

Declassified E.O. 12356 Section 3.3/NND No. 785020

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July - Aug 1

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AMG COURTS

5269
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July - Aug 1945

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HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Ref: AC/14212/PS.

21 Aug 45

SUBJECT: Death Sentences on Civilians.

TO: Land Forces Sub-Commission. — A (3)

Reference your A 238 of 15 Aug 45.

Attached is a copy of AC/14212/PS of July 1945 referred to in para 1 of the letter of the 10 Aug 45 from 50 British Liaison Unit.

H. H-S. Hartley
H. H-S. HARTLEY, Col.,
CSO CA Section.

Leave this for the present
WJ

5273

HEADQUARTERS ALLIED COMMISSION
Civil Affairs Section
APO 394

Tel : 47037-580

July 1945

AC/14212/35

SUBJECT : Administration of Death Sentences.

TