

## **Academic Asylum, Academic Freedom, And Police Jurisdiction in Law Enforcement at Universities: Comparative Study of Greece and Other Countries' General Practice**

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DOI: <https://doi.org/10.37745/gjplr.2013/vol11n13039>

Published: 10<sup>th</sup> anuary 2023

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**Citation:** Kakarelidis G.and Georgiadou N. (2023) Academic Asylum, Academic Freedom, And Police Jurisdiction in Law Enforcement at Universities: Comparative Study of Greece and Other Countries' General Practice, *Global Journal of Politics and Law Research*, Vol.11, No.1, pp.30-39

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**ABSTRACT:** *The concept of Academic Asylum in Greece is twofold: a) asylum against third-party intervention with the aim of limiting the freedom of University Academic Personnel in the exercise of their duties, in research and teaching and, b) the ability of the Police to apply the Law by preventing or suppressing criminal behavior and to protect the University community and the University estate. In the first sense, academic asylum is equivalent to the concept of academic freedom, while in the second sense it refers to the terms and conditions of police intervention in the premises of higher educational institutions. With this paper, an attempt is made to interpret the institution of academic asylum according to the Greek Constitution and National Legislation and to answer the questions of what asylum is, what its content is, what its limits are, and in what cases is it circumvented. This research also compares the practices of third countries vis-à-vis Greece and investigates the effects as well as the eventually necessary regulations.*

**Keywords:** University Asylum, University Police, Campus Law enforcement, Academic liberty, Academic freedom, University privileges, Town over Gown

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### **INTRODUCTION**

The concept of the asylum of the Universities and its members was first introduced in Roman Vespasian times (Johnson et al., 1961) and notably in the Empire of New Rome - Constantinople, where the first University quite like today's structure was established, having extended the immunity even to the members of the families of the University Professors (Clyde Pharr et al, 2001), as well as to specific professional categories, such as doctors and architects (Codex XIII, section 4.1).

In the West, the first Universities (Bologna, Salerno, Paris, Montpellier, Oxford, and Cambridge) were mostly established as ecclesiastical institutions and enjoyed the sanctuary privilege (usually with papal seal) that the churches themselves had. This lasted, decreasing gradually, until the end of the Enlightenment era, when it was considered that in the context of the equality of citizens, there cannot be special protective provisions of some, against the religiously neutral State. The paradox is that the

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retreat of ecclesiastical protection brought about the need to establish the protection of universities, staff, and students from the interventions of the state (Municipalities, Cities, and States). The most paradoxical thing is that administrators of the Universities and Colleges tried to subject the academic members to an oath of obedience and allegiance, by using the powers of their position (Rashdall Hastings, 1895).

In the modern era, the institution of university asylum is not incorporated into the legislation of any European state, while in some European countries university asylum is not even known as a concept, let alone as a legal reality. In the Convention National of 1792, the French Revolution abolished all existing asylums, since "*the law is the asylum of all citizens*" (Matzoutsos, 2010). Academic freedom in itself as an individual right and institutional guarantee includes the individual freedoms of the flow of ideas, research and teaching and of course entails the non-persecution (or immunity of) the Academic Personnel for the research and teaching activity of its members. This kind of protection against persecution is an **inherent element of academic freedom**. The concept of university asylum seems in most democratic countries to be unnecessary and scientifically incorrect. However, in Greece, the institution of university asylum has historical references and ideological symbolism, and it was established to secure academic freedom, free scientific research, and the free flow of ideas. Already today, after four decades of implementation and very strong criticism for the degeneration of asylum into a means of protecting lawlessness in universities, the university asylum was abolished by law, an initiative that we will attempt to approach, analyze, and evaluate in the following paragraphs.

### **Academic Freedoms in Greece**

The academic freedoms in Greece are constitutionally guaranteed by Article 16 of the Constitution. "*Art and science, research and teaching are free, their development and promotion is an obligation of the State. Academic freedom and freedom of teaching shall not exempt anyone from the duty of obedience to the Constitution ...*" According to this provision, the member of the teaching-research staff can determine the content, method, and subject of his teaching, within the framework of the University's regulation, as well as to prepare scientific research and the teaching of its subject without any hindrance. At the same time, academic freedom is also an institutional guarantee, since as an institution of public law, the state has as its basic mission to create an environment fertile for the development and promotion of academic freedom, with the aim of scientific progress and extend the country's progress in all sectors. On the other hand, students as bearers of academic freedom have as their main right to study and learn (Spiropoulos et al., 2017).

However, some general limitations are also placed on the concept of academic freedom provided for in the Constitution. More specifically, the obedience to the constitutional orders is derived from article 16, the debt for social and national solidarity is derived from article 48, as well as the prohibition of the academic liberties' abusive exercise based on article 25§3.

