


ACC






ENEMY AGENTS
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HEADQUARTERS
ALLIED CONTROL COMMISSION
CMF
Office of the Chief of Staff

CONFIDENTIAL

Ref: ACC/4040/L.

9 October 44.

SUBJECT: Trial of Enemy Agents.

9 OCT Recd

TO : HQ Allied Armies in Italy.

1. In view of the fact that your letter 1460/S/GSI(b) dated 5 Sep 44 raised such fundamental points concerning the conduct of Allied Military Courts in the cases of enemy agents it was necessary to secure information regarding the three cases mentioned from officers familiar with these cases, now widely scattered; hence the delay in replying.

2. The basic criticism contained in your letter is that Military Courts are bound by their regulations to observe certain legal technicalities inconsistent with the military situation and have misinterpreted certain Proclamations.

3. This, I can assure you, is not so; Military Courts are by their regulations far less fettered by procedural rules than criminal courts either in the U.S. or Great Britain or, it should be added, than Military Courts-Martial of either country and this is particularly so in the admission of hearsay evidence and confessions.

4. Nevertheless Military Courts remain bound to observe fundamental principles of Anglo-Saxon justice of which the following may be given as examples:

(a) The accused are presumed innocent until, by evidence, proved beyond reasonable doubt to be guilty.

(b) The judgement of the Court must be based on evidence actually adduced before it and must not be coloured by suspicions aroused by extraneous circumstances.

(c) In no case can a man be convicted and punished unless he has committed or attempted to commit some crime known to the law. In parenthesis I would add that the ruling you refer to in para.2 is correct. For members of the enemy Armed Forces to "conspire" while in their own country (or in country in their occupation) to commit sabotage against the Allies is not an offence known to the law. If the converse case is considered, the reasonableness of this view becomes apparent.

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5. Allied Military courts must and will continue to observe these principles and a careful examination of the cases mentioned by you shows that they are all examples of the application of the above fundamental rules.

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6. As to the case of the group of saboteurs (10) referred to in paragraph 2 of your letter some of the accused were acquitted; others were given sentences varying from 2 to 10 years. Two of these accused were acquitted because early after the Allied occupation they came forward voluntarily and disclosed all their information to the Allied authorities which, the Court concluded, showed an intention not to carry out any hostile activities. Three others among the accused were women, as to whom there was no evidence that they had buried explosives or even knew where any explosives were to be found. One of the accused was acquitted because the evidence against him was regarded by the Court as being insufficient, not going beyond the point of raising some suspicion.

7. The charges in any case are not prepared by the Court, but the President of this particular Court did remark that the accused were charged with the only possible charges the evidence would support.

8. This case is an example of the applicability of all three principles mentioned above.

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9. With reference to the cases referred to in paragraph 3 of your letter (BRIGIDO Bruno and SQUADRILLI Franco). In this case certain explosives were burried at FROSINONE: however, they were not buried by the accused, who were merely given a plan which would direct them to the hiding places in order that they could take possession of them. The accused tore up and threw away this plan in Rieti, where they were then living. This probably happened while the Germans were still in Rieti. CIC agents later accompanied the accused from Rome to Rieti and after a long search found the torn plan and were able to piece it together.

10. On the evidence before it the Court held, and rightly, that this destruction and throwing away of the plan put it out of the power of the defendants to use these explosives and that there was no continuing intention of using them.

11. This is an example of the applicability of the principles laid down in para.2 (c) above.

12. Certain other explosives were buried by the accused at Rieti. As to these explosives the position is different. The accused were in possession before the Allied arrival and remained in possession subsequently. They were therefore convicted of possession. The appropriate sentence naturally depended on the view taken by the Court as to the intention of the accused. The Court on the evidence adduced by the prosecution formed the view that the accused abandoned their intention to make use of these explosives for sabotage purposes. It is pertinent to remember that Rieti was occupied by the Allies on the 16th June whereas the accused were arrested in Rome on the 29th June - a period in which, if they had wished, they might have taken affirmative action with regard to the explosives. Each of the accused was nevertheless given a 7 year sentence, a very stiff one in the circumstances.

13. With regard to paragraph 4 of your letter, the case against PIANDRO Eugenio appears to have been badly given and was considered as highly unsatisfactory.

14. There were two C.I.C. agents involved, FRANCANZI and FITZGERALD, both of whom were involved in the interrogation of the accused. They were two main witnesses for the prosecution. FRANCANZI gave evidence that he had no personal knowledge of the case and that in the interrogation he had only acted as interpreter for Fitzgerald. Then followed the evidence of FITZGERALD, who testified that he explained the case to FRANCANZI who did the interrogating. As a result the Court felt that it received no proper evidence from either of them.

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15. FITZGERALD testified that he was in possession of a statement of facts and that "in order to avoid extraneous matter" he and FRANCAZZI did guide the contents of the statement". Obviously a court will give little or no weight to a confession obtained in that manner. The court was forced to the conclusion that the statement had been in a large measure dictated to FIANDRO by FRANCAZZI and that it was not a voluntary statement. 437-1

16. There was also a conflict between two other prosecution witnesses as to the statement made by the accused to the Royal Carabinieri at the time of his arrest.

17. The prosecution experienced the greatest difficulty in identifying its exhibits. The articles sought to be offered in evidence lacked identifying marks. The investigating agents had not even noted the number of the pistol and it was impossible strictly to prove that the pistol was the pistol in question. On the other hand it is understood that the accused, in testifying in his own defence, made an excellent impression on the Court and many of his denials and explanations were corroborated in varying degree by evidence given by prosecution witnesses.

18. The accused was found not guilty of the principal charges but he was found guilty of possession charges and was given a 10 years sentence which was regarded as a stiff one for possession alone.

19. This case is an example of the principle that the decision of the Court must be based on the evidence adduced before it and not on suspicion.

20. I should like to point out that the same Court on the following day in the somewhat similar case of FIANDRO Carmelo, where the facts were proved to the satisfaction of the Court beyond reasonable doubt, sentenced the accused to death.

21. As you know, in proper cases Allied Military Courts have without hesitation given death or heavy sentences when the cases have been proved beyond reasonable doubt in conformity with Anglo-Saxon principles of justice. In connection with these so called sabotage cases discussed above, it is well to bear in mind that none of the accused has ever committed any act of sabotage or made any attempt to commit any such act. I should add the respective presidents of the Courts which tried these three cases were some of the most capable and experienced legal officers in ADC.

For the Chief Commissioner.

A.S. Lisle
Brigadier.
Chief of Staff.

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