

Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC - Italy

10000/105/19

015.
Dec. 2,

20pp

Declassified E.O. 12356 Section 3.3/NND No. 785016

10000/105/19

015. Counts (Civil, Military)
Dec. 2, 1943 - Feb. 13, 1944

20pp.

THE ITALIAN COURT OF ASSIZES

The Court of Assizes in Italy has been and still is the highest criminal jurisdiction in the country. From its creation it became the subject of extremely bitter arguments on both juridical and political grounds, and there is no doubt that the satisfactory reorganization of the Assizes will be one of the major problems to be faced by both the new Italian government and the Allied Control Commission.

The polemics in which have been engaged at all times very distinguished University professors, the highest judicial officials in the kingdom and political leaders can be summed up as follows.

"Can the politically desirable participation of popular judges in the proceedings of the Courts of Assizes and in the verdict, compensate the chances of miscarriages of justice due to the emotional and non-professional frame of mind of the Italian laymen."

The partisans of the political solution strive hard to devise ways and means by which the selection of jurors or assessors could be achieved while minimizing to a great extent the dangers of appointing incompetent or prejudiced jurors or "scabinati".

On the other hand the supporters of the juridical method endeavour to contrive forms of procedure (and even education) by which professional judges sitting without jurors or assessors would be able to take into consideration the human element in the case.

It must not be forgotten that the Italian or even the French conception of crime and the degree of culpability of the accused have never been measured by the same standards as in Anglo-Saxon countries. As Montesquieu said "Nations obey the laws which the climate of their country and their own temperament render suitable". The philosophy of justice is generally the same, but the procedure by which it is administered varies according to the degree of moral education of the public.

It is thought that a short résumé of the History of Criminal Jurisdictions in Italy and a summary of the opinions of the most qualified exponents of the question of the reform of the Court of Assizes, will perhaps help to clarify the present situation and facilitate the eventual solution of this very delicate problem.

1 - Origin of criminal proceedings in Italy.

The main reason why the Italian people accepted so readily the French Napoleonic Codes in which were embodied and systematized the laws, ordinances and customs of ten centuries, is that the sources of these various legislations were the same and thus the concept of justice very similar.

During the last years of the Roman Empire, the inquisitorial principle was at first established, and remained in force during the domination of the Ostrogoths in Italy and the Franks in France.

The accusatorial notion which became prevalent in England, during the early middle ages (XII century) was also known in Italy during the same period especially in the South and even in Sardinia, under the influence of the Normans, first Christian kings of Sicily.

The "accusatorial system" was granted to the city of Palermo by ordinance, confirmed by Parliament on 1416 and 1451, "except for the cases of lese majesty, heresy and homicide, when the ecclesiastical inquisitorial procedure was applied" by special Courts.

The Sicilians preserved portion of these privileges through the reigns of the Aragons, Anjous, Bourbons until 1787. In all other parts of Italy, however, under the pressure of the Church, the whole procedure for dealing with criminal offenders became inquisitorial.

Furthermore the Holy See had preserved in all independent Italian States their own courts (Sant'Uffizio) which were competent to deal with such offences as misdeeds of the Clergy, heresy, adultery, usury, etc.

Ecclesiastical Courts were suppressed in Lombardy in 1780 in Sicily, Tuscany and Modena before 1785 and in Piedmont in 1797.

In both type of Courts proceedings were very similar, appeals were rarely admissible in Civil Courts and the decisions of the S. Uffizio were final.

In 1789 came the French Revolution and between that date and 1794, when Napoleon promulgated his first code, French jurists such as Cambacérès, Bigot, Portalis, Malleville, Tronchet etc. had worked continuously in an endeavour to unify the old French provincial customs and to adapt them to the principles of freedom and democracy of the Revolution which found their origin in the liberal institutions of England introduced in France by the philosophers of the XVIII century.

The French Court of Assizes, (later adopted throughout Italy) was one of the result of their efforts.

This Court retained many of the procedures of the old regime, it was inquisitorial, pre trial investigations were carried out by a magistrate, the bench was formed of a college of judges, but for the first time a jury selected according to the English custom was introduced.

The courts received their final statute through the provisions of the French Constitutions of 1790 and 1791.

In 1797, after the conquest of Italy by Bonaparte, the sister Republic of Cisalpine and Cispadane was formed and its Constitution (Art. 65) adopted the French system in the following terms "Crimes of the first degree fall within the competence of the Criminal Courts, which shall not pronounce their sentence without the formal opinions of a jury of accusation, as to the criminality, and of a jury in Court, as to guilt, having been rendered."

The Constitution of 1802, embodied this formula in its provisions, but for political reasons postponed their application for ten years so that the new Court never operated in Italy during the period of French Control over the Country.

In 1808, the Court of Assizes and Jury appeared in Piedmont for press offences only, in 1859 its Competence was extended to political and serious crimes, its statute which remained in force up to 1911 was determined by the changes of the Law of 6 December 1865 amended by the Law of 6 June 1874, the Code of Penal Procedure of 1913 and the Royal Decree of 5 October 1911.