On the other hand, Universities, based on paragraph 5 of the same article, are Legal Entities under Public Law, with full self-government, under the supervision of the State and operate with a statute defined by Law. Self-governance means that the institution elects its own governing bodies, uses its

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resources as it sees fit, and decides on its mission and objects. On the contrary the self-government of universities does not mean their autonomy, that is, the ability to issue regulatory acts without legislative authorization. Universities operate within the framework of existing legislation, which cannot limit or cancel their self-government (Spiropoulos et al., 2017).

### **The University Asylum / Immunity in Greece**

University Asylum in Greek layman terms means that Higher Educations Institutes (H.E.I.) territory is forbidden for the law enforcement agencies to enter. The etymology of the word asylum ('a'+ 'sylo') comes from ancient Greece and is comprised from the "a" that deprives of the ability of the next word + "sylo" (συλώ) which means pillage, thus the word literally means "cannot be plundered". And refers to sanctuary places such us Temples, occasionally graves or specifically defined places where no force can enter, and any pursuit stops outside.

The university asylum was established by law for the first time eight years after the collapse of the dictatorship of the colonels, with the law 1268/1982. In particular, university asylum is recognized as a means to achieve specific constitutional goals: "academic freedom", "free scientific research" and "the free flow of ideas" (Matzoutsos, 2010). The competent body for inviting or authorizing the intervention of the public force on the premises of the University is defined as a three-member body consisting of the Rector or his deputy, a representative of the professors and a representative of the students, who must take a unanimous decision while, if this is not possible, the University Senate is convened on the same day, which decides with an increased majority of 2/3 of those present (article 2 par. 6). Exceptionally, it is possible for the public force to intervene without giving the above permission in cases where spontaneous felonies or spontaneous crimes against life are committed (article 2 par. 7), while the violation of university asylum becomes a specific criminal offense (article 2 par. 8).

L.1268/1982 was symbolic legislation with a strong emotional charge aimed at consolidating democracy then damaged by the previous dictatorship and protecting academic freedom, the free flow of ideas and unfettered research. That law defined and delimited the University Asylum as an institutional guarantee surrounding academic freedom. So, asylum in its first establishment was meant to protect the university community of teachers and students, the freedom of teaching and research. Asylum implied the prohibition of the intervention of the public force in the premises of universities without the permission of the Senate or in extraordinary circumstances of the Rector. But no license was required when committing felonies or even misdemeanors against life. Therefore, the law provided criteria, conditions, and safety clauses (Venizelos, 2022).

The main criticisms that proved correct in the subsequent years, were that a) the decisive bodies were very difficult to summit on time, b) the decisive bodies could not overcome the indirect or direct fear pressure of unscrupulous offenders, c) the public forces perceived that the committee's decisions -if any, would be based on political ideological or party issues. Therefore, without strict orders by superiors they (each one of them personally) should have to consider the possibility of becoming liable to violating the asylum even in the case of flagrante crimes and thus being faced with administrative and criminal sanctions. In fact, the university community, while implementing the asylum legislation,

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proved to be incompetent to exercise control over its premises and even worse it itself is placed under the real control of persons or groups that often catalyze the asylum in its name. The asylum, however, should not cover acts of offensive or defensive violence but should aim to absolutely prevent these acts and above all to ensure the tranquility and freedom of the university community.

This law had the following consequences in the subsequent decades: a) lots of thefts and damages in the University property occurred by “unknown offenders” who knew in advance that they would not be caught (Aristotle University of Thessaloniki, 2018). b) outsiders selling drugs or goods in the black market simply entered the university gates and police could not arrest them (Iefimerida, 2022) c) uncountable times offenders occupied the premises of the University thus hindering the functioning of the University including administration, lectures and research, d) offenders had many times intimidated professors for their scientific opinions that were not in line with their "ideologies" or party guidelines (Athens University of Economics and Business, 2020). The references cited at the offensive categories listed above are only illustrative gleanings from countless situations. In fact, the official announcements by the Universities, that are cited, compared to the reality shown at the media, have been strongly moderated. Even at the police stations only a few incidents were finally recorded all these years (Scholars at Risk, 2022). On the occasion of the minimal official figures of the Police, an attempt is often made to play down both the importance and extent of this delinquency. The 2018 Commission's finding on issues of academic freedom and peace, for example, refers to "crimes of low criminal merit" (Ministry of Education, 2018). However, the current situation, as we described it above, highlights the real and not officially recorded size of the problem. A very recent example is the Police operation in the Student Residences of the Polytechnic University in Athens, where 32 members of three gangs who committed armed robberies and trafficked drugs lived, permanently or occasionally (To Vima, 2022). Thus, the intention of the legislator to protect academic liberties establishing the University as territorial (sanctuary) asylum led to the completely opposite result.

Twenty-five years later, the legislator tried, by enacting Law 3549/2007, to rationalize the legislative regime, clarifying that asylum is granted exclusively for the defense of academic freedoms and the right to knowledge and learning in higher education, and aims in preventing its abuse for acts that have nothing to do with the academic functioning of higher educational institutions. The invitation or permission for police intervention is now the responsibility of the Rector's Council, which takes the relevant decision by a simple majority (Article 3 par. 5 and 9) and not by unanimity, while intervention by the public force without the above permission is still possible only if spontaneous felonies or spontaneous crimes against life are committed (article 3 par. 6). In practice, the new regulation did not produce significant results as the perception had already been established that in Greek universities it is almost freely allowed to commit offenses under common criminal law.

In 2011 a coalition government proposed, and the parliament passed Law 4009/2011 that repealed all the university asylum laws and subsequent regulations. Art. 3 (3) states that for all crimes in the University the Common Legislation is applied. A few years on Law 4485/2017 Art. 3 (3) reinstated the asylum. Finally, Laws 4623/2019 and 4957/ 2022 completely revised the University Laws including abolition of asylum. Art.4 (4) explicitly states that: “Within the premises of Universities public

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authorities exercise all their statutory powers, including intervention due to the commission of criminal acts”.

Supporters of the reform argue that Greek universities have long been plagued by violence and those against it are afraid it will hinder freedom of expression (Fasia, 2021). By our opinion, in a democratic state, police are the only body having authority -granted by constitution, to enforce law, prevent illegal actions, arrest offenders and violators of Law and use violence under provisions of law. The jurisdiction of the police to intervene cannot be limited by claims of immunity (especially territorial ones) unless stated explicitly by law. On the other hand, the guarding of the university premises, as an administrative matter, is obviously within the competence of the university authorities, who have a relevant service or enter a contract for the provision of guarding services with accredited private companies (Venizelos, 2022).

Indeed, Law 4777/ 2021 enacted –for the first time in Greece, University Institutions Protection Teams for guarding and patrolling the university. These Special Guards are assimilated to police officers with limited investigating powers. A team of them including sometimes police officers would patrol the University territory. It is interesting that these Guards according to this law will not carry guns. Against the provisions of this law an appeal claiming unconstitutionality was submitted at the Hellenic Council of State. The appeal was backed by some Universities’ professors’ Societies and others. The Council, met in plena composition, ruled against the plaintiffs (Hellenic Council of State, 2022, contra Chrisogonos, 2012, Argiros, 2011). And affirmed as well that articles referred to these University protection teams do not violate in any case the Constitutional mandate for academic freedom.

### **Police Campus Law enforcement into an international perspective.**

Custody and security issues exist internationally. Many universities face various forms of violence. Yet, the concept of university asylum, as it existed in Greece, does not exist anywhere in Europe. In most European campuses, the area is controlled by men and women of private security, while access to departments and schools is allowed by showing a university ID and card. Visitors get a temporary identity card with which they can move freely in the academic areas. This regulation is not perceived as a deprivation of freedom but as a normality, which ensures the rights of all those who live in the educational community (students, workers, academic staff).

The justification for Campus police is “...Because of the facilities and people concentrated in a relatively small area. Dormitories and fraternity/sorority houses generate a lot of calls for loud parties, underage drinking, and fights. Laboratories have a lot of expensive equipment that merits closer watching over than a city department is willing to provide. Athletic events often require traffic control and extra security ...” as a ret. justice professor and ex-cop says (Dees, 2014).

### **Police Campus Law enforcement in USA**

There exist police forces in federal, municipal, and county level, with varying territorial jurisdictions. They are sworn officers and they possess full authority including arrest, interrogation and arms bearing. On the other hand, there are (unsworn) private security officers (private police or security) that do not

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have powers of arrest, however, and are typically unarmed. Once licensed and approved, private police have the authority to patrol, stop, detain, and search individuals without probable cause, in the property bounds of their employer (Heaton et al., 2016).

A substantial difference for a campus police department is based on whether Universities hire sworn police officers or just unsworn security / guards. The former has full jurisdiction and powers as the standard city police officers. In either case the University funds by its budget the campus police.

According to Department of Justice in its comprehensive special report (U.S. Department of Justice Office, 2015) prepared by Brian A. Reaves, (Ph.D., BJS Statistician by) 90% of public universities with over 2500 students, hire sworn police officers, 8% only security and 95% of them are allowed to carry weapons. In the same report private universities employ 48% sworn and 52% security officers. In all cases duties of the forces go beyond standard policing obligations including first aids, handling cases of alcohol or drug consumption etc. Interesting enough is the fact that 43% of the officers had a 4-year University degree and 14% a 2-3 year college degree. In most cases University authorities are raising the educational requirements for these posts.

