

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

785017

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10000/107/1182

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10000/109/1182

LEGAL REFORM, MILITARY TRIBUNALS
MAY - JULY 1946

20

C80

Please reply to L.F.S.C. on basis of CNA's

directs.

W 1317

22.

La Comm.

Letter of 121 submitted for signature.
This is in reply to 12. The whole
of this file refers, but final action
has been taken as a result of
m' 19 and 20. J.S. 1977

Ex Comm.

22.

Letter at 11 submitted for signature.
This is in reply to 1 2. The whole
of this file refers, but final action
has been taken as a result of
m. 19 and 20. Mif 10/7

2517

TO: EXECUTIVE COMMISSION.

Reference minute 8 it appears that although the numbers awaiting trial in the Italian Air Force compared to those in the Italian Army are considerably less, we are informed by the Italian Air Ministry that the period over which personnel await trial is anything from six months to 12 months; from about 15 to 20 cases are tried per month. It seems, therefore, that it is the general law machine of the country which needs investigation, rather than any one Service.

2. Folios 10 and 10A show the present position in respect to the Italian Air Force.

24th June, 1946.

L. P. Butler
Director, A.F.S.C.

16.

TO: EXECUTIVE COMMISSIONER:

While the number of men awaiting trial is considerably less than the Army and the majority of these are cases of desertion, nevertheless, the normal period awaiting trial is more than 45 days. It is considered that fundamental basic changes in methods of trial and review of cases is desirable.

J. P. Butler
Navy Sub-Commission.

17.

esp. Ex Comm.

Ref min 7. Navy and A.F.S.C.

agree that it is the general law machine that is at fault (see min 4 & 15). Do you wish J.C.A. to discuss with regard to having a letter sent to the 3 Service ministries on this point please?

TO: EXECUTIVE COMMISSIONER:

While the number of men awaiting trial is considerably less than the Army and the majority of these are cases of desertion, nevertheless, the normal period awaiting trial is more than 45 days. It is considered that fundamental basic changes in methods of trial and review of cases is desirable.

J. P. [Signature]
Navy Sub-Commission.

Capt. Ex Comm.

Ref memo 7. Navy and A.F.S.C.

Agree that it is the general law machine that is at fault (See memo 11 & 16). So you wish J.C.A. to discuss with regard to having a letter sent to the 3 Service ministries on this point, please?

C.S.O.

Please prepare letter in consultation with J.C.A. *4/7 11/16/7*
Let us get it off — when been at it now for 6 weeks

E.C.

12 11/16/7

11. The recent amnesty has particularly cleared the military side.
12. The affairs of the military Penal Code is one of the main features on the agenda of the Judicial Committee of the Constitution.
13. I do not see what good could be achieved by an attempt to the Service Ministers & Ministers of Justice at the present stage. 15 per cent. 11/16/7

6-
 Ex Comm:

Letter at 12 was passed to CIA
 for comment. Do you agree with his
 recommendation at m 4? M.L. 3/15
 671

Is he also like to know whether AFSEC &

Navy & C. feel the same need of reform
 in the Italian Air Force & Navy. We can then
 estimate whether it is the general law
 machine of the country which is obsolete
 or whether the Dir. of Dev. is unique.

To directas
 1. Navy
 2. Air Force
 8.

may I please have your comments
 on mine 4.

Alauntkively
 Expt. 4/6

Navy & C. feel the same need of repair in the Italian Air Force & Navy. We can then estimate whether it in the general law machine of the country which is machine in whether the Dir. of War is necessary.

To include
1. Navy
2. Air Force & C.

8.

10/1/41

may I please have your comments on mine?

Alaugh Kinsley
Capt. 4/6.

9.

Details of personnel arriving last etc. 2015
on several particulars are available from the Ministry of Marine. New Air Force & C. please read and return to Navy for comments. when our comments are in appendix

Discharge
10/1/41
ADMIRAL'S SECRETARY
T. Smith.

21

HEADQUARTERS ALLIED COMMAND

APO 794

Office of the Executive Commissioner

Ref. : 6432/21/31

20 July 1946

SUBJECT: Legal Reform - Military Tribunals.

TO : Land Forces Sub-Commission
(MILA).

2

1. Reference your L OFS dated 16 May 1946.

2. The recent Amnesty Decree has practically cleared the military
guilt, and the reform of the military Penal Code is one of the main
features on the agenda of the Judicial Committee of the Constituent.

3. In view of this it is not felt that much would be achieved by
our taking up the matter with the Service Ministers and the Minister of
Justice at the present time.

By Command of Rear Admiral Stone:

MC
Brigadier,
Executive Commissioner.

Copy to: Navy S/O
Air Forces S/O
Legal S/O

2013
20
7
2

785017

15

From: MINISTRY OF MARINE (Cabinet)
To : N.S.O. - H.Q. - A.O.
Date: 6th July 1946
Ref.: B.6107 - Encl. No.1

Personnel of the Italian Navy tried or awaiting trial from April 1945 to March 1946

In reply to the Navy Sub Commission's request a brief report is enclosed regarding Italian Naval personnel tried or awaiting trial in the period April 1945 to March 1946.