There again the Italian Jurists had followed their French predecessors closely and the Assizes were practically identical in both countries. A Jury of twelve male members sitting in Court, together with a college of Judges, the former being solely responsible for the verdict, the latter passing sentence in accordance with the provisions of the Penal Code as to minimum and maximum.

No appeal was receivable, but recourse to Cassation on points of law and procedure was admissible.

II The Reform of 1911

In December 1925, the then Minister of Justice, Alfredo Rocco, appointed a Commission of Senators and Deputies with the formal object of drawing a project of reform of the Court of Assizes.

It was composed among others of the present Minister of Justice, Alfredo De Martino, who succeeded Rocco in 1943, d'Amelio, first President of Cassation and of the Committee of the "Digesto Italiano" S-E Calissac, and the famous Roberto Farinacci. 369

A report of their activities was presented to the Chamber of Deputies by Gabriello Gornazzari and to the Senate by d'Amelio.

The principal reasons in favour of the reform were the following: (a) The Jury (giudici popolari) and the bench (giudici professionisti) sat entirely apart during the proceedings, this fact had been the cause of many miscarriages of Justice as there is no summing up in Italian Courts.

(b) On the other hand the complete suppression of the jury favoured by a number of jurists and politicians, was at least premature and would probably disturb the mind of the nation.

(c) The amalgamation of professionals bringing with them their authority prestige, culture and juridical knowledge, with popular assessors chosen among free citizens well aware of the surrounding atmosphere (ambiente) and local conditions was a step in the right direction.

(d) The mode of selection of assessors would be more restricted than that of the jurors and thus men of higher social, moral and cultural standard could be chosen.

(e) This form of assizes had been tried in the Colonies (French and Italian) and had been a success.

(f) Politically the Jury was the result of the former popular principle of the sovereignty of the people, a belief which held no place in the fascist ideology.

The main provisions of the Royal Decree could be summed up as follows.

1) The existing Jury and college of Judges forming the Bench were abrogated and replaced by a single college composed of a President of Section of Court of appeal, a Counsellor of appeal and five assessors. The Bench thus formed would decide as to the guilt or innocence of the accused by the majority of votes, each member having an equal vote.

2) The professional judge would draw up the judgment and pronounce the sentence in accordance with the law.

3) A new and rather complicated system of selection reduced the number of citizens who could legally become assessors. A special ballot was also devised to draw the names of assessors from the list of suitable candidates.

Though the Italian Jurists protested vigorously against the allegation, the reform was inspired by Germanic precedents, the "Schlichtung" or "college of laymen and judges", was an old Teutonic custom adopted in Northern Italy when it became part of the Empire of Carlo Magno and by Italian Communes under German influence. It still exists in Germany for certain forms of offences.

III The present situation

From 1931 to 1942, the new Italian Court of Cassation appears to have been accepted without great difficulty by the public and even by professionals, and to have functioned fairly satisfactorily during the first years of its creation, in spite of the fact that the number of sentences reformed by the Court of Cassation increased from 2% to 20%.

This was due to the fact that every judgment, according to Italian Law, must be motivated and often the text of the sentence had to justify the decision of the majority which was not per force shared by the professionals and this could not always be done without overlooking certain provisions of the Penal Code or the Code of Procedure.

Thus, more and more, the Court of Cassation whose functions are exclusively to ensure that the law has been respected had to reverse decisions in order that justice be done.

In 1942, the climax was reached when in the "Mulas" case, the accused was declared not guilty by the Court of Assizes of Sassari while the whole text of the judgment of acquittal clearly demonstrated his culpability.

The various solutions proposed by many eminent Italian jurists are completely contradictory and range from the suppression of the Court of Assizes and its replacement by a Supreme Criminal Court with a college of three to five judges and no jury or assessors to the appointment of a single judge sitting with a carefully selected jury.

Others are of opinion that the motivation of sentences, as expressed quoting Lord Mansfield as advising a colonial Administrator "to give his sentences in Court resolutely as he would in all probability be right, but never to try and explain the reasons which determined his judgment as he would invariably be wrong."

The problem is therefore far from solved and the political considerations involved will render the task of the Central Commission extremely delicate. A complete supersession of the Jury or "assinnato" would be held in democratic countries as super fascism. On the other hand a system by which ignorant, incompetent or prejudiced jurors or assessors could be selected would lead to a form of justice which might determine serious social disorders. A careful study of the question will have to be made by the new Italian government whenever it may be.

There is little doubt that main difficulty lies mostly in the lack of sense of responsibility, ignorance, and absence of moral training of the mass of the people after twenty years of fascist rule.

Illiteracy was the gravest problem in pre-world war days and the jurors were often too backward to understand not only their duties to their fellow citizens and the State, but often unable to grasp the mere facts of the case, when they were not the tools of some criminal organisations, such as the Mafia.

Until a new and well regulated system of education may produce satisfactory results it might be well to restrict the selection of popular judges to those whose cultural and social achievements qualify them to undertake this responsibility.

The unrelieved burden which will fall on the shoulders of a few may be alleviated by a simpler and more speedy mode of selection.

