out may incur criminal liability.[190]

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[187] Marchi I. (2017), "Prime riflessioni a margine del nuovo art. 613-bis c.p.", cit., p. 157; Lobba P. (2017), "Punire la tortura in Italia", cit., pp. 237-238; Pugiotto A. (2018), "Una legge 'sulla' tortura, non 'contro' la tortura", cit., pp. 399-400.

[188] See Cisterna A. (2017), "Colmata una lacuna, ma molte nozioni restano poco precise", in *Guida al diritto*, 39, pp. 18-19; Colella A. (2019), "La risposta dell'ordinamento interno", cit., p. 827; Galluccio A., Ubiali M.C. (2021), *Codice penale commentato*, cit., p. 1965; Mazzi G., Lecce M. (2022), "Art. 613-bis - Tortura", cit., p. 697.

[189] Court of Cassation, Judgment No. 32380/2021, para. 3.3.

[190] Article 17 of Presidential Decree No. 3/1957.

However, the special status of police forces within the state administration—and their distinctive hierarchical structure—entails a heightened duty of obedience that exceeds that required of ordinary civil servants. In recognition of this, the law provides for a specific statutory criminal defence in cases where an offence is committed pursuant to an order that the subordinate official is not in a position to question. This defence applies when the order is considered *indisputable*, thereby excluding the criminal liability of the officer who merely executed it.[191]

The indisputability of orders received by members of the Italian police forces is subject to three key limitations: (i) the formal legitimacy of the order; (ii) the order must not be manifestly unlawful; and (iii) the executing officer must lack awareness of the criminal nature of the order.[192] Within these boundaries, the legal interest protected by the potentially violated criminal provision is considered secondary to the public interest in ensuring that police officers promptly execute orders. However, this statutory defence applies exclusively to the subordinate officer who carried out the order; it does not extend to the superior who issued it, nor to any third party who voluntarily participated in the offence.

3.1.4. Excessive force

The criminal liability regime for police officers is complemented by a system of statutory defences, which in practice form the legal framework governing the use of force by law enforcement agents.[193] Under the Italian Criminal Code, the use of weapons or other means of physical force by a police officer is deemed lawful in cases of self-defence—that is, when it is necessary to protect one's own rights or those of others from an

[191] Article 51(4) of the Italian Criminal Code.

[192] Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 345.

[193] Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 363. On the relationship between the different statutory defences, see Albano A. (2018), *Uso legittimo delle armi e degli altri mezzi di coazione fisica*, La Tribuna, Piacenza, p. 30 ss.; Alibrandi L. (1979), *L'uso legittimo delle armi*, Giuffrè, Milano, p. 49 ss. For a historical and comparative reconstruction of the system of statutory defences: Martiello G. (2019), *I limiti penali dell'uso della forza pubblica: una indagine di parte generale*, ETS, Pisa, p. 89 ss.

imminent and unlawful threat. In addition to this general defence, the law provides a specific justification that excludes the unlawfulness of the use of force or weapons by public officials when it is necessary to repel violence, overcome resistance, or prevent the commission of certain criminal offences.[194]

The statutory criminal defence of lawful use of weapons or force, as set out in Article 53 of the Italian Criminal Code, is explicitly defined as autonomous and distinct from both self-defence (Article 52) and the execution of an indisputable order (Article 51). However, the isolation of this provision from broader justifications for the use of force raises significant concerns. The broader the autonomous scope attributed to Article 53, the greater the risk that it may serve as a blanket justification for the use of force by law enforcement agencies.[195]

The original formulation of Article 53 reflects an authoritarian conception of the relationship between the individual and State authority, typical of the Fascist regime that enacted the Criminal Code still in force today. Over time, judicial interpretation has progressively aligned this defence with the constitutional framework of the Republican State.[196] In particular, the courts have incorporated the principle of proportionality—originally rooted in the doctrine of self-defence—which has gradually been elevated to general principle of both the Italian constitutional order and European human rights law.[197] This principle therefore serve, also within the Italian legal system, as the key benchmark for assessing the relationship between the legal requirements and the

[194] These offences include mass murder, shipwreck, sinking, aviation and rail disasters, murder, armed robbery, and kidnapping. They were added by Article 14 of Law No. 152/1975 (the so-called "Reale Law") during the "Years of Lead" to bolster police protection when investigating and suppressing particularly serious crimes that provoked widespread public alarm. However, the amendment has raised—and continues to raise—concerns that Article 53's justification for the use of force could be extended improperly to mere preparatory acts of these offences, which are themselves not criminally punishable (see: Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 367).

[195] Musacchio V. (2006), *L'uso legittimo delle armi*, Giuffrè, Milano, p. 61.

[196] Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 364; Manna A. (2020), *Manuale di diritto penale*, cit., p. 378; Martiello G. (2019), *I limiti penali dell'uso della forza pubblica,* cit.; Mantovani F. (1988), *Manuale di Diritto penale. Parte generale*, II CEDAM, Padova, p. 269.

[197] Abagnale M., Domenicali C., Ponzetta L. (2017), "Le declinazioni della responsabilità penale", cit., p. 104.

means of physical coercion employed by the police officer. It provides the basis for balancing the competing interests at stake.[198]

A first defining element of the statutory defence under Article 53 of the Italian Criminal Code is the status of the person invoking it. Scholarly commentary and case law consistently affirm that this provision applies exclusively to public officials who are legally authorised to use weapons or other means of coercion.[199] Accordingly, only law enforcement officers may lawfully resort to force, and only within the scope of duties that exceptionally require physical coercion. Private security personnel are therefore excluded from the application of this defence. The use of force is classified by the Ministry of the Interior as an operational technique of policing, governed by specific rules of conduct and requiring dedicated training, with the aim of ensuring the safety of all parties involved.[200]

Another critical issue concerns the definition of "weapons and other means of physical coercion" as referenced in Article 53 of the Italian Criminal Code. The debate centres on whether this term should be interpreted narrowly—limited to equipment expressly issued to law enforcement personnel—or broadly, to include any object available to the officer in a specific situation, even if not officially authorised.[201]

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[198] Musacchio V. (2006), *L'uso legittimo delle armi*, cit., 95-96; Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 364. On the principle of proportionality in the interpretation of article 53, see Donizzetti R. (2015). "L'uso legittimo delle armi tra l'affermazione del principio di proporzionalità e le incertezze giurisprudenziali in materia di fuga", in *Diritto penale contemporaneo*. Available at https://archiviodpc.dirittopenaleuomo.org/d/4105-l-uso-legittimo-delle-armi-tra-l-affermazione-del-principio-di-proporzionalita-e-le-incertezze-giur (last accessed, 30.10.2024); Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., pp. 223-241.

[199] Cfr. Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 378; Manna A. (2020), *Manuale di diritto penale*, cit., p. 378; Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., p. 21 ss.; Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 78; Mezzetti E. (1999), "Uso legittimo delle armi", in *Digesto delle discipline penalistiche*, XV, UTET, Torino, p. 131; Ardizzone S. (1992), "Uso legittimo delle armi", in *Enciclopedia del diritto*, XLV, Giuffré, Milano, p. 979; Alibrandi L. (1979), *L'uso legittimo delle armi*, cit., p. 57.

[200] Ministero dell'Interno, Dipartimento della Pubblica Sicurezza*, Manuale delle Tecniche Operative*, unpublished, 2008, quoted in Albano A. (2018), *Uso legittimo delle armi*, cit., p. 25.

[201] For a detailed account of the individual and unit equipment of the police forces, see: Albano A. (2018), *Uso legittimo delle armi*, cit., pp. 177–318. The equipment of law enforcement officers is governed by the following regulations: Presidential Decree No. 359/1991, which concerns the armaments supplied to the personnel performing police functions; Presidential Decree No. 551/1992, which regulates the equipment

The practical implications of this interpretive choice are significant. A narrow interpretation would restrict the options available to officers in high-risk situations, potentially limiting their ability to respond effectively when standard-issue tools are unavailable.[202] Conversely, a broad interpretation—allowing the use of unauthorised or improvised means—could undermine the principle of legality in administrative action, which requires that coercive measures be explicitly prescribed by law.[203] Moreover, it could legitimise violent or excessive behaviour involving tools for which officers have received no formal training, raising concerns about both effectiveness and proportionality.[204]

Support for a more restrictive interpretation can be found in the explicit legal prohibition against police personnel carrying offensive weapons not authorised for use while on duty.[205]

According to the statutory defence provided under Article 53 of the Italian Criminal Code, the use of weapons or other means of physical coercion is lawful when it is necessary to "repel violence" or to "overcome resistance" in order to fulfil an institutional duty connected to the public official's role. Both the legal doctrine and the

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of the Penitentiary Police Corps; and Ministerial Decree No. 145/1987, which sets out the equipment provided to municipal police officers who have been granted law enforcement authority.

[202] An example would be a police officer who, having lost their service weapon during a physical altercation, is compelled to resort to an improvised object or a weapon seized from the opponent (see: Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., p. 61).

