

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

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5/585

CA, BOLZANO, LANGUAGE
(RECOGNITION OF GERMAN)
NOV., DEC. 1945

negate. It must be pointed out that the Russian side is
 based upon the power of the USSR.
 as to what extent they may alter the laws of
 the occupied country without a referendum is not required
 by military necessity that is desirable for the good of the
 governed. Still, the peace officer

243
 DEF 1948
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S.A. Sec.

Under the Hague Convention a all international
 precedents, the occupant is not empowered to alter
 the fundamental institutions of the occupied state.
 The official use of the Italian language in
 Italy appears "prime facie" to be a fundamental
 institution of the Italian state.
 like in Costa, this state of affairs could not be
 changed without all the constitutional bodies
 being a party to the amendment and therefore could
 not be effected by a local order.

Legal S/C
 5 Dec 57

G. G. Hammett
 W. Lee

stitution of the Stalin State.
like in Russia, this state of affairs would not be
changed without all the constitutional bodies
being a party to the amendment and therefore could
not be effected by a local order.

G. G. Hannaford

Legat S/C
5 Dec 45.

2072

Minutes

10 : V.R. On Section

In reply to the questions in your minute of 23 Nov. 1936 our Italian advisory states:

1. The decrees would appear illegal and "ultra vires" in the light of the prevailing legislation.

2. In case of conditions of "emergency or urgency" set out in art. 19 of the Legge Comunale e Provinciale (L.C. approved by R.L. 5 March 1924, No. 283) the Prefect is authorized to enact temporary provisions to meet the exigencies of the situation. Even if such conditions would prevail, the said law No. 283 would not appear to empower the Prefect to issue provisions such as the Decree under consideration.

3. The fascist law No. 100 of 31 Jan. 1926 conferring vast rulemaking powers on the executive does not grant any such power to local government authorities. Nor does any subsequent law.

4. In particular it is pointed out as follows:

a) as to No. 1

According to art. 1 L. No. 100 of 31 Jan. 1926 matters pertaining to "working of State administration" must be regulated by Royal Decrees with approval of the Council of Ministers and after consultation with the Consiglio di Stato. Matters under No. 4 pertain to "working of State Administration" and consequently could not be dealt with by Prefectural Decree.

b) as to No. 2

The same as above under (a) applies. The provisions set out in No. 2 pertain to requirements for employment in public office. The question of such requirements is a matter concerning the "working of the State Administration" as confirmed by R. Decree of 28 Sept. 1924, No. 1587 and consequently be determined by Royal Decree.

c) as to No. 3

These provisions of the Prefectural Decree infringe upon art. 1 of law 10 Apr. 1936 No. 634 which states as follows: "the teaching subjects, the practical exercises, the

4. In particular it is pointed out as follows:

a) As to No. 1

According to art. 1, L. No. 100 of 31 Jan. 1926 matters pertaining to 'working of State Administration' must be regulated by royal decrees with approval of the Council of Ministers and after consultation with the Consiglio di Stato. Matters under No. 1 pertain to 'working of State Administration' and consequently could not be dealt with by Prefectural Decree.

b) As to No. 2

The same as above under (a) applies. The provisions set out in No. 2 pertain to requirements for employment in public office. The question of such requirements is a matter concerning the 'working of the State Administration' as confirmed by a L. 28 Sept. 1924 No. 1287 and consequently **2011** be determined by royal decrees.

c) As to No. 3

These provisions of the Prefectural Decree infringe upon art. 1 of law 15 Apr. 1926 No. 534, which states as follows: 'the teaching subjects, the practical exercises, the programmes and the time schedules for all the elementary and high schools of any kind and degree shall be fixed by royal decrees, on the proposal of the Minister of National Education if they do not involve an increase of expenses, otherwise in accordance also with the Minister of Finance'.

2. Perhaps A. M. U. has ordered the Prefect to issue the decree.

In such case the question would arise whether A. M. U. was authorized to ~~do so~~ under the laws of occupation, to make certain provisions which might be alleged as infringing the fundamental constitution of an occupied country (article 11)

2 Dec. 1943

G. C. HANDELSON

-Lt. Colonel,

Deputy Chief Legal Advisor

Miguelis

Declassified E.O. 12356 Section 3.3/NND No. 73016

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

(2A)

6/18.3/GA

13 Dec 45

SUBJECT : Prefectural Decree - Bolzano

TO : SO Venetia Region - (Copy to IC Bolzano)

- 1 The Prefectural Decree of the use of German in Bolzano seems to go beyond the prefects or even AMG powers. Under the Hague convention and all international precedents an occupying power is not entitled to alter the fundamental institutions of the occupied state and use of the native language is one of these fundamental institutions.
- 2 So far as the Prefect is concerned there are several matters which appear to deal with legislative sphere preserved to the central government. (e.g. the State Administration Arts 3, 4, 6, and 8. Education Art 9).
- 3 However desirable the legislation on these subject may be, the local Authority has no power to deal with them.
- 4 You will therefore caution the Prefect against taking any action under the Decree on matters which are beyond the powers. The Italian Govt is proposing legislation on this subject and a copy of their proposals is enclosed.