CHIEF OF CABINET

JLP/P.

see M16917 +19

2312

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PERSONNEL OF THE ITALIAN NAVY TRIED OR AWAITING TRIAL FROM APRIL 1945 to
MARCH 1946 BY THE TERRITORIAL MILITARY TRIBUNALS

Month	awaiting trial	tried
April 1945	857	113
May	1264	102
June	1174	133
July	1057	64
August	1338	110
September	1231	68
October	1271	115
November	1530	189
December	1410	137
January 1946	1280	151
February	1134	70
March	1105	58

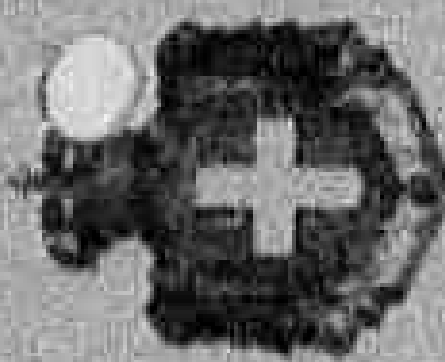
Note :

The discrepancy between the number of men awaiting trial and the cases tried is due to exceptional circumstances. The great majority of personnel awaiting trial is charged with desertion, a charge which is more or less general owing to the circumstances in which the country has been placed. The military tribunals are therefore faced by a much greater task than they would normally deal with. Since the recent introduction of amnesty and pardon, however, this exceptional situation has improved, and the Military Tribunals are in a position to carry out their duties in the regular manner.

In normal circumstances the lapse between the charge and the trial is about 45 days.

Rome, 4th July 1946

JLP/GCE/P.



Ministero della Marina

GABINETTO

-6 LUG. 1946

Roma

NAVY SUB-COMMISSION
HEADQUARTERS, A.C.

INVIATO TELEGRAMMI MARINA - ROMA

Ord. N. 3.5107 Allegato 1.-

ARGOMENTO: Militari della Marina Italiana in attesa di giudizio
e giudicati dall'Aprile 1945 al Marzo 1946.-

In relazione alle richieste fatte da codesta
S. Commissione Navale si trasmette uno statino riepilo-
gativo riguardante personale militare della Marina
Militare Italiana in attesa di giudizio e giudicato,
nel periodo Aprile 1945-Marzo 1946.-

IL CAPO DI GABINETTO
C. di V. G. MARINI

Marini

2010

12

PESONALE MILITARE DELLA MARINA MILITARE ITALIANA IN ATTESA
DI GIUDIZIO E GIUDICATO DAI TRIBUNALI MILITARI TERRITORIALI

DALL'APRILE 1945 AL MARZO 1946

mese	attesa di giudizio	giudicati
Aprile 1945	857	113
Maggio	1264	102
Giugno	1174	133
Luglio	1057	64
Agosto	1338	110
Settembre	1231	68
Ottobre	1271	115
Novembre	1530	189
Dicembre	1410	137
Gennaio 1946	1280	151
Febbraio	1134	70
Marzo	1105	58

NOTA:

La sproporzione fra il numero dei militari in attesa di giudizio ed il numero dei casi giudicati è dovuta a circostanze di carattere eccezionale. La grandissima maggioranza dei militari in attesa di giudizio risulta denunciata per il reato di diserzione, reato che si è piuttosto generalizzato in conseguenza delle circostanze nelle quali è venuto a trovarsi il paese. I tribunali militari si sono trovati pertanto in questo periodo di fronte ad un compito superiore a quello a loro normalmente affidato. Ma poiché il recente provvedimento di amnistia ed indulto ha avviato a questa situazione eccezionale, i Tribunali Militari Territoriali si trovano ora nelle condizioni di poter assolvere regolarmente i loro compiti.

mese	attesa di giudizio	giudicati
Aprile 1945	857	113
Maggio	1264	102
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In circostanze normali il ciclo che va dalla denuncia alla celebrazione del processo si aggira sui 45 giorni.

2509

Roma, 4 luglio 1946.-

TRANSLATION

From : I.A.F. "Stato Maggiore".
Office "I".

To : A.F.S.C., A.O. ROSE,
Intelligence office.

Date : 19th June, 1946.

Ref. : UI/752655/C.

REPORT SHOWING I.A.F. MILITARY PERSONNEL HELD, TRIED AND
ACCUSED

Please, find enclosed herewith copy of report showing I.A.F.
personnel held, ^{TRIED} ^{SENT} and accused to Military Tribunals or special
Assize Courts, as at 18th June, 1946.

THE CHIEF OF THE OFFICE
(Lt.Col.SANTINI)

Translated by Maria T. Chiaia.

12168 SENT
REPORT SHOWING I.A.P. MILITARY PERSONNEL HELD, TRIED AND ACCUSED TO MILITARY
TRIBUNALS OR SPECIAL ASSIZE COURTS, AS AT 18-6-46

RANKS	H E L D		Personnel Released		Proposed by the		TOTAL
	Waiting Trial	Condemned	Trialed Found: Not Guilty	On Parole Pending Trial	Commissions for Deferment to Military Tribunal		
Generals	2	-	-	-	-	2	
Senior Officers	11	3	3	4	1	22	
Junior Officers and Cadets	28	9	5	19	12	73	
WCOs	35	18	4	11	-	66	
ORs	201	166	2	24	-	393	
TOTAL	277	196	14	58	13	558	

Transl. by Maria T. Chiaia.

785017

8282-9
Subject: Legal Reform - Military Tribunals

Land Forces Sub-Comm. A.C.
(M.M.I.A.) R C M S.

A 023

16 May 1946.

MAY 16 1946

To : Executive Commissioner A.C. 

1. I wish to bring to your notice the unsatisfactory working of the Italian Military Legal machine.

2. Italian military personnel are subject to Italian Military Law which is supposed to work as follows:-

- (a) Summary awards by Commanding Officers for acts of indiscipline.
- (b) Trial by permanent and static Military Tribunals for "crimes".

3. In June 1945 it became clear that some legal reform in the Italian Army was necessary to cope with the ever increasing number of cases awaiting trial.

Accordingly various channels were explored, and the advice of the AG legal advisor was taken.

4. On 28 Sep 45 a long memorandum was sent to General BRESARI the Procuratore Militare containing concrete suggestions for the setting up of ad hoc Military Courts Martial, and suggesting a meeting for discussion of any difficulties which might arise.

5. Procuratore answered on Oct 3 and meeting was called on 9 Oct at which Procuratore raised a number of objections to Courts Martial, but agreed that reform was necessary. Finally he agreed to work out some concrete proposals which would

- (a) Leave existing Military Tribunals untouched and
- (b) Set up Regimental Courts Martial in addition.

6. His proposals were received on 10 Nov 45 and I addressed a letter

2506

To : Executive Commissioner A.C.

1. I wish to bring to your notice the unsatisfactory working of the Italian Military Legal machine.

2. Italian military personnel are subject to Italian Military Law which is supposed to work as follows:-

(a) Summary awards by Commanding Officers for acts of indiscipline.

(b) Trial by permanent and static Military Tribunals for "crimes".

3. In June 1945 it became clear that some legal reform in the Italian Army was necessary to cope with the ever increasing number of cases awaiting trial.

Accordingly various channels were explored, and the advice of the AC legal adviser was taken.

4. On 26 Sep 45 a long memorandum was sent to General BRESARI the Procuratore Militare containing concrete suggestions for the setting up of ad hoc Military Courts Martial, and suggesting a meeting for discussion of any difficulties which might arise.

5. Procuratore answered on Oct 3 and meeting was called on 9 Oct at which Procuratore raised a number of objections to Courts Martial, but agreed that reform was necessary. Finally he agreed to work out some concrete proposals which would

{
2} Leave existing Military Tribunals untouched and
3} Set up Regimental Courts Martial in addition.

2506

6. His proposals were received on 10 Nov 45 and I addressed a letter to Ministry of War on the subject on 10 Nov 45.

7. A further meeting was held on 20 Dec at which Navy Staff and Air Force were represented. Procuratore again raised many objections to setting up of Courts Martial, but no serious difficulty remained after argument, and Procuratore moved up in favour of the establishment of these Courts.

8. On 10 Jan 46 a Commission was set up to study in detail the possibility of forming Corps Tribunals and on the 15 March 46 the Draft Decree for the introduction of Corps Tribunals was passed to M.M.I.A. and M.M.I.A. approved the Decree with certain amendments.

9. On 19 April 46 Procuratore raises the whole question again by sending long extracts from a Book by one PIETRO VICO which raises all the old arguments

at M3.4 + 5.6.7
421.1.

(cont)

- 2 -

which have already been discussed, and which "raises doubts as to the soundness of Regimental Tribunals."

10. Meanwhile the number of military personnel awaiting trial has risen from 110,000 in April 1945 to 212,000 in February 1946, and the number of cases tried monthly by the Military Tribunals has fallen from 5,000 in August 1945 to 3,641 in February 1946.

The existing Italian system has proved itself quite incapable of dealing with the situation, and Gen. BOESARI's oft quoted theory that the best thing is to do nothing because matters will in time right themselves, has proved to be as false as it was thought to be the first time he expressed it.

11. As there seems to be little hope of my advice in this matter being accepted by the Procuratore Militare (although favoured by officials within the War Ministry) I should be glad of your viewer instructions in this matter.

d. Browning

Major General,
M.M.I.A.

2505

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