[203] Delogu T. (1972), "L'uso legittimo delle armi o altri mezzi di coazione fisica", in *Archivio penale*, 1, p. 193; Mezzetti E. (1999), "Uso legittimo delle armi", cit., pp. 130-131; Ardizzone S. (1992), "Uso legittimo delle armi", cit., p. 980 ss. Article 1 of Presidential Decree No. 359/1991 provides that the equipment supplied to the Public Security Administration must be appropriate and proportionate to the requirements of maintaining public order and security, preventing and combating crime, and fulfilling other institutional duties. These principles are also reflected in the regulations governing the equipment of other police forces.

[204] Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., pp. 62-63.

[205] Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., p. 63. However, the Court of Cassation has held that neither the type of instrument used nor its unorthodox application excludes the applicability of the statutory defence. In a case involving a *carabiniere* who, during a pursuit, fired several shots from a pump-action shotgun loaded with anti-riot pellets at fleeing individuals—causing injury—the Court ruled that the use of an unauthorised weapon was not relevant to the application of the statutory defence. Rather, it could give rise to a separate charge of unlawful possession and carrying of a weapon (Court of Cassation, Judgment No. 41038/2014, para. 1).

case law have long been divided on the precise definition of the concepts of *violence* and *resistance*.

With regard to the concept of violence, scholarly and judicial interpretations can broadly be grouped into two main hermeneutical approaches.[206]

On one hand, some argue that the notion of violence under Article 53 of the Italian Criminal Code should be interpreted consistently with Articles 336 and 337 of the same Code, which criminalise acts of violence or threats against public officials aimed at compelling them to act against their duties or preventing them from performing their functions.[207] According to this view, the scope of the statutory defence would be narrowly defined, excluding, for instance, the use of weapons or other means of coercion in response to passive resistance. A similar conclusion is reached by those who define violence strictly in terms of vis corporis—that is, physical force exercised directly on persons, resulting in harm to their bodily integrity or health, or on property, causing its destruction or rendering it wholly or partially unusable.[208]

On the other hand, a second hermeneutic approach supports a broader interpretation of the term violence, encompassing a wider range of behaviours—not limited to physical force—that actively obstruct the performance of an officer's duties.[209] In line with a broader trend toward the progressive "spiritualisation" of the concept of violence in criminal law[210], some scholars argue that so-called psychological violence may also justify the use of coercive force by law enforcement officers.[211]

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[206] Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., p. 44 ss.; Albano A. (2018), *Uso legittimo delle armi*, cit., pp. 119-120.

[207] Mezzetti E. (1999), "Uso legittimo delle armi", cit., p. 135; Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 85 ss.

[208] Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 366. In questo senso, anche Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., pp. 47-48.

[209] Albano A. (2018), *Uso legittimo delle armi*, cit., p. 48 ss.; Ardizzone S. (1992), "Uso legittimo delle armi", cit., pp. 982-983; Alibrandi L. (1979), *L'uso legittimo delle armi*, cit., p. 64; Fiandaca G., Musco E. (2004), *Dritto penale*, cit., 318.

[210] Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., pp. 46.

[211] Cfr. Donizzetti R. (2015). "L'uso legittimo delle armi", cit., p. 7.

A comparable interpretive challenge concerns the definition of *resistance*. The key question is whether this notion should be limited to cases of "active resistance"—that is, physical opposition to the actions of law enforcement—or whether it may also extend to forms of "passive resistance," such as fleeing the scene or engaging in non-cooperative conduct that hinders the exercise of official duties. The resolution of this issue has important implications for determining when the use of coercive force by police officers may be legally justified.

One interpretive approach excludes passive resistance from the scope of the statutory defence, arguing that the concept should be interpreted consistently with the definition of resistance under Article 337 of the Italian Criminal Code, which criminalises resistance only when it involves violence or threats.[212] According to this reading, the fact that Italian law expressly authorises the use of force to overcome passive resistance only in specific circumstances suggests that, in all other cases[213], the use of weapons or physical force to counter passive resistance should be deemed unlawful, as it would invariably be disproportionate.[214] By contrast, the prevailing interpretive view maintains that the lawfulness of using force—even against passive resistance—should be evaluated in light of the specific context and the methods employed by the police. According to this approach, such use of force may be legitimate if, under the circumstances, it is both necessary and proportionate to the aims of the police operation.[215]

The most contentious issue concerning the interpretation of "resistance" relates to the use of firearms against individuals who flee in an attempt to evade law enforcement

[212] Mezzetti E. (1999), "Uso legittimo delle armi", cit., p. 134 ss.

[213] The law expressly authorises the use of coercive measures by law enforcement officials in certain cases of passive resistance. For example, Article 41 of the Prison Regulations permits such use within detention facilities, while Law No. 100/1958 allows it in the event of a smuggler attempting to flee without abandoning the contraband (see: Marinucci G., Dolcini E., Gatta G. L. (2023). *Manuale di diritto penale*, cit., p. 366).

[214] This position has been supported in the past by the jurisprudence of the Court of Cassation. For a reconstruction of this position and an overview of the main judgments, see: Martiello G. (2019), *I limiti penali dell'uso della forza pubblica*, cit., pp. 54-55.

[215] Fiandaca G., Musco E. (2004), *Dritto penale*, cit., 318; Garofoli R. (2023), *Manuale di diritto penale*, XX ed., Neldiritto, Bari, pp. 687-688; Donizzetti R. (2015). "L'uso legittimo delle armi", cit., pp. 8-9; Mantovani F. (1988), *Manuale di Diritto penale*, cit., p. 281; Alibrandi L. (1979), *L'uso legittimo delle armi*, cit., p. 68; Delogu T. (1972), "L'uso legittimo delle armi", cit., p. 192 ss.

control. For a long time, both prevailing legal scholarship and the jurisprudence of the Italian Court of Cassation excluded the applicability of the statutory defence in such cases, adhering to a restrictive interpretation that defined resistance solely as active opposition.[216] This position has gradually been replaced by an approach grounded in proportionality, requiring a contextual balancing of the legal interests at stake in each individual case. As a result, recent case law has moved away from the rigid distinction between active resistance and flight, favouring instead a proportionality-based analysis. Under this framework, the use of firearms may be deemed lawful in cases of so-called "reckless flight"—that is, when the manner in which the escape is carried out poses a concrete threat to other relevant legal interests, such as public safety or the physical integrity of others.[217]

In summary, case law[218] has established the following criteria for the application of the statutory defence set out in Article 53 of the Italian Criminal Code: (a) the law enforcement officer must have no reasonable alternative to the use of force in order to repel violence or overcome resistance while performing official duties; (b) among the available means, the officer must choose the one that causes the least harm to the legally protected interests at stake, with particular regard to the life and physical integrity of all persons involved; (c) the use of weapons must be proportionate to the totality of the legal interests involved in the specific circumstances.

When all these conditions are met, the law grants the police officer immunity from criminal liability, even in cases where a more serious outcome occurs that was not intended. Conversely, if the conditions are not satisfied, the officer may be held criminally liable for either an intentional offence or, where applicable, a negligent

[216] For an overview of the development of case law concerning the relationship between Article 53 and the issue of flight, see: Albano A. (2018), *Uso legittimo delle armi*, cit., p. 119 ff. In this regard, the Court of Cassation in hte Judgment No. 11879/2007 held that a suspect's flight cannot justify the use of firearms, as it amounts to mere passive resistance.

[217] With regard to cases of "dangerous" or "reckless" flight—considered equivalent to active resistance for the purposes of applying Article 53—see Court of Cassation, Judgments No. 9961/2000, No. 20031/2003, No. 24187/2008, No. 6719/2014, and No. 26412/2019.

[218] Court of Cassation, Judgments No. 35962/2020; No. 41038/2014; No. 854/2007; No. 9961/2000.

offence.[219] In particular, a case of excessive use of force due to negligence may arise when the officer misjudges the proportionality of the response, fails to comply with technical regulations governing the use of weapons or force, or breaches general rules of prudence that should guide conduct in situations involving the use of force.[220]

Accordingly, even the use of firearms to prevent escape or for purposes of intimidation or deterrence—such as firing warning shots into the air—while not inherently unlawful, may expose a police officer to criminal liability if, through negligence or improper conduct, harm is caused to the life or physical integrity of others. For this reason, the Ministry of the Interior stresses that firearms must be used "with caution and prudence," and only when the officer has "sufficient expertise in handling them".[221] The Ministry also highlights the growing prevalence of warning shots, which, while intended as a means of intimidation, must be treated as a measure of last resort due to the significant risks they pose to both bystanders and the (alleged) suspect, as well as the potential for retaliation by those who perceive themselves as being unjustly targeted.[222] In light of these risks, the Ministry urges police commanders to carefully assess each incident involving warning shots, including the possible disciplinary liability of the officer involved.

3.1.5. Jurisdiction and Procedural Admissibility of Police-Related Offences

As a general rule, Italian police officers fall under the jurisdiction of the ordinary criminal courts.[223] However, the Carabinieri—by virtue of their status as a military police force—

[219] This implies immunity from prosecution for an offence resulting from negligence in the use of means or in the outcome, provided that the offence is not classified by law as a punishable negligent offence.

[220] Abagnale M., Domenicali C., Ponzetta L. (2017), "Le declinazioni della responsabilità penale", cit., p. 109. Si veda anche: Faranda C. (1988), *L'eccesso colposo. Errore di giudizio ed errore modale nell'art. 55 c.p.*, Giuffrè, Milano.