In the meantime it will be the duty of legal officers to see that the disadvantages of the existing system, as set forth in the above memorandum are reduced to a minimum.

February 6 - 1944.

ALLIED CENTRAL MEDITERRANEAN FORCE

7th. February, 1944.

Pursuant to Proclamation No. 4 of the Allied Military Government of Occupied Territory and pursuant to the powers vested in me as Military Governor of the Occupied Territory in Italy and Sicily and pursuant to Article VIII of the said Proclamation, I, HAROLD R.L.G. ALEXANDER, G.C.B., C.S.I., D.S.O., M.C., General, General Officer, Commanding, Commander in Chief, Allied Central Mediterranean Force and Military Governor of the Occupied Territory hereby delegate to FRANK NOEL MASON MACFARLANE, K.C.B., D.S.O., M.C., Lieutenant General, Chief Civil Affairs Officer, the power to confirm any sentence of death passed by an Allied Military Court in Occupied Territory in Italy and Sicily.

HAROLD R.L.G. ALEXANDER,
General,
Commander in Chief,
Allied Central Mediterranean
Force.

366

015-

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

13 February 1944

Dear Marshal Messe,

Your representations to Brigadier General Taylor concerning the trial by Italian Military Tribunals in occupied territory of deserters from the Italian Armed Forces have been given careful consideration. I have come to the conclusion that members of the Italian Armed Forces who deserted between 10 July and 8 September, 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion.

An instruction to the above effect has been sent to my officers in territory occupied by the Allied Forces and I ask you to inform Italian Commanders stationed therein of this ruling for their guidance.

I will also ask you to give me your assurance that the foregoing will be applied in unoccupied territory.

Lieutenant-General, 365
Chief Commissioner,
Hq. Allied Control Commission.

TO: Marshal G. Messe,
Chief of General Staff,
R. Army

HEADQUARTERS
ALLIED CONTROL COMMISSION
Administrative Section.
APO 394.

ACC/CCS./AS.

2 February 1944

SUBJECT: Dott. Pace, Translator.

TO: C.O. H.Q. A.M.C. 5th Army, APO 404, U.S. ARMY
(Attn. Legal Div.)

With reference to your 200/CA/36 of 18 January 1944.

The scales of pay and allowances for civilian interpreters laid down by AFHQ; Adv. Adm. Pub. Adm. Instr. H. 24 dated 24 January 1944 allows a maximum salary of about \$ 33 month. It is regretted therefore that the employment of DOTT. PACE at a salary of \$ 100 plus all allowances cannot be sanctioned.

2. It is considered that it should be possible to engage an interpreter to accompany your HQ, on terms which would fall within the scales.

FOR THE COMMANDING GENERAL:


CHARLES A. SPOFFORD,
Colonel, U.S.C.
D.C.C.A.O.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
ECONOMIC SECTION
APO 394

ES /JBT / fjd

1 February 1944

SUBJECT: Dott. Pace, Translator.

TO : Administrative Section.

1. Reference attached Legal Division letter 208/CA/36 dated 18 January 1944. The matter mentioned therein has been reviewed, and your attention is invited to AMHQ Adv. Adm. Echelon Administrative Instruction No. 24, dated 24 January 1944, under which you will find the base pay for interpreters, oral and translating i.e. 70 to 110 lire per day, subject to modifications (see para 5).

2. It is quite obvious that payment of a salary of 100 dollars a month plus an additional cash allowance for meals and quarters would be completely out of line with this administrative instruction and further that it would far exceed the pay given to all other interpreters which would cause serious difficulties.

3. It is therefore recommended that permission to pay such a salary be refused.

D.S. Adams
D.S. ADAMS COLONEL C.E.
CHIEF STAFF OFFICER
ECONOMIC SECTION

363

ADMIN. DIVISION	
CHIEF STAFF OFFICER	
STAFF OFFICER 1	
STAFF OFFICER 2	
STAFF OFFICER 3	
CLERK	

620

785011

HEADQUARTERS
AMG 5th ARMY
A.P.O. 464 U.S. ARMY.
Legal Division

208/CA/56

18 January 1944

Subject : Dett. Pace, Translator.

To : HQ, AMG, Provincia Bldg.

1. The Legal Division plan for Rome includes setting up six or seven Allied Military Courts, besides a Hq. office. All of these require highly skilled interpreters and translators. Especially is this true of the HQ office, which will be flooded with written applications of all kinds. Not one is available out of the military personnel assigned to AMG 5 Army or of Region IV attached to 5 Army. While it is true that some civilian personnel will be found in Rome, the number to be found there and the time required to locate them are uncertain, and there will be numerous offices competing for them.

2. For these reasons, I am of the opinion that it is highly desirable, if not necessary, to take one expert translator into Rome, either with us or as soon as practicable after arrival. Such a translator is available in the Legal Division of AMG provincial HQ. in Trapani, Sicily. In view of the fact that he will not be needed after the turnover of Region I to the Italian Government, which is about to take place, I do not believe that the Trapani office will interpose any objections.