For a police officer to become a campus one must have passed a special training program at a certified police academy, before applying at a university. In addition to their formal duties as policemen, they also perform personal escorts, community presentations, and crime prevention training, among many other related activities to support the university or college community. Whether carrying guns depends on the University's policy (Metropolitan Police).

### **Police Campus Law enforcement in UK**

The first, in modern era, law concerning policing in the Universities of England, was enacted by King George IV of Great Britain, in 1825 (An Act for the better Preservation of the Peace and good Order in the Universities of England, 1825). Thus granting the Universities of Cambridge and Oxford the right to have a sworn force with full warrant cards with the same powers as constables with jurisdiction in any University area or building and within 4 miles around them. They had also disciplinary power and could act in loco parentis over the students.

This force was one of the oldest police forces in UK and terminated in 2003 due to financial constraints for raising such a traditional force up to the contemporary standards. Now most Universities employ private security, and some retain a police officer in campus. There is a constant collaboration with police forces, fire departments, first aids etc. They also proactively deal with crimes. Private security role can be found at any University's website an example of which derives from Bristol University ([www.bristol.ac.uk](http://www.bristol.ac.uk)).

There are no restrictions on local police jurisdiction in the University area. In either case the role of the private security is in strictly University matter transferring severe issues and crimes to the local police departments. It must be noted that University, according to its size, the number of its students, staff, and other people daily present at its territory, may opt for accreditation in security issues, by police or special accreditation organizations. For example, the University of Sunderland has a full-time campus Police

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Officer, a private security team and it is also be accredited as secured by a police accreditation scheme (www.securedenvironments.com). Similar provision about the campus police jurisdiction and responsibilities of Universities can also be found at State Statutes (Florida State Statute, 2022).

### **Police Campus Law enforcement in rest European Countries**

In the Kehagia research into the terms and conditions of police intervention in university premises within EU countries, the following facts emerged (Kexagias, 2021).

In Germany there is no concept of asylum as we know it in Greece. The police may be called by the rector's authorities when they find criminal acts on the university premises, i.e., in the building and the grounds. When, for example, students have taken over and violent attacks develop. However, there are generally no sit-ins at German universities and the presence of the police at universities is extremely rare. In addition to the rector's authorities, any citizen can also call the number 110 when they find that criminal acts are taking place. For example, thefts, physical violence, drug dealing, etc. In this case the police are obliged to intervene without the permission of the rectory authorities. There are usually some janitors inspecting the premises and, in the evenings, only professors, assistants and some students with keys enter the offices. In Austria, although there is no formal agreement between the University and the police, the police have the power to enter the University in case of suspicion of criminal activity - according to the Security Act in Austria. Security officers work very closely with the police, who can step in at any time and act. There are several police stations near the University with which the security officers are in contact. In Latvia the law works everywhere - the Universities also follow the same law and there are no regulations that say the police cannot intervene on the Campus. Police patrols are allowed on Campus (daily and not just when something happens). There are not agreements between the Universities and the police (state or municipal police), but the police can patrol the Campus or other University facilities. In addition, there is security team (private, not University-owned) who also patrol and may enter the premises daily (as part of their duties).

An exception to the above is the University of Ljubljana, in which the police are not allowed to enter, except in special cases where they are called for some criminal act and always accompanied by a person in charge of the University or the Institution.

In all cases, however, the intervention of the police in case of crime is a given and does not cause negative reactions either from the academic community or from the politicians.

### **CONCLUSIONS**

University asylum as a sanctuary does not exist in contemporary times. In Greece it was established as a law for symbolic reasons that led to situations not deserving the quality of the work done in Greek universities. As Venizelos claims (Venizelos, 2022), *“the public debate about higher education in our country urgently needs to shift from the issues of security and dealing with violence and from the issues of administration to the issues concerning the integration of our universities into the global environment of the fourth industrial revolution, and new technologies”*.

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Abolishing asylum, in our opinion, does not infringe on the fully protected academic freedom and full self-government of universities, both enshrined in the Constitution. The university asylum, as a legislative regulation, despite its initial aim, did not succeed, it was never implemented in practice as an asylum that promotes freedom of thought, speech, teaching and research, but was circumvented and evolved into a mechanism for the protection of illegal behavior. Of course, the responsibility for the non-implementation of the asylum legislation does not lie with the criminal offenders but with the State and the University Community who showed inexcusable hesitancy in the correct application of law. However, regardless of the responsibilities, we consider the university asylum to have fulfilled its historical role and no longer has a place in a democratic university community in which every member enjoys the asylum afforded by his constitutional rights.

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