[221] Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, *Uso delle Armi - Direttive*, Circolare prot. n. 559/A/2/752M:2.5/2182 of 30 June 2008, pp. 3-4. The document also stresses the need to provide police officers with professional and continuous training, both in the use of firearms and in current legislation.

[222] Ministero dell'Interno, Dipartimento di Pubblica Sicurezza, *Uso delle Armi - Direttive*, Circolare prot. n. 559/A/2/752M:2.5/2182 del 30.6.2008, p 4.

[223] Article 71 of Law No. 121/1981.

are subject to a partially distinct legal framework.[224] Specifically, members of the Carabinieri may be tried before military courts for offences classified under the Italian Military Criminal Code of Peace as either *exclusively* military or *also* military offences. The former refers to acts that are criminalised solely under military law, whereas the latter includes ordinary criminal offences that are reclassified as military crimes when committed against members of the Armed Forces or within a military setting or operational context.[225]

Military justice has however become a residual jurisdiction in Italy whose scope of intervention has been progressively reduced over time in favour of the ordinary criminal courts, in line with the constitutional structure of the judicial system.[226] The reform process began in 1956, when Law No. 167/1956 gave precedence to ordinary jurisdiction in cases involving a connection between common and military offences and repealed the provisions concerning so-called 'militarised' offences. This process was finally completed in 1981 with the enactment of Law No. 180/1981. This reform marked the end of the differential legal framework that had long characterised military justice, bringing it largely into line with the ordinary justice system.[227] The entry into force of the 1989 Code of Criminal Procedure, together with a key ruling by the Italian Constitutional Court[228] affirming that military criminal proceedings must not conflict

[224] On the differential character of military criminal law, see Fiandaca G. (2008), "Quale specialità per il diritto penale militare?", in *Rivista italiana di diritto e procedura penale*, 51(3), pp. 1059-1087.

[225] The distinction is regulated by Article 37 of the Italian Military Criminal Code of Peace. On the notion of military offence, see Brunelli D., Mazzi G. (2007), *Diritto penale militare*, Giuffrè, Milano, p. 43 ss. On the boundaries of the scope military criminal jurisdiction, see Riccio G. (1986), "Appunti per la determinazione dell'oggetto e dei soggetti della giurisdizione penale militare", in *Rassegna giustizia militare*, suppl. 4-5, pp. 137-166.

[226] In particular, the articles 102 and 103 of the Italian Contitutio. See Mazzi G. (1993), "La giurisdizione militare come giurisdizione eccezionale e i suoi limiti costituzionali", in *Cassazione penale*, 7, pp. 1627-1632; Rivello P.P. (1993), "I limiti di assoggettamento alla giurisdizione penale militare: ricondotti dalla Corte costituzionale entro l'alveo delineato dalla Costituzione", in *Legislazione penale*, 13(3), pp. 607-614. For a general overview of the relationships between ordinary and military jurisdictions: Rivello P.P. (2011), *Il procedimento militare*, Giuffrè, Milano.

[227] Rivello P.P. (2011), *Il procedimento militare*, cit., pp. 76-77. Royal Decree No. 1022/1941, which governed the military judicial system, was the subject of an abrogative referendum. However, the Constitutional Court declared the referendum inadmissible, ruling that its approval would have resulted in a violation of constitutional provisions establishing the system of military courts.

[228] Italian Constitutional Court, Judgment No. 274/1995.

with the principles and general rules of ordinary criminal justice, marked the completion of the process of "jurisdictional harmonisation." Today, under Article 261 of the Italian Military Criminal Code of Peace, ordinary procedural rules also apply in proceedings before military courts, with the exception of specific provisions expressly laid down by law—such as those concerning the composition of the judicial panel.[229]

Some special provisions regarding procedural rules and the enforcement of sentences are designed to safeguard police officers who are on trial or have been convicted. In the area of criminal proceedings, the 1989 Code of Criminal Procedure repealed the special procedural rules introduced by the so-called *Legge Reale*, which had applied to officers under investigation for violent crimes or the use of weapons.[230] That procedure had effectively conferred a form of de facto immunity, as it gave judicial authorities discretionary filtering powers that, in practice, often prevented criminal cases against police officers from moving forward.[231] However, the use of immediate trial proceedings (*giudizio direttissimo* in Italian) remains mandatory for the specific offences set out in Law No. 121/1981.[232] An additional general safeguard is the right of police officers to serve any custodial sentence, including pre-trial detention, in military facilities as provided under Articles 76 and following of Legislative Decree No. 66/2010.[233]

3.2. Civil Liability and Public Financial liability

Police officers and the public security administration may also be held civilly liable for harm caused by their actions. In this context, civil liability can serve as an economic

[229] Molinari L. (2001), "La Giurisprudenza Penale Militare in tempo di pace", in *Rassegna dell'Arma*, 4, pp. 7-16. On the specific features of military criminal proceedings, see Rivello P.P. (2011), *Il procedimento militare*, cit., pp. 217 ss.; Venditti R. (1997), *Il processo militare*, Giuffré, Milano.

[230] Articles 27 to 31 of Law No. 152/1975.

[231] Riberi M. (2018), "Sicurezza vs. libertà costituzionali: la «legge Reale» n. 152 del 22 maggio 1975", in *Italian Review of Legal History*, 4(6), pp. 1-18 e 13-14.

[232] Article 80 of Law No. 121/1981. The mandatory use of direct judgement is excluded where there is a need for special investigative activities that require a switch to the ordinary procedure (see Bottino A. (1982), "Un privilegio inesistente: il giudizio direttissimo per gli appartenenti alle forze di polizia", in *Rivista di Polizia*, 1, pp. 12-21).

[233] Article 79 of Law No. 121/1981.

incentive for appropriate conduct, encouraging law enforcement to exercise their powers with greater care. Moreover, because the burden of proof in civil proceedings is lower than in criminal cases, civil liability may, in theory, have a stronger deterrent effect than criminal sanctions.[234] The potential for the administration to be held liable for damages caused by its employees may also incentivize more effective internal oversight and the adoption of precautionary operational procedures aimed at minimizing the financial consequences of misconduct. For these reasons, some scholars have argued that civil liability may, in many respects, serve as a viable alternative to criminal liability in addressing police misconduct.[235]

The Consolidated Law on Public Security (Testo Unico delle leggi di pubblica sicurezza) of 1931 granted the police special legal protection, establishing in Article 7 the principle that "no compensation is due for measures taken by the public security authorities in the exercise of the powers conferred on them by law".[236] This provision epitomised an authoritarian conception of the relationship between public authorities and individuals, placing the protection of public order and security above the rights of those harmed by police actions.[237] Although Article 7 of the Consolidated Law on Public Security remains formally in force, it is now clearly incompatible with the constitutional framework established by Articles 28 and 113 of the Italian Constitution, which subject public officials and the public administration to ordinary forms of civil liability for unlawful acts.[238] As a result, the exemption from liability for damages resulting from public security measures is now interpreted narrowly, covering only lawful actions and

[234] Rowe M. (2020), *Policing the Police*, cit., p. 54.

[235] Waddington P.A. (1999), *Policing citizens: authority and rights*, Routledge, Abington, p. 171.

[236] Art. 7, Royal decree no. 773/1931.

[237] Ursi R. (2022), *La sicurezza pubblica*, cit., p. 93.

[238] Articles 18, 22, 23, and 28 of Presidential Decree No. 3/1957. See Laboccetta A.M. (2022), "Danni dalla p.a. e alla p.a.", in Cassano G. (a cura di), *Il danno alla persona*, Giuffré, Milano, pp. 1269 ss.; Conte F., Lisi G. (2017), "Le frontiere mobili della responsabilità civile: alla ricerca di un equilibrio tra opposte esigenze", in Giupponi T. (a cura di), *L'Amministrazione di Pubblica Sicurezza e le sue* responsabilità, cit., pp. 121 ss.

measures. Unlawful conduct that infringes individual rights gives rise to ordinary tort liability under Article 2043 of the Civil Code.[239]

The use of firearms or other means of physical coercion represents the police activity with the highest potential for harm to individuals or property. Over time, courts have progressively expanded the scope of compensable harm resulting from police conduct, in accordance with the general principle of *neminem laedere*. [240] Even in areas where public authorities enjoy broad discretionary powers—such as the maintenance of public order and security—their actions must comply not only with specific legal provisions but also with overarching legal principles. Chief among these is the duty to avoid unjustified infringements of individual rights, a fundamental tenet of the civil liability regime.[241]

In line with general principles of criminal law, the statutory defence of lawful use of force excludes the unlawfulness of the officer's conduct and, consequently, the unlawful character of any resulting harm—thus precluding any civil liability claim.[242] However, this protection does not extend to cases involving the negligent use of firearms or other means of coercion. In such instances, the harm caused by police conduct is considered unlawful, and a civil claim for damages may be brought under the rules governing liability for wrongful acts.

However, the jurisdiction of civil courts is limited by the boundaries of judicial review over administrative acts, particularly those involving police conduct. The discretionary authority granted to police officers in deciding whether to resort to coercion, and in choosing the specific means to do so, is not itself subject to judicial review, as this would entail the civil judge substituting their judgment for that of the administrative authority.[243] In the context of Article 53 of the Italian Criminal Code, this discretion is considered *pure*, as it relies exclusively on the officer's subjective assessment in the

[239] Court of Cassation, Judgment No. 1608/1958. See Conte F., Lisi G. (2017), "Le frontiere mobili della responsabilità civile", cit., p. 133 ss.

[240] Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 126.

[241] Court of Cassation, Judgment No. 396/2008.

[242] Court of Cassation, Judgments No. 21426/2014; No. 11998/2005; and No. 15271/2003. See Filippi S. (2006), "Il danno derivante da uso legittimo delle armi", in *La responsabilità civile*, 1, pp. 32-38.

[243] Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 129.

moment, without the possibility of prior evidentiary evaluation or the support of technical tools.[244] There is no doubt, however, that civil courts are empowered to assess how force and coercive means were used by a police officer—particularly in cases involving misuse or reckless use of a weapon. Moreover, judges may always evaluate whether the coercive measures employed were manifestly and objectively disproportionate to the circumstances.

Recent judgments of the Court of Cassation have affirmed that when the statutory defence of lawful use of force does not apply, the resulting harm from police action may fall within the scope of civil liability for hazardous activities under Article 2050 of the Italian Civil Code. This applies, for example, in cases of negligence in the use of weapons or other means of coercion, or when the instruments used are manifestly disproportionate to the circumstances. This interpretation does not entail a review of the administration's discretionary decisions, but rather focuses on the "external limits" of such discretion—namely, compliance with legal and technical rules governing police conduct, as well as general principles of caution and care.[245] The judge's role is therefore confined to assessing whether the officer complied with the legal requirements, operational protocols, and precautionary measures that public authorities must observe to minimise the risk of harm to others.[246]

With regard to the civil liability of law enforcement officers, a key issue concerns the enforceability of criminal judgments in subsequent actions for damages—specifically, the legal weight in civil proceedings of factual determinations made in a final criminal judgment concerning the use of force. In accordance with the principle of the autonomy of proceedings, the *erga omnes* effect of criminal judgments is generally excluded. Any departure from this principle is considered exceptional and must be explicitly provided for by law.[247] Consequently, for the factual findings established in a criminal judgment to be used in subsequent civil liability proceedings, there must be an identity of parties

[244] Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 129.
[245] Court of Cassation, Judgments No. 21426/2014.
[246] Albano A. (2018), *Uso legittimo delle armi*, cit., pp. 106-107; Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 131; Alibrandi L. (1979), *L'uso legittimo delle armi*, cit., pp. 136-137.
[247] Articles 651 to 654 of the Italian Code of Criminal Procedure. On the issue, see Court of Cassation, Judgments No. 2643/2004.

between the two proceedings. Specifically, the civil defendant must have participated in the criminal trial and in the adversarial process that led to the establishment of the relevant facts and responsibilities. Accordingly, a conviction for negligent use of force by a police officer does not, in and of itself, have probative value in civil proceedings brought against the public security administration, unless the latter was a party to the original criminal proceedings.[248]

In addition to the personal liability of the individual police officer, the public administration to which the officer belongs may also be held liable. Under the principle of *organic identification* (*immedesimazione organica*), whereby the acts of public employees are deemed to be acts of the administration itself, civil liability for unlawful conduct extends to the public body, which is jointly responsible for the actions of its personnel.[249] The injured party can therefore take direct action against the public administration, from which it is easier to obtain financial compensation. The responsibility of the administration is maintained unless the employee's conduct cannot reasonably be linked to the public body. If the conduct in question is motivated exclusively by personal interests or wholly unrelated to institutional functions, the administration cannot be held liable for the resulting harm caused to third parties.[250]

When the administration is required to compensate for damages caused by its employees, it may seek recourse against the individual officer by asserting their liability for public financial loss.[251] To establish such liability, in addition to proving the employee's negligence, it is necessary to demonstrate the existence of an employment relationship.[252] Public financial liability resulting from the use of force by police officers

[248] Filippi S. (2006), "Il danno derivante da uso legittimo delle armi", cit., p. 35.
[249] Court of Cassation, Judgments No. 2089/2008. See also Laboccetta A.M. (2022), "Danni dalla p.a. e alla p.a.", cit.
[250] Conte F., Lisi G. (2017), "Le frontiere mobili della responsabilità civile", cit., p. 126.

[251] For an analysis of the case law of the Court of Auditors concerning public financial liability arising from police misconduct, see: Morvillo M. (2017), "La responsabilità amministrativa: profili di espansione e argini normativi", in Giupponi T. (a cura di), *L'Amministrazione di Pubblica Sicurezza e le sue responsabilità*, cit. pp. 147-168; Tenore V. (2017), "Il danno erariale (diretto e indiretto) nelle Forze Armate", in *Rassegna dell'Arma dei Carabinieri*, 2, pp. 85-111.

[252] Musacchio V. (2006), *L'uso legittimo delle armi*, cit., pp. 132-133.

is governed by the general rules applicable to civil servants.[253] Accordingly, the judge has the discretion to reduce the amount owed by the officer based on an evaluation of the specific circumstances in which the officer acted, the challenges they faced, and any contributory failings on the part of the administration—such as inadequate professional training.[254] Furthermore, public financial liability may also be extended to the officer's superior if it can be shown that they failed to exercise proper oversight of the subordinate whose actions caused the damage.[255]

In 2002, the Italian Government allocated specific funds to cover civil and administrative liability for non-intentional harm caused by police officers in the course of their duties.[256] These funds—regularly renewed through subsequent budget laws and, in some cases, supplemented by social security resources—have been used to underwrite collective insurance schemes with major international providers.[257] While these schemes are generally limited to cases of minor negligence, coverage may be extended to include serious negligence through optional, individually contracted insurance arrangements entered into by police officers.[258]

3.3. Disciplinary control

Disciplinary procedures have traditionally served as the primary tool for the internal oversight of police conduct. The hierarchical structure of police forces and the duty of

[253] Articles 81 to 86, Royal Decree No. 2440/1923. See also: Rodriguez S. (2006), "La Corte dei conti e la responsabilità amministrativa degli appartenenti alle forze dell'ordine: i pregiudizi finanziari derivati dall'uso delle armi", in *Responsabilità civile e previdenziale*, 71(2), p. 347 ss.

[254] Italian Court of Auditors, Judgment No. 133/2006, quoted in Musacchio V. (2006), *L'uso legittimo delle armi*, cit., p. 133.

[255] Albano A. (2018), *Uso legittimo delle armi*, cit., p. 111.

[256] Art. 16(4), Law no. 448/2001.

[257] In 2022, the Public Security Administration entered into two insurance agreements with Lloyd's Insurance and Roland Italia to provide members of the *Polizia di Stato* with coverage for third-party civil liability and legal expenses arising from incidents related to the performance of police duties.

[258] Ministero dell'Interno, *Circolare rinnovo affidamento dei servizi assicurativi per la copertura dei rischi per la responsabilità civile verso terzi e tutela legale, inerenti alle responsabilità connesse allo svolgimento delle attività istituzionali del personale della Polizia di Stato ai sensi della Legge 28 dicembre 2001*, n. 448. Prot. 0011575, 1 Giugno 2022.

subordination have historically ensured both the efficiency of administrative action and the preservation of the organisation's legitimacy in the eyes of the public. In recent years, however, the function of disciplinary procedures has evolved, increasingly incorporating external inputs. To enhance public trust and demonstrate institutional accountability, private citizens have been granted the right to file complaints against police officers. These complaints can now serve as a basis for initiating disciplinary proceedings.[259]

Originally managed internally within police institutions, complaint-handling processes have gradually been transferred to independent bodies, such as the Independent Office for Police Conduct (IOPC) in England. This shift reflects broader concerns over the transparency, impartiality, and effectiveness of internal disciplinary mechanisms.[260]

While the debate over the effectiveness of complaints procedures remains open, there is no doubt that their introduction has profoundly changed the meaning of traditional disciplinary procedures. Once primarily designed as internal control mechanisms to ensure organisational cohesion and the effectiveness of police action, disciplinary procedures have evolved into channels for external oversight. They now serve also as tools to protect individuals from police misconduct—particularly in cases that do not meet the threshold for criminal liability or where addressing the issue through the criminal justice system would be too complex or burdensome.

An important development in the evolution of complaint mechanisms and oversight bodies in many countries is the growing role these institutions play in collecting and analysing data related to complaints. In several jurisdictions, this has led to mandatory

[259] Jones T. (2012), "The Accountability of Policing", cit., p. 711.

[260] Rowe M. (2020), *Policing the Police*, cit., p. 47; Punch M. (2009), *Police Corruption. Deviance, accountability and reform in policing*, Routledge, Abingdon, p. 204; Collen L. (2009), "Civilian Oversight", in Wakefield A., Fleming J. (eds.) *The SAGE Dictionary of Policing*, Sage, London, p. 23. The powers conferred on these bodies may vary, but it is possible to identify three main functions: monitoring the way in which complaints and critical cases are handled by the internal affairs departments; supervising and directing the work of the departments dealing with complaints; and ex post review of the work carried out by the departments dealing with complaints (den Boer M. (2018), "Police oversight and accountability in a comparative perspective", in den Boer M (ed.), *Comparative Policing from a Legal Perspective*, Edward Elgar, The Hague, p. 449).

reporting requirements for police forces, obliging them to record all critical incidents—such as the use of weapons or encounters with the public that result in physical coercion.[261] The resulting analyses not only shed light on the underlying causes of excessive force but also help to identify recurring risk factors or problematic operational practices. These insights can inform police leadership and support targeted reforms, independently of individual accountability.

This shift has significantly altered the function of disciplinary mechanisms. Rather than serving solely as instruments for sanctioning misconduct, they are increasingly viewed as tools for prevention and institutional change. As a result, a traditionally reactive and punitive system is being reoriented towards a more proactive and preventive model.

In Italy, disciplinary procedures continue to reflect the principles of authority and subordination. As emphasised in the specific academic literature on the subject, the primary function of the disciplinary system is to preserve the internal unity, order, and cohesion of the organisation—thereby indirectly supporting the effectiveness of administrative action in achieving its institutional goals.[262] The disciplinary power of the administration is rooted in the specific relationship of subordination—often described as a *special subjection*—that binds public employees to the public authority they serve.[263] Within this framework, the hierarchical superior exercises disciplinary

[261] Chan J.B.L. (2003), "Governing police practice: limits of the new accountability", *The British Journal of Sociology*, 50(2), p. 255; Stone C.H. (2007), "Tracing police accountability in theory and practice: From Philadelphia to Abuja and Sao Paulo", in *Theoretical Criminology*, 11(2), p. 255; Collen L. (2009), "Civilian Oversight", cit., p. 23; den Boer M. (2018), "Police oversight and accountability in a comparative perspective", cit., p. 448; Kutnjak Ivković S. (2014), "Police Misconduct", Reisig M.D, Kane R.J. (eds.), *The Oxford Handbook of Police and Policing*, Oxford University Press, Oxford, p. 321; Rowe M. (2020), *Policing the Police*, cit., p. 49.

[262] Mone L. (2011), *L'Amministrazione della Pubblica Sicurezza e l'ordinamento del personale*, XVIII ed., Laurus, Roma, p. 385.

[263] This relationship of subordination or subjection defines the position of those who, for various reasons, are obliged to comply with the conditions unilaterally defined by the public administration by virtue of its supremacy, whose disciplinary measures constitute the 'specific sanctions' (Romano S. (1990), "I poteri disciplinari delle pubbliche amministrazioni", in Romano S., *Scritti minori*, *vol. 2*, Giuffrè, Milano, pp. 102-103). In addition to service relationships with the public administration, Stacca provides further examples of situations in which an individual is part of an continuous relationship with a public body, such as a prison, hospital, school or university, and is required to comply with internal disciplinary rules (Stacca S. (2018) *Il potere disciplinare: dalla protezione della comunità alla protezione dell'individuo*, Franco Angeli, Minalo, pp. 34-35).

authority to ensure compliance with the fundamental duties of civil servants, including obedience, loyalty, integrity, and diligence.

From this perspective, the foundation of disciplinary power is distinct from the punitive power of the State. While criminal sanctions serve to protect the legal order and broader public interests, disciplinary sanctions are specifically aimed at safeguarding the internal interests of the public administration and, by extension, the public functions it performs.[264] Although the conduct subject to disciplinary action may also have external legal relevance—potentially giving rise to criminal, civil, or public financial liability[265]—the disciplinary process addresses the misconduct in light of the civil servant's particular status within the administrative structure.[266] In this context, the disciplinary sanction addresses a breach of the duties inherent to the civil servant's role—particularly the duties of obedience and loyalty—rather than a general violation of the law or harm caused to others.[267]

From this perspective, a widely supported view in the legal literature is that the administration may impose disciplinary sanctions even in the absence of specific internal rules. Regardless of the severity of the sanction, it is not deemed necessary for disciplinary offences to be strictly codified, since it would be impossible to exhaustively define the many ways in which a civil servant might breach their duty of obedience and loyalty. As a result, the administration retains broad discretion in determining whether a particular behaviour constitutes a disciplinary offence and in assessing its seriousness.[268]

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[264] Romano S. (1990), "I poteri disciplinari delle pubbliche amministrazioni", cit., pp. 87-94. Vitta C. (1913), *Il potere disciplinare sugli impiegati pubblici*, S.E.L., Miano; Zanobini G. (1958), *Corso di diritto amministrativo*, *Vol. 3*, Giuffrè, Milano; Alessi R. (1968), "Responsabilità amministrativa", in *Novissimo Digesto Italiano*, XV, UTET, Torino, pp. 618-622.

[265] For an overview of the cases, see Sandulli A.M. (1989), *Manuale di diritto ammnistrativo*, *vol. 1*, XV ed., Jovene, Napoli, pp. 311-318.

[266] Alessi R. (1968), "Responsabilità amministrativa", cit., p. 620; Sandulli A.M. (1989), *Manuale di diritto ammnistrativo,* cit., p. 318.

[267] Alessi R. (1968), "Responsabilità amministrativa", cit., p. 620; Sandulli A.M. (1989), *Manuale di diritto ammnistrativo,* cit., p. 318.

[268] Stacca S. (2018) *Il potere disciplinare*, cit., p. 62. On the non-applicability of the principle of *nullum crimen, nulla poena sine lege* to disciplinary sanctions, see Romano S. (1990), "I poteri disciplinari delle pubbliche amministrazioni", cit., p. 96; Vitta C. (1913), *Il potere disciplinare*, cit., p. 406; Spagnuolo Vigorita

In the legal framework governing the *Polizia di Stato*, any conduct that violates the "specific or general duties of service," "internal codes of conduct," or a lawful order issued by a superior officer constitutes a disciplinary offence, unless the act also amounts to a criminal offence.[269] Similarly, for the *Carabinieri*, a disciplinary offence is defined as any breach of service duties, military discipline as established by military regulations, or a received order.[270]

In addition to the general duty of hierarchical subordination and obedience applicable to all police officers[271], the regulations governing Italy's various police forces set out a series of specific obligations aimed at ensuring the effectiveness of police operations.[272] These include not only operational duties, but also rules of conduct that establish deontological, ethical, or decorum-related responsibilities.[273] While such rules may occasionally have external legal significance—serving, for instance, as a benchmark for assessing police conduct towards the public—their primary function remains the protection of the police force's public image and institutional credibility.[274]

V. (1954), "Osservazioni sul fondamento del potere disciplinare degli enti pubblici", in *Il Foro Italiano* 77(6), pp. 129-140, 138; Alessi R. (1968), "Responsabilità amministrativa", cit., p. 621; Iovino P.F. (2022), *Il codice di disciplina della polizia di stato*, Franco Angeli, Milano, pp. 24-25; Carrata E. (1986), "Pubblica sicurezza (sanzioni disciplinari)", in *Novissimo Digesto italiano*. Appendice VI, Utet, Torino, p. 169.

[269] Article 1 of Presidential Decree No. 737/1981.

[270] Art. 1352(1) of Legislative Decree No. 66/2010.

[271] The hierarchical subordination and the duty to comply with orders are established for the *Polizia di Stato* under Articles 4 and 8 of Presidential Decree No. 782/1985, and for the military police forces under Articles 715 and 729 of Legislative Decree No. 90/2010.

[272] See, in particular, Articles 18, 19, and 25 to 34 of Presidential Decree No. 782/1985 concerning the duties of members of the *Polizia di Stato*, as well as Articles 716, 717, 722, 730, 731, and 739–749 of Legislative Decree No. 90/2010 regarding the duties of members of the military police forces.

[273] See, in particular, Articles 12 to 15 of Presidential Decree No. 782/1985 concerning the *Polizia di Stato*, and Articles 713(2), 720–721, and 732 to 734 of Legislative Decree No. 90/2010 regarding the military police forces. In general, see Tenore V., Scopelliti O. (2012), *Condotte extralavorative del personale delle forze di polizia: rilevanza ai fini disciplinari e del trasferimento per incompatibilità ambientale*, in *Rivista di Polizia*, 1-2, pp. 33-76.

[274] Members of the Polizia di Stato, for example, are required to conduct themselves with the utmost propriety, impartiality, and courtesy; to maintain irreproachable behaviour; and to act responsibly, fully aware of the purposes and consequences of their actions, with the aim of earning the esteem, trust, and respect of the community (Article 13 of Presidential Decree No. 782/1985). Similarly, members of the military police forces must observe the rules of civil coexistence (Article 732(2) of Legislative Decree No. 90/2010) and adopt courteous manners towards all citizens (Article 732(5)(e) of Legislative Decree No. 90/2010).

The disciplinary mechanism of the Italian police functions primarily as a tool of internal control, rather than as a means of protecting individuals from police misconduct. This is evident from the fact that only hierarchical superiors are authorised to identify disciplinary breaches and to refer them to the competent disciplinary authority.[275] Citizens have no right to file complaints or formally report misconduct or breaches of conduct rules by police officers. Nor does the legal framework provide any form of participation for third parties in disciplinary proceedings, even when their rights or interests may have been affected by the officer's conduct.