3. The translator's name is Dett. Pace, a professor of English and a University graduate., I am informed. He is willing to leave his family and work for this office for a salary of \$100 a month, plus quarters and meals, which is a fair salary under all the circumstances. In view of the policy against furnishing rations to civilians, and additional cash allowance for food and quarters could be added to the \$100 salary.

4. It is requested, therefore, (a) that permission to pay such a salary be granted; (b) that the Trapani office be asked to release him now, and (c) that a permit be issued permitting travel and that transportation be furnished for him from Trapani to Naples, if AMG 5 Army is still in Naples when he arrives, otherwise to Rome. In view of the existing situation, it is urgently requested that action be taken at once.

362

J. W.

HEADQUARTERS
ALLIED CONTROL COMMISSION
(Salerno Detachment)
APO 394
Administrative Help Section

MAC/015./AD

29 January 1944

SUBJECT : Sentences by Military Courts.

TO : S.C.A.C., Region II, A.C.C.

1. Reference your letter 2201/42/1 dated 21 January 1944 subject above, it is decided that it will be impracticable to authorize compliance with Para. 2 and 3 for the following reasons:

- (a) There is no authority for sending to North Africa persons convicted by Allied Military Courts. Nor does the above pertain to Par. 38 of Plan of Military Government of SICILY which concerns civilian internees.
- (b) It is not considered advisable to incorporate any threats of action that are incapable of being executed.

2. It is believed that the congestion referred to will not increase, particularly in view of plans being prepared so that the administrative matter can be broached to the Italian Government in the immediate future.

361

R.H.C.
R.H. CHIPPES,
Lt. Colonel,

for the Vice President, Economic & Administrative Section.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION II

21 Jan 44

Ref: 2201/42/1

Subject: Sentences by Military Court.

To : CCAO, HQ AMG

1. The present effect of sentences by Military Courts is largely discounted as a deterrent, by the belief however erroneous, that after the handing over of territory to the Italian Government, a very large number are almost certain to be amnestied. Moreover, since it is anticipated that this Region may be required to accommodate prisoners from regions further north, the number of persons now undergoing sentence, is becoming dangerously close to the maximum prison capacity.

2. The deportation to North Africa of persons under detention as opposed to under sentence, is known to have been contemplated by higher authority. It is therefore submitted that persons sentenced to more than one years imprisonment by Military Courts should in fact be so deported.

3. Should this however be impracticable for shipping or other reasons, approval is requested to the publication of a Regional Order to the effect that any person in future sentenced by a Military Court for more than 1 year IS LIABLE at the discretion of AMG to be deported to serve his sentence in North Africa. If supported by even a few well advertized cases of the proposal being put into effect, it is submitted that the deterrent effect would be considerable.

G. H. McCaffrey
G. H. McCAFFEY
Lt. Col. Inf.,
RCAO

360

SEEN	
ADMIN DIRECTOR	
STAFF O.	
CHIEF OF STAFF	
CHIEF OF BUREAU	
CHIEF OF SECTION	
DATE	21-1

301.

ALLIED MILITARY GOVERNMENT
INTER OFFICE MEMO

From: *Legal Subcommittee*

SUBJECT: *Sentences by Military Court*

FILE NO.

10 *Adm. Div.*

24 Jan 1944

1. I know of no authority providing to North Africa persons convicted by Allied Military Courts. Possibly Col. McCaffrey has in mind par 25 of Plan for Military Government of Sicily having to do with civilian internees.
2. If this confusion continues the Italian Government itself may want to have the suggested arrangements made at some later date, but I think it unlikely.
3. The order suggested in par 2 of Col. McCaffrey's letter should not be issued. *Why?*

Richard H. Wilmer
1st Lt Col
A.C.P.O.

CONFIDENTIAL

File

HEADQUARTERS
ALLIED CONTROL COMMISSION
(Salerno Detachment)

APO 394

Administrative Staff Section.

AMC/015./AD

29 January 1944.

SUBJECT: Employment, Dott. Pace, Translator.

TO : R.C.A.C., Region 1.

1. An application has been received at this office for the transfer from TRAPANI to NAPLES of Dott. PACE, translator for work in connection with LEGAL DIVISION HOME PLANNING, of an urgent nature.
2. Would you please state whether you can release Dott PACE from his present employment in the office of the LEGAL DIVISION at TRAPANI, and if so the earliest date at which he can be made available.
3. This H.Q. has no objection to the transfer on security grounds.

RRC

R. R. CRIPPS,
Lt. Colonel.

for the Vice President Economic & Admin. Section.

Copy to: A.M.G., 5th. Army.

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CONFIDENTIAL

HEADQUARTERS
AMG 5th ARMY

A.P.O. 404 U.S. ARMY.

Legal Division

20c/CA/56

18 January 1944

SUBJECT : Dott. Pace, Translator

TO : HQ. AMG. Provincia Bldg.