BY COMMAND OF THE CHIEF COMMISSIONER:

S. H. WHITE L. C. 10
A/VP GA Section.

Copy to: Legal S/C
Local Govt S/C

3/110

copy

translation

Draft legislative decree regarding
the use of the German language in
the commune of Bolzano Province.

Order for the Council of Ministers.

In implementation of the directives agreed upon for
the treatment of foreign language minorities, the Council
of Ministers has already approved the provision regarding
the educational system in Bolzano province.

The attached draft seeks (Art. I) to regulate, in the
same manner as that employed in the case of the Val d'Aosta,
the use of the German language in Alto Adige whether in
relations with the public authorities or in legal acts, with
the obvious exception of sentences of the judicial authority
and decisions of the administrative jurisdictions.

The same article provides that the registers of the
Public Record Office be kept in the Italian language with
translations in German.

Art. II of the draft deals with the eventual need for
issuing rules for the implementation of this decree; which
may become particularly necessary in regards the use of
German in judicial and administrative proceedings as well
as the organization of the services in public offices.

Given the necessity for ascertaining the organization
of offices that the use of the German language may be
practically possible (reference need only be made here to
the need for replacing public servants who do not know the
language), the provision should have an adequate time-lag.
It has therefore been laid down that the provision shall come
into force three months after the transfer of Bolzano
province to Italian administration.

2600

Translation

(20)

To, Humbert of Saxe,
Prince of Piedmont,
Lieutenant General of the Realm.

By virtue of the authority delegated to Us:
In view of Article 4 of the Decree Law of the Lieutenant of the
Realm No. 151 of June 25th 1944;
In view of the Decree Law of the Lieutenant of the Realm No. 92
of February 1st, 1945;
In view of the deliberation of the Council of Ministers;
On the proposal of the President of the Council of Ministers,
the Minister of the Interior, in concert with the Minister of
Justice;

Have sanctioned and do hereby promulgate the following:

ART. I

The use of the German language is permitted in Bolzano province
in relations with the political, administrative and judicial
authorities.

In the communes of the aforesaid province, public acts may be
drawn up in German, excepting the sentences of the judicial
authority and the decisions of the administrative jurisdictions.

The registers of the Public Record Office must be kept in Italian
with translations in German.

ART. II

Rules for the implementation of the present decree shall be
issued, as necessary, by decree of the Lieutenant of the Realm,
on the proposal of the Minister of the Interior and the Minister
of Justice, according to their respective competences, and after
consulting the Council of Ministers.

ART. III

The present decree comes into force three months after the
transfer of Bolzano province to Italian administration.

We therefore order that the present decree, bearing the seal of
State, shall be included in the official collection of laws and
decrees of the Kingdom of Italy, charging whomsoever it may
concern to observe it and to enforce its observance as a law of
the State.

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COPY

Extract of Decree No. 6388

19 Nov 1945

As the use of both German and Italian language is essential to build up friendship between the two ethnical groups of this Province, pending decision, I order:

- 1) Free use of Italian and German language in civilian and public relations.
- 2) Names of towns and roads will be written in both languages on boards or in notices. The Italian name will be in the first place, letters have to be of equal size.
- 3) The Italian and German denomination of Communes will be decided by Sindaci with the assistance of a Commission composed by the Sindaco and 4 members 2 of whom have to be German speaking and chosen by the Sindaco on Proposal of the Giunta Comunale.
Doubtful cases will be submitted to the Prefettura.
- 4) State administrations and public offices will issue all documents etc. in both languages.
Notice boards on public buildings to be written in two languages.
- 5) Shops etc. will have their denominations and all notices in both languages except their private names and secondary indications for which the language may be chosen.
- 6) Administrations and public offices have to arrange that within one year's time all the correspondence (written and verbal) can be carried out in both languages in order that answer can be received in the language in which request has been made.
- 7) In order to study and to examine the instructions necessary to carry out this decree, a special "Commissione Giuridica per la Bilinguita" appointed by the Prefect and composed of a President and 6 members (3 Italian, 3 German speaking) will be formed. President will be the First President of the Court of Bolzano and members will be elected by lawyers and judges.
- 8) To receive employment in public offices or to be promoted to responsible grades, it will be necessary to speak both languages.
- 9) Prefettura gives order to Sindaci to give instructions for the institution of schools in both languages. Provveditore agli Studi will study progress and notify Sindaci all instructions he deems necessary. A Commission will take care of this (3 Italian and 3 German speaking members). Prefettura will provide for the necessary funds.
- 10) Items 2-3-4 and 5 will be carried out within 6 months. Sindaci have to notify Prefettura that above instructions have been complied with.

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1902

(recognition of human)

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