The disciplinary framework of the *Polizia di Stato* establishes six types of sanctions, ranked in order of severity: oral warning, written warning, fine, reprimand, suspension, and dismissal.[276] In addition, despite the demilitarisation of the force, one sanction involving the restriction of personal liberty remains in place: confinement in a training institute (*consegna in istituto*) for up to five days. This measure is reserved exclusively for cadets and may be imposed as an alternative to a fine.[277] By contrast, the *Carabinieri* operate under a disciplinary framework grounded in their military structure, which is characterised by a dual-tier system of sanctions. This includes 'corps discipline' measures (*sanzioni di corpo*), aimed at addressing breaches of service rules and internal discipline, and 'status discipline' measures (*sanzioni di stato*).[278] Corps sanctions serve a

[275] See in particular Article 12 of Presidential Decree No. 737/1981 and Article 10 of Presidential Decree No. 782/1985 for the Polizia di Stato, as well as Article 1354 of Legislative Decree No. 66/2010 for the military police forces.

[276] La Monica M. (1983), "Gli illeciti disciplinari nel nuovo ordinamento dell'amministrazione della Pubblica Sicurezza", in *Rivista di Polizia*, 8-9, p. 510; Famiglietti F., Zannini Quirini G. (2001), "Sull'illecito disciplinare nello statuto del personale dell'Amministrazione della Pubblica Sicurezza: l'obbligatorietà dell'iniziativa disciplinare e il reato di abuso di ufficio", in *Rivista di Polizia*, 6-7, pp. 386-388; Iovino P.F. (2022), *Il codice di disciplina della polizia di stato*, cit., p. 66.

[277] The cadet may leave the institute only to perform assigned duties, from which they are not exempt.(Iovino P.F. (2022), *Il codice di disciplina della polizia di stato*, cit., p. 95).

[278] This division reflects the traditional 'duality of competences' that characterises the organisation of military personnel: technical and military management is entrusted to the various levels of command within the corps, while administrative management falls under the responsibility of the Ministry of Defence (see Bassetta F. (2004), "Verifica della validità e dell'efficacia delle vigenti sanzioni disciplinari di corpo e di stato", in *Rassegna dell'Arma dei Carabinieri*, supp. n. 3, available at www.carabinieri.it/media--comunicazione/rassegna-dell-arma/la-rassegna/anno-2004/supplemento-al-n-3/ii-sessione/verifica-della-validit%C3%A0-e-dell'efficacia-delle-vigenti-sanzioni-disciplinari-di-corpo-e-di-stato [last access, 25.11.2024]).

corrective function and are confined to the internal military context. By contrast, status sanctions impact the individual's official position and employment relationship, producing effects that extend beyond the military sphere.[279]

When imposing a disciplinary sanction, the administrative authority must tailor the penalty to the seriousness of the offence, considering all relevant circumstances.[280] These include the officer's age, rank, length of service, and disciplinary history, as well as the number of individuals involved in the misconduct and the gravity of the violation. In assessing the seriousness of the disciplinary offence, the administration must also consider the consequences of the conduct on the functioning of the institution and its ability to fulfil its mandate. This framework underscores that the primary purpose of the disciplinary system is to protect the institution to which the officer belongs, rather than third parties who may have been affected by the misconduct. Any external consequences are only relevant insofar as they harm the institution—for instance, by damaging its reputation or eroding public trust.

The disciplinary system for police accountability is not primarily intended to protect third parties from potential misconduct by police officers. Its principal function is to safeguard the unity, prestige, and institutional integrity of the police forces, rather than

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[279] According to Article 1358 of Legislative Decree No. 66/2010, the disciplinary sanctions classified as *corps sanctions* include: oral and written reprimands, confinement (*consegna semplice*, which prohibits the individual from leaving the military base), and severe confinement (*consegna di rigore*, which requires the individual to remain within a designated area of the base). Confinement entails a deprivation of liberty for up to seven consecutive days, whereas severe confinement involves an obligation to remain either in designated military facilities or within one's accommodation for a maximum of fifteen days. The latter is considered the most severe among corps sanctions and may only be imposed in the specific circumstances enumerated in Article 751 of Legislative Decree No. 90/2010. As a measure involving deprivation of personal liberty imposed by an administrative authority, it has raised concerns regarding its compatibility with Article 13 of the Italian Constitution (see Bassetta F. (2002), *Lineamenti di diritto militare*, Laurus Robuffo, Rome, pp. 168–175). The *status sanctions*, by contrast, include: suspension from duty for a period between one and twelve months; suspension from rank for the same duration (in the case of personnel on leave); termination of enlistment or re-enlistment (for temporary service personnel); and dismissal with loss of rank (Article 1357 of Legislative Decree No. 66/2010). These sanctions are intended to result in the temporary or permanent exclusion of the individual from the military organisation. Dismissal with loss of rank is the most severe disciplinary measure for military personnel and, for those in active service, entails discharge and subsequent transfer to reserve status.

[280] Article 1(2) of Presidential Decree No. 737/1981; Article 1355 of Legislative Decree No. 66/2010. See Mone L. (2011), *L'Amministrazione della Pubblica Sicurezza*, cit., pp. 389-390.

to ensure, even indirectly, the protection of fundamental rights of individuals affected by police actions. Naturally, conduct that constitutes a disciplinary offence may also give rise to criminal liability if it infringes upon the rights of third parties. In such cases, however, the rule concerning pending criminal proceedings (so called: *pregiudiziale penale*) may lead to the suspension of disciplinary proceedings pending the outcome of the related criminal trial.[281]

This procedural rule aims to prevent interference between the two proceedings that might compromise the police officer's right to a defence or result in conflicting factual determinations based on different bodies of evidence. Once the criminal proceedings have concluded, the police administration may request the full judgment to initiate or resume disciplinary proceedings, provided that it does so within the statutory time limits. [282] In any case, the police officer under review may invoke the final acquittal issued by the criminal court before the disciplinary authority, on the grounds that the alleged act did not occur, does not constitute a criminal offence, or that he or she was not the perpetrator.[283]

Disciplinary sanctions can have a significant and lasting impact on a police officer's career. Even when they do not result in dismissal, sanctions can hinder promotions and negatively affect the outcome of the annual performance evaluations to which all officers are subject—often excluding a positive assessment regardless of the overall quality of their work.[284] In this way, disciplinary measures can damage an officer's

[281] For a comprehensive analysis, see Grassia M. (2020), "La pregiudiziale penale nei regimi disciplinari delle forze di polizia: quadro attuale e spunti correttivi", in *Rivista trimestrale della Scuola di perfezionamento per le forze di polizia*, 4, pp. 11-48. The suspension of disciplinary proceedings is essentially automatic for members of the Polizia di Stato, pursuant to Article 11 of Law No. 121/1981. In contrast, for members of the military police forces, suspension may only be ordered in cases of particular complexity in establishing the facts attributed to the personnel, or where, following preliminary investigations, the available evidence is deemed insufficient to initiate disciplinary action (Article 1393 of Legislative Decree No. 66/2010).

[282] Article 154-ter of the Italian Code of Criminal Procedure.

[283] Article 653 of the Italian Code of Criminal Procedure.

[284] The annual evaluation of non-executive police officers is governed by Articles 62 to 67 of Presidential Decree No. 335/1982, Articles 1025 to 1029 of Legislative Decree No. 66/2010, and Articles 688 to 697 of Presidential Decree No. 90/2010. Evaluations are carried out by completing specific assessment forms—referred to as Informative Reports (*rapporti informativi*) for members of the *Polizia di Stato* and Characteristic Documents (*note caratteristiche*) for members of the military police forces. These forms,

professional trajectory, sometimes irreparably.[285] However, in the most serious cases, the initiation of disciplinary proceedings is typically postponed until the conclusion of criminal proceedings. This means that a police officer under investigation for serious misconduct may remain on duty—and even be promoted—pending the outcome of the criminal case.[286]

As a result, the effectiveness of disciplinary procedures as a mechanism for ensuring accountability is weakened, particularly in cases involving alleged violations of individual rights or excessive use of force. Instead, the disciplinary system tends to function primarily as a means of preserving internal discipline. It is more frequently applied to address non-work-related misconduct, insubordination, or deviant behaviour that brings discredit to the institution (e.g., substance abuse, associations with disreputable individuals).[287] Without meaningful external oversight—such as a robust complaints mechanism—disciplinary procedures alone are unlikely to serve as an effective tool for monitoring the quality of police-citizen interactions or for addressing abuses of power.

This conclusion is supported by two key judgments of the European Court of Human Rights (ECtHR), in which Italy was found to have violated the European Convention on Human Rights due to excessive use of force by its police forces. In *Alikaj and Others v. Italy*[288], concerning the fatal shooting of a young Albanian man during a non-violent attempt to flee, the Court held that there had been a violation of Article 2 (right to life). Notably, it observed that the officer responsible for the shooting had not faced any

completed at least once a year, provide a reasoned appraisal of the officer's duties, performance, and professional conduct (Mone L. (2011), *L'Amministrazione della Pubblica Sicurezza*, cit., pp. 310-312; See also Cazzella G. (1998), "L'uso degli indicatori di prestazione nell'amministrazione della pubblica sicurezza", in *Rivista di Polizia*, 12, pp. 800-811).