1. The Legal Division plan for Rome includes setting up six or seven Allied Military Courts, besides a Hq. office. All of these require highly skilled interpreters and translators. Especially is this true of the Hq. office, which will be flooded with written applications of all kinds. Not one is available out of the military personnel assigned to AMG 5th Army or of Region IV attached to 5th Army. While it is true that some civilian personnel will be found in Rome, the number to be found there and the time required to locate them are uncertain, and there will be numerous offices competing for them.

2. For these reasons, I am of the opinion that it is highly desirable, if not necessary, to take one expert translator into Rome, either with us or as soon as practicable after arrival. Such a translator is available in the Legal Division of AMG provincial HQ in Trapani, Sicily. In view of the fact that he will not be needed after the turn over of Region I to the Italian Government, which is about to take place, I do not believe that the Trapani office will interpose any objections.

3. The translator's name is Dott. Pace, a professor of English and a University Graduate. I am informed he is willing to leave his family and work for this office for a salary of \$100 a month, plus quarters and meals, which is fair salary under all the circumstances. In view of the policy against furnishing rations to civilians, and additional cash allowance for food and quarters could be added to the \$100.

4. It is requested, therefore, (a) that permission to pay such a salary be granted; (b) that the Trapani office be asked to release him now; and (c) that a

permit be issued permitting travel that that transportation be furnished for him from Trapani to Naples if AMG 5th Army is still in Naples when he arrives, otherwise to Rome. In view of the existing situation, it is urgently requested that action be taken at once.

J. V. M. SHIELDS

Lt. Colonel

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TO : HQ. AMG. Provincia Bldg.

1. The Legal Division plan for Rome includes setting up six or seven Allied Military Courts, besides a Hq. office. All of these require highly skilled interpreters and translators. Especially is this true of the Hq office, which will be flooded with written applications of all minds. Not one is available out of the military personnel assigned to AMG 5th Army or of Region IV attached to 5th Army. While it is true that some civilian personnel will be found in Rome, the number to be found there and the time required to locate them are uncertain, and there will be numerous offices competing for them.
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J. F. M. SHIELDS

Lt. Colonel
Senior Legal Officer
AMG 5th Army

CONFIDENTIAL

File

HEADQUARTERS
ALLIED CONTROL COMMISSION
(Salerno Detachment)
APC 394

Administrative Staff Section.

29 January 1944.

AMC/015/11

SUBJECT : Employment, Dott. Pace, Translator.
TO : AMC, 5th. Army, S.I.C.

1. Reference your 206/CA/56 dated 18 January 1944, this H.Q. has no objection to the transfer of the abovementioned from TRAPANI to NAPLES and RIME on security grounds.
2. A letter (copy attached) has been forwarded to Region 1 asking for his release from TRAPANI, and permit to travel will be furnished if this is agreed.
3. Before the movement is authorized however, the amount of salary should be settled; this is under consideration and you will be informed when a decision has been made.
4. Transportation will be the responsibility of the individual. Region 1 will be asked to assist by providing road transport to PALERMO and arranging sea transportation onwards.

R. R. Chipp

R. R. CHIPP
Lt. Colonel.

for the Vice President Economic & Admin. Section.

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CONFIDENTIAL

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LEGAL SUB-COMMISSION
A.F.O. 394

AMS/4109/L

SUBJECT:- Visit of Special Prosecutor to Region II

TO :- Administrative Directorate

25th January 1944

May the following signal please be sent to AMS Region II in reply to their signal KT/134 dated 25 January 1944.

In view of emergency regret no special prosecutors available for many days

GERALD URVORI

Colonel,
Chief Legal Officer.

242150A

N-3684

Signal Corps, United States Army

Telegram

TWX

1544

Received at

PENINSULAR BASE SECTION
SIGNAL MESSAGE CENTER

CONFIDENTIAL

CONFIDENTIAL

ROUTINE

TO (ACTION) : CG PBS (FARGO) FOR LEGAL

(INFORMATION): NONE

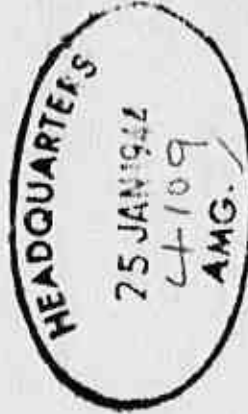
FROM : AMG REGION 2

DATE TIME SIGNED: 24 NPT

DATE TIME REC'D.: 242150A

REFERENCE NR. : RT/134

CITE : NONE



PLEASE INFORM BY TELEGRAM EARLIEST DATE AT WHICH SPECIAL PROSECUTOR CAN VISIT THIS HQ PROCEEDING THENCE TO REGION SUPERIOR COURT CASE.

Action - AMG HQ
Info - Perry
C. G.

Adm. 3564

Copy retained by legal
and action taken 25/1/44

FORM 1-10-44

Received at

CONFIDENTIAL

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PENINSULAR BASE SECTION
SIGNAL MESSAGE CENTER

25 JANUARY 1944

CONFIDENTIAL

ROUTINE

TO (ACTION) : CG PBS (FARGO) FOR LEGAL

(INFORMATION): NONE

FROM : AMG REGION 2

DATE TIME SIGNED: 24 NPT

DATE TIME REC'D.: 242150A

REFERENCE NR. : RT/134

CITE : NONE

HEADQUARTERS
25 JAN 1944
4-109
AMG.

PLEASE INFORM BY TELEGRAM EARLIEST DATE AT WHICH SPECIAL PROSECUTOR CAN VISIT THIS HQ PROCEEDING THENCE TO REGION SUPERIOR COURT CASE.

Action - AMG-HQ
Info - Perry
C. G.

Line
Adm 356

Copy retained by legal
and action taken 25/1/44

CONFIDENTIAL

FORM #18-A

CRYPTOLOGICAL

10941

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 394
LEGAL SUB-COMMISSION

AMG/4001/2.

GGH/rlp
17 January 1944

SUBJECT : Reggio Court of Appeal (Sez. Distaccata).

TO : RCIO, Hq Region I (Thru: RCAO, Hq Region I).

1. RCIO, Region II complains that:

- a. First President of Court of Appeal of Messina has to date failed to comply with the provisions of the Royal Decree of May 1939 in regards to the Civil Jurisdiction of the Court of Appeal of Reggio, where cases are piling up now. Court of Appeal of Reggio being responsible for appeals from three Tribunali (Reggio, Fiumi, Locri). This Chamber is still closed.
- b. Could recommendations be made to Primo Presidente of Messina in regard to the appointment of the necessary "Consiglieri di Appello" for both Chambers of the Court of Reggio which is extremely short of personnel and has to borrow judges of the Tribunali to carry on with its work (Criminal Chamber).
- c. It is understood that an order has been issued by the Primo Presidente for the "Sezione Distaccata" at Reggio to be transferred to Messina. This is strongly objected to by RAO, Region II on grounds of policy.

2. Will you therefore be good enough to inquire into the various points above set out and communicate with RCIO (RCAO) Region II on these matters direct, forwarding copies of your correspondence to this Hq for information and eventual action.

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RICHARD H. WILSON,
Lt. Col., CAG,
Deputy Chief Legal Officer.

Copy to RCIO, Region II.

015.

161917A
Form 150D

N-2361

Adm. Div (2) ¹¹⁵⁹
Signal Corps, United States Army

CONFIDENTIAL Telegram **PRIORITY**

GP-0 3-2088

Received at

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PENINSULAR BASE SECTION
SIGNAL MESSAGE CENTER

16 JANUARY 1944

CONFIDENTIAL

OPERATIONAL PRIORITY

TO (ACTION) : CG PBS (FOR FARGO FOR UPJOHN)

(INFORMATION) : NONE

FROM : AMG REGION 2

DATE TIME SIGNED: 16/11FT

DATE TIME REC'D : 161917A

REFERENCE NR. : RT/125 15/1

CITE : NONE

SCAO REGGIO REPORTS MESSINA COURT OF APPEAL HAS ORDERED
REGGIO COURT TO TRANSFER TO MESSINA. HAVE INSTRUCTED SCAO TO SUSPEND
TRANSFER. REPORT TO YOU IN TRANSIT.

HEADQUARTERS

17 JAN 1944

AMG.

352

SEEN	TO:	INIT.
ADMIN. DIRECTOR		
CHIEF STAFF O		
STAFF O 1		
STAFF O 2		

94/13

CONFIDENTIAL

OPERATIONAL PRIORITY

TO (ACTION) : CG PBS (FOR FARGO FOR UPJOHN)

(INFORMATION) : NAME

FROM : AMG REGION 2

DATE TIME SIGNED: 16/11/44

DATE TIME REC'D : 161917A

REFERENCE NR. : RT/125 15/1

CITE : NONE

SCAO REGGIO REPORTS MESSINA COURT OF APPEAL HAS ORDERED
REGGIO COURT TO TRANSFER TO MESSINA. HAVE INSTRUCTED SCAO TO SUSPEND
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HEADQUARTERS
17 JAN 1944
AMG.

352

SEEN	TO: INT.
ADMIN DIRECTOR	
CHIEF STAFF O.	
STAFF O 1	
STAFF O 2	
STAFF O 3	
CHIEF CLERK	
DATE	

FORM #10-R
CRYPTO
CONFIDENTIAL
150

APD 512

PDG/wb

AMG/015./AD

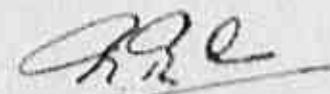
3 January 1944

SUBJECT: Italian Military Courts.

TO: Advance Command Post;
Allied Control Commission,
BRINDISI. (att: Legal Sub-commission).

1. Forwarded as a matter originating in your office.

For the Commanding Officer:



W.R. CRIPPS,
Lt. Colonel,

for the Administrative Director.

Incl: 1. Letter 2201/14/46 dated 30 Dec. 43 from Region 11.

9A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
AFG 512

30 November 1943

SUBJECT: Powers of R.C.L.O.s

TO : R.C.L.O.s, Regions I & II

1. Attention is invited to General Order No. 6 of 23 November 1943 entitled "Relations with Regional HQ" and, in particular, to paragraph 6 thereof, to which this directive is supplemental.