[285] Iovino P.F. (2022), *Il codice di disciplina della polizia di stato*, cit., p. 229.

[286] Carrer F., Alain M., (2011), "L'analisi sul campo: i dati della ricerca sulla Polizia locale Toscana", in Carrer F. (a crua di) *L'etica della polizia. Teoria e pratica*, Maggioli, Rimini, pp. 133-166.

[287] One of the few empirical studies on law enforcement conducted in Italy, based on a large-scale survey of police officers, reveals widespread dissatisfaction among officers with the disciplinary system (David F. (2018), Sicurezza e forze dell'ordine, Aracne, Rome). In the absence of more in-depth research on the functioning of the disciplinary mechanism, a brief review of case law suggests that disciplinary sanctions are predominantly used to 'moralise' police officers—particularly in relation to their conduct outside of work.

[288] ECtHR, Alikaj and Others v. Italy, no. 47357/08, Judgment of 29 March 2011.

disciplinary sanction for the unlawful use of firearms (para. 110). Similarly, in *Cestaro v. Italy*[289], which addressed the brutal police raid at the Diaz school during the 2001 G8 summit in Genoa, the Court reiterated its established case law on disciplinary measures. It recalled that "where a State agent is charged with crimes involving ill-treatment, it is important that they be suspended from duty during the investigation or trial and dismissed if convicted" (para. 210). However, in that case, the Court found that the officers responsible had neither been suspended nor subjected to disciplinary proceedings following their final criminal convictions (para. 227).

Neither the legal framework nor the ministerial guidelines governing the annual performance evaluations of police officers require any specific assessment of their involvement in critical incidents—such as the use of weapons or other means of coercion—or of the quality of their interactions with the public. The rules on *Informative Reports* for members of the *Polizia di Stato* stipulate that officers should be evaluated based on their professional competence, problem-solving ability, organisational skills, quality of work performed, and any other factors deemed relevant.[290] For police personnel with military status, evaluations focus on "performance", "skills and attitudes demonstrated," and "results achieved".[291] However, the existing guidelines for completing these evaluation forms do not specify whether an officer's conduct during interactions with the public, or their involvement in high-risk or controversial incidents, should factor into the assessment of their professional skills or overall performance.[292]

This means that, unless misconduct reach the threshold of a criminal offence, it risks going largely unnoticed by the police administration, which tends to prioritise obedience, job performance, and off-duty conduct. The predominantly punitive nature of disciplinary mechanisms also hinders the use of information from critical incidents as

[289] ECtHR, *Cestaro v. Italy*, No. 6884/11, Judgment of 7 April 2015.

[290] See in particular Article 62 of Presidential Decree No. 335/1982.

[291] Article 688, Presidential Decree No. 90 of 15 March 2010.

[292] See Ministero dell'Interno, *Rapporti informativi per il personale della Polizia di Stato*, 6 May 1996; Ministero della Difesa, *Istruzioni sui documenti caratteristici del personale delle Forze armate e dell'Arma dei carabinieri*, 26 July 2023.

a tool for institutional learning or operational reform. In the absence of clear rules mandating the detailed documentation of critical incidents, and without robust mechanisms for verifying the accuracy of service reports[293], the effectiveness of internal oversight mechanisms depends almost entirely on officers' willingness to report. However, officers may be disincentivised from providing full and truthful accounts due to concerns about facing disciplinary sanctions or receiving negative performance evaluations.[294] This fear may contribute to a culture of underreporting, which greatly undermines transparency and limits the potential for institutional accountability and learning.

3.4. Final remarks

In Italy, the liability of police officers for misconduct is grounded in Article 28 of the Constitution, which holds all public officials and employees directly accountable—under criminal, civil, and administrative law—for acts committed in violation of individual rights. The liability framework for police officers is therefore situated within the broader regime governing public officials. Nonetheless, this general framework is subject to important qualifications arising from the peculiarities that characterise the management of public security from an organisational, functional and operational point of view, as well as the special legal regimes applicable to the various police forces. These specificities, while justified by the unique nature of policing, give rise to a fragmented system of accountability that presents several structural weaknesses, ultimately undermining its capacity to effectively prevent and sanction police misconduct.

As demonstrated, the disciplinary system is primarily designed to maintain the internal cohesion and hierarchical order of police forces, rather than to serve as a mechanism

[293] Bertaccini D. (2011), *I modelli di polizia*, Maggioli Editore, Santarcangelo di Romagna, p. 170. Although the service regulations impose an obligation to report—by submitting a specific report to the hierarchical superior—any "facts" or "incidents" that "by their nature must be reported immediately" (see Article 27, Presidential Decree No. 782/1985), they do not clarify what types of facts or incidents fall under this category, nor do they specify the purpose such reports are intended to serve.

[294] Palidda S. (2021), *Polizie, sicurezza e insicurezze*, Meltemi, Roma, p. 204.

for addressing misconduct. This is not to suggest that disciplinary proceedings cannot be initiated in cases of proven violence or other inappropriate conduct. However, the analysis clearly indicates that external accountability is not the primary aim of the system. The internal structure of disciplinary procedures is particularly telling: responsibility for identifying, evaluating, and sanctioning misconduct lies entirely within the same police force to which the officer belongs. This lack of institutional independence and impartiality significantly undermines the system's credibility and its ability to protect third parties affected by police behaviour. The complete exclusion of the victim from the disciplinary process and the absence of a formal mechanism by which external parties can lodge a complaint with an obligation to register and investigate it, are structural deficiencies that severely limit the system's effectiveness in preventing and addressing police misconduct.

Given the structural limitations of the disciplinary system, the control of police misconduct in Italy relies predominantly on judicial mechanisms. Among these, criminal liability remains the most prominent tool for holding police officers accountable. As previously noted, beyond the specific offences established under the laws governing the various police forces, law enforcement officers are subject to the ordinary criminal justice system. In addition, there are specific criminal offences and aggravating circumstances that apply either exclusively to police officers or are particularly relevant to their functions.

The introduction of the crime of torture under Article 613-bis of the Italian Criminal Code in 2017 addressed a serious gap in the national legal framework—one repeatedly highlighted by the European Court of Human Rights. This reform marked an important step toward strengthening the capacity of the criminal justice system to prevent and punish police misconduct. While the reform has drawn criticism on several grounds, seven years later, case law suggests that Article 613-bis has proven effective in prosecuting instances of state torture. According to data collected by the Antigone

Association, the number of criminal proceedings for torture continues to rise, and the first final convictions of police officers have recently been issued.[295]

Nevertheless, the effectiveness of the criminal justice system in preventing police misconduct is hindered by several limitations. Some of these are specific to the Italian legal framework: the excessive length of judicial proceedings and the general rules on the extinction of criminal liability—particularly the statute of limitations, which is especially problematic for offences carrying relatively light penalties[296]; the requirement that certain offences be prosecuted only upon complaint by the victim[297]; and the mechanism for balancing aggravating and mitigating circumstances, which may offset aggravating factors and thereby reduce or nullify the punitive impact of a conviction. In addition to these structural weaknesses, amnesty and pardon measures are occasionally adopted, allowing for the waiver of prosecution for certain offences or the commutation or remission of penalties already imposed. In the past, police officers convicted of offences related to excessive or arbitrary use of force have benefited from such exceptional measures.[298]

Further structural flaws in the criminal justice system may well reduce its effectiveness as a mechanism for controlling police misconduct. The most important of these is likely the lack of visibility that characterises most interactions between the police and the public. In the case of critical events or individual misconduct, there is usually a clash between opposing versions of the story, which is likely to result in the police version of events being accepted unless independent witnesses come forward.[299] This is because

[295] Antigone, *Nodo alla gola - XX Rapporto di Antigone sulle condizioni sulle condizioni di detenzione*, 2024, available at www.rapportoantigone.it/ventesimo-rapporto-sulle-condizioni-di-detenzione (last access, 4.12.2024). The mapping of judicial proceedings for the crime of torture is available at: www.antigone.it/cosa-facciamo/i-processi (last access, 4 December 2024).

[296] Article 157 of the Italian Criminal Code.

[297] Following the so-called Cartabia Reform (Legislative Decree No. 10/2022), the range of offences subject to prosecution upon the victim's initiative has been expanded to include, among others, minor intentional bodily harm, as defined under Article 582(1) of the Italian Criminal Code.

[298] Amnesty and pardon measures are provided for under Article 79 of the Italian Constitution and governed by Articles 151 and 174 of the Italian Criminal Code.

[299] Bowling B., Reiner R., Sheptycki J. (2019), *The Politics of the Police*, cit., p. 245; Waddington P.A. (1999), *Policing citizens*, cit., p. 202.

the victims of police misconduct are often people belonging to stigmatised and marginalised groups, who end up in contact with the police because of behaviours or incidents that discredit their credibility, or worse, because they are suspected of a crime. In addition to the greater credibility of an official report in such a situation, the "epistemic power" of the police should also be considered.[300] In fact, police officers are more experienced in writing reports and documenting events and are in a better position to provide evidence than ordinary citizens.[301] In many judicial cases involving police misconduct, the investigations are carried out by other law enforcement officers, often belonging to the same corps as those under investigation. The proximity between those investigating and those involved in the events dramatically increases the risk of attempts to cover up or mislead, as the Italian history sadly demonstrates.