MILITARY COURTS

2. The R.C.L.O. shall have the authority and is responsible for the establishment of Superior and Summary Military Courts in his region. He will request AMG HQ to appoint a General Military Court whenever necessary.

3. Reviews of the decisions of Allied Military Courts will be in accordance with Proclamation No. 14 as it amends Proclamation No. 4 which provides for reviews substantially in the following manner:

Any person convicted by a Military Court may, within thirty days after imposition of sentence, file with the trial court or forward to the R.C.L.O. a petition addressed to the C.C.L.O. submitting reasons why the conviction should be set aside or the sentence should be modified.

Every record of trial by an Allied Military Court shall be transmitted to the R.C.L.O. for examination and file. The record in any case may on the recommendation of the C.C.L.O., and shall, in the event of the sentence exceeding two years imprisonment or a fine of L. 50,000, be reviewed by the C.C.L.O. or by an officer of the Allied Military Service must not follow the rank of Lieutenant Colonel who may be appointed by the Chief Civil Affairs Officer for that purpose. Where there has been no petition of appeal as above provided and the sentence does not exceed two years imprisonment or a fine of L. 50,000 the R.C.L.O. shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. Confirmation of death sentences remains as before.

350

4. By Proclamation No. 14 referred to above the R.C.L.O. may order an Allied Military Court to sit in camera. The R.C.L.O. may also perform the functions previously assigned to the C.C.L.O. in connection with the detention of suspects. See Proclamation 7, Article VII, Section 2.

MILITARY COURTS AND TRIBUNALS

5. The R.C.L.O. may remove, suspend, judge and officer is connected with

1. Attention is limited to General Order No. 6 of 23 November 1943 entitled "Relations with Regional HQ" and, in particular, to Paragraph 5 thereof, to which this directive is supplemental.

MILITARY COURTS

2. The R.C.L.O. shall have the authority and is responsible for the establishment of Superior and Summary Military Courts in his region. He will request AMG HQ to appoint a General Military Court whenever necessary.

3. Reviews of the decisions of Allied Military Courts will be in accordance with Proclamation No. 14 as it amends Proclamation No. 4 which provides for reviews substantially in the following manner:

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350

4. By Proclamation No. 14 referred to above the R.C.L.O. may order an Allied Military Court to sit in camera. The R.C.L.O. may also perform the functions previously assigned to the C.L.O. in connection with the detention of suspects. See Proclamation 3, Article VII, Section 2.

ITALIAN COURTS AND JUDICIALS

5. The R.C.L.O. may remove Italian Judges and Officials connected with the Italian Courts and on a temporary basis may fill existing vacancies. He may appoint Notaries when vacancies occur, upon the recommendation of the Notarial Council of the district in which such vacancies exist. For the purpose of securing assistance and advice on Italian legal and judicial matters, he may appoint a General Consultant of Italian Citizens. The R.C.L.O. will report in detail to AMG HQ on any such removal or temporary appointment.

6. The R.C.L.O. may review any sentence of an Italian Court when a petition is presented by or on behalf of the sentenced person. Cases tried by the Court of Appeal will be reviewed by AMG HQ.

7. The opening and functioning of all Italian Courts, criminal, civil, is the responsibility of the R.C.L.O. This provision has no reference to the Court of Cassation.

ITALIAN MILITARY PRISONERS

6. The S.C.C.O. acting on the advice of the S.C.L.C. will be responsible for providing Italian Military Prisoners to function within his region in accordance with the directive issued in this regard.

PRISONERS

9. The S.C.C.O. shall be responsible for investigating the circumstances of all prisoners held in jail without trial and for investigating all cases of complaint by prisoners that they have been unjustly condemned for their political views. The S.C.C.O. shall forward to all his recommendations for release of all such prisoners and may propose receipt of orders for their grant provisional or conditional liberty of release on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crime and never brought to trial because of political connections and report made to A.I.H.C.

ITALIAN DISSENTION AND LAWS

10. The S.C.C.O. shall not abrogate or amend any laws or the grounds that they are discriminatory or of a fascist nature and this matter is reserved to A.I.H.C. The S.C.C.O. may, however, temporarily suspend rules of procedure for the more expeditious handling of trials in accordance with directives in this regard.

GENERAL

11. A.I.H.C. retains the power to issue orders and directives binding upon regions, to assign, attach, detach or replace regional legal personnel, and to review decisions of Italian Military Courts in accordance with paragraph 10 above.

12. The Regional Chief Legal Officer will not issue directives or render opinions dealing with matters of general legal policy without previous reference to A.I.H.C. He will not fix penalties for prescribed offenses but it is his duty to ensure responsible conformity of sentences commensurate with the gravity of any particular type of crime in his region, and to consult with the particular crime itself.

By command of Brigadier General McNulty.