The investigations into the events at the Diaz school during the 2001 G8 summit in Genoa, as well as the subsequent incidents at the Pascoli school, were marred by misdirection and cover-ups. In most cases, the crimes of misdirection committed by police officers became time-barred before the conclusion of the internal disciplinary proceedings. The sentences imposed were further reduced as a result of the general pardon granted under Law No. 241/2006, which, according to the European Court of Human Rights (ECtHR), rendered the Italian authorities' response inadequate in light of the seriousness of the offences[302].

Similarly, in *Alikaj and Others v. Italy*, the ECtHR criticised the lack of independence and effectiveness in the investigation conducted by the *Polizia di Stato*, particularly since several investigative activities were carried out or overseen by officers from the same police station as the subject of the investigation. The Court emphasised that for an investigation into an alleged unlawful killing by public officials to be effective, those conducting it must be independent of those implicated—meaning both "practically

[300] Boutros M. (2024), "The epistemic power of the police", in *Theoretical Criminology*, 28(4), pp. 495-515.

[301] Waddington P.A., Wright M. (2012), "Police use of force, firearms and riot-control", in Newburn T. (ed.), *Handbook of Policing,* Routledge, Abingdon, p. 483; Waddington P.A. (1999), *Policing citizens*, cit., p. 168.

[302] ECtHR, *Cestaro v. Italy*, No. 6884/11, Judgment of 7 April 2015, para. 222.

independent" and free from any "hierarchical or institutional connection" with the officers under investigation[303]. In that case, the lack of independence rendered the investigation ineffective, as it was incapable of determining whether the use of force had been lawful in the circumstances[304].

The issue has recently resurfaced in the case of Ramy Elgaml, who died in Milan on the night of 24 November 2024, after the motorcycle on which he was riding with a friend was struck by a *Carabinieri* patrol during a pursuit. Two *Carabinieri* officers who intervened at the scene are currently under investigation for obstruction of justice, misdirection, and aiding and abetting, for allegedly destroying potential evidence and obstructing the investigation. In a separate case, in May 2024, three *Carabinieri* were indicted for allegedly obstructing the investigation into the death of Stefano Cucchi, which occurred in Rome on 22 October 2009. However, in a parallel proceeding concerning the same events, the Court of Cassation declared time-barred the convictions of two other *Carabinieri* for falsifying official documents.

Technological developments have certainly given the police a "new visibility"[305], increasing the likelihood that interactions between police officers and the public can be documented. In some cases, the institution itself has adopted tools to document the work of police officers, especially in places and spaces where the most critical interactions typically occur. Many police forces have installed CCTV cameras in custody areas or made it compulsory for officers involved in public order or local policing to wear body-worn cameras.[306] But it is above all the proliferation of smartphones and audio-

[303] ECtHR, *Alikaj and Others v. Italy*, no. 47357/08, Judgment of 29 March 2011 para. 96.

[304] ECtHR, *Alikaj and Others v. Italy*, no. 47357/08, Judgment of 29 March 2011, para. 97.

[305] Goldsmith A.J. (2010), "Policing's new visibility", in The British Journal of Criminology, 50(5), pp. 914-934.

[306] Rowe M. (2020), *Policing the Police*, cit., p. 48-49; see also: Dymond A., Hickman M. (2018), "Body-Worn Cameras, Use of Force and Police-Civilian Interactions", in *Policing: A Journal of Policy and Practice*, 12(1), pp. 1-5. At the time of writing, the Italian Senate is examining Bill No. 1236, titled *Provisions on Public Safety, Protection of Personnel on Duty, Victims of Usury, and the Penitentiary System*. Article 21 of the bill introduces the use of body cameras by police forces. However, their deployment remains at the discretion of law enforcement authorities and is restricted to specific contexts, including public order management, local policing, the surveillance of sensitive locations, and patrols on trains.

video devices among the population that has exposed the police to public scrutiny, regardless of their willingness to be more accountable.

In the past, the police held near-total control over constructing the official account of events in critical incidents. Today, at least in public spaces, this epistemic power is increasingly challenged by private citizens' ability to independently document events. This shift facilitates legal accountability, as citizen-recorded evidence can be used to contest police statements and official reports. Moreover, the heightened visibility of police conduct in public may generate a panopticon-like effect, whereby the possibility of being filmed acts as a deterrent and encourages more lawful and professional behaviour.[307]

While it is now relatively easy to document police misconduct, the accountability implications of this increased visibility must be assessed with caution. The loss of control by police authorities over how their actions are portrayed does not automatically translate into more effective prevention or punishment of misconduct when it occurs. First, these developments do not completely undermine the epistemic power of the police. The police still enjoy significantly more power in terms of knowledge and resources.[308] In fact, the police can easily limit citizen counter-surveillance by explicitly banning it, or by hindering it, for example by preventing the identification of individual agents during operations. The police can also exploit or colonise these forms of widespread surveillance and turn them to their advantage. Ultimately, the material collected from the public can be used in all directions: it can become a source of intelligence for the police, or a tool for producing a counter-narrative about the work of the police. For this reason, police officers' attitudes towards body-worn cameras are more complex than is often assumed.[309]

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[307] Ariel B. et al. (2017), "Contagious accountability: a global Multisite Randomized Controlled trial on the Effect of Police body-worn Cameras on Citizens' Complaints against the Police", in *Criminal Justice and Behaviour*, 44(2), pp. 293-316.

[308] Rowe M. (2020), *Policing the Police*, cit., p. 107.

[309] Sandhu A. (2017), "'I'm glad that was on camera': a case study of police officers' perceptions of cameras", in *Policing and Society*, 29(2), pp. 223-235.

Second, we should remember that even the most graphic video footage of police violence needs to be contextualised. Images do not speak for themselves.[310] In short, documenting the use of force by the police with images does not eliminate the problem of interpreting the situation, since the use of force is not in itself problematic unless it can be shown that it was unjustified or excessive in that particular circumstance. The greater possibility of documenting police actions therefore does not eliminate the problem of the legal qualification of the documented facts and, ultimately, of the regulation of police power. It is difficult for a single video clip to provide an unambiguous view of the wider context in which the action took place. Therefore, the same images can be read and interpreted differently by different people. The police themselves can use the same video to offer their counter-interpretation of the event. This also explains why the public's reaction to photos or videos is not as predictable as we often assume. On the contrary, it could have the effect of legitimising the use of force in that particular case or situation.[311]

Many of the structural limitations that affect criminal liability as a tool for police accountability also apply to civil liability. However, in theory, the lower standard of proof required in civil proceedings could make them a more accessible and effective alternative to criminal prosecution. However, the deterrent effect of civil liability as a mechanism for police accountability is highly questionable. In most cases, compensation costs are covered by the police administration, except in instances of serious misconduct by the officer—typically requiring a finding of criminal liability. Insurance schemes underwritten by the administration, and in some cases by individual officers, effectively transform the financial consequences of misconduct into predictable and socialised expenses. As a result, officers have little personal financial incentive to alter their behaviour.[312] Nonetheless, the role of insurance companies merits closer examination. By restricting the circumstances under which reimbursement is granted, insurers may

[310] Rowe M. (2020), *Policing the Police*, cit., p. 116.

[311] Rowe M. (2020), *Policing the Police*, cit., p. 113.

[312] Kutnjak Ivković S. (2014), "Police Misconduct", cit., p. 324; Rowe M. (2020), *Policing the Police*, cit., p. 55.

exert indirect pressure on police officers to act more cautiously—thus positioning themselves as de facto agents of behavioural oversight. Even so, in such a system, the primary function of civil liability becomes the financial compensation of victims. Yet this too is often undermined by the high cost of civil litigation, which remains prohibitively expensive for many victims of police abuse.

Beyond its limited effectiveness, a sanctions-based approach to police misconduct—whether disciplinary, criminal, or civil—can also be counterproductive in at least two important ways.

First, it promotes an individualised and overly narrow interpretation of critical incidents, framing them as the result of personal moral failings or factual misjudgements by individual officers. This obscures the organisational and systemic dimensions of police misconduct. In reality, the most serious cases are often not accidents caused by inexperience or a momentary lapse in judgment, nor are they merely the result of uncontrolled emotions in high-pressure situations. Rather, they are frequently the outcome of a chain of operational decisions shaped by institutional practices—factors that sanctions-based procedures, focused solely on individual accountability, tend to ignore. Second, punitive responses risk creating scapegoats, which may appease public outrage but ultimately divert attention from the structural causes of police brutality.[313] By isolating blame on individuals, this approach reinforces a defensive form of group solidarity within the police, aimed at shielding colleagues from what is perceived as unjust criticism or reputational harm. In doing so, it entrenches a professional culture that tolerates, rationalises, and conceals misconduct.[314]

[313] Armacost B.E. (2004), "Organizational culture and police misconduct", in *The George Washington Law Review*, 72(3), p. 457.

[314] Waddington P.A., Martin M. (2012), "Police use of force", cit., p. 484.