OFFICIAL:

E. J. McNulty
Lt. Col., USA
Acting Adjutant General

S. A. L. SUNDSTROM
Lt. Col.
Adjutant General

cases of complaint by prisoners that they have been unjustly condemned for their political views. The S.C.A.C. shall forward to A.S. HQ his recommendations for release of all such prisoners and any pending decisions of orders that are granted provisional or conditional liberty of release on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crime and never brought to trial because of political connections and report made to A.S. HQ.

ITALIAN LEGISLATION AND LAWS

10. The S.C.A.C. shall not derogate or change any laws on the ground that they are discriminatory or of a racist nature and this matter is reserved to A.S. HQ. The S.C.A.C. may, however, temporarily suspend rules of procedure for the more expeditious hearing of trials in accordance with directives already issued.

GENERAL

11. A.S. HQ retains the power to issue orders and directives binding upon regions, to assign, suspend, relieve or replace regional judicial personnel, and to review decisions of Allied Military Courts in accordance with Paragraph 2 above.

12. The Regional Chief Legal Officer will NOT issue directives or render opinions dealing with matters of general legal policy without previous reference to A.S. HQ. He will NOT fix penalties for prescribed offenses but it is his duty to secure reasonable conformity of sentences commensurate with the gravity of any particular type of crime in his region, in accordance with the particular crime itself.

By command of Brigadier General McSherry:

OFFICIAL:

E. L. McSherry
E. L. McSherry
Lt. Col., USA
Adj. Adjutant General

E. L. McSherry
Brig. Major
Acting Chief of Staff

file ^{awb}
RESTRICTED
File this up

INCOMING MESSAGE

NR:1317

ADDRESSED FOR ACTION TO : FARGO FOR WYLER
FOR INFORMATION TO :
FROM : SAVINA FROM UPJOHN*
IN REPLY REFER TO : 1317

IBS NUMBER : 5066
TIME SENT : 071500
TIME REC'D : 080327A
PRECEDENCE : PRIORITY

*SIGNED JOYCE

- EDITED LITERAL TEXT -

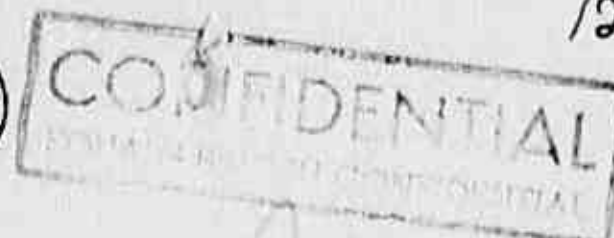
015
If memorandum on Italian Courts and legal setup not already distributed
please hold up pending certain amendments.

DISTRIBUTION :

ACC(ACTION)

CO

343
RESTRICTED



1258

guk

CONFIDENTIAL
HB 243

ADDRESSED FOR ACTION TO: FARGO FOR RTED FREEDOM FOR HGS 1884 1: 4663
INFORMATION TO : FATIMA FOR THACKRAH
FROM : FILED FROM AMG
IN EMPLOY WAPER TO : FA 335
TIME SENT : 301306A
TIME ROVD : 000830A
PRECEDENCE: PRIORITY

Your BEO of 27/11. Matter in hands of Major Thackrah AGO. There are no Allied Military Courts in 4 Provinces of India since no proclamations were issued there. Moreover doubts have been expressed whether Allied Military Courts have jurisdiction over British Merchant Seamen. Consult your correspondence on subject.

Copies to file

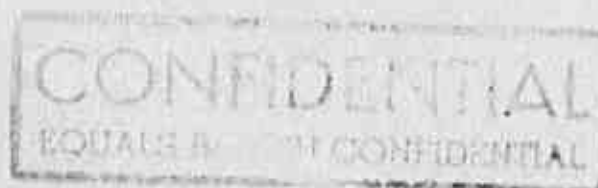
DIST:

AGO (ACTION)

GO

JAG

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ORIGINAL ACTION
RECEIVED AT
ISLAND BASE SECTION

1258

MSG NR 243
MSG CEN NR
TO SEARS FOR FARGO



CLASSIFICATION PRIORITY
TIME OF ORIGIN 301308A
TIME OF RECEIPT 011725A
TIME DECODED 011945A

YOUR EIGHT EIGHT ZERO OF TWO SEVEN SLANT ONE ONE PD MATTER IN HANDS
OF MAJOR THACKRAH ABLE CHARLIE CHARLIE PD THERE ARE NO REPEAT NO
ALLIED MILITARY COURTS IN FOUR PROVINCES OF APULIA RPT APULIA SINCE
NO RPT NO PROCLAMATIONS WERE ISSUED THERE PD MOREOVER DOUBTS HAVE
BEEN EXPRESSED WHETHER ALLIED MILITARY COURTS HAVE JURISDICTION
OVER BRITISH MERCHANT SEAMEN PD (PAREN TO SEARS FOR FARGO RPTD FREE-
DOM FOR MIKE GEORGE SUGAR CMA FATIMA FOR THACKRAH FROM FILPOT FROM
AMG CITE FOX ABLE THREE THREE FIVE PAREN) CONSULT CORRESPONDENCE ON
SUBJECT YOUR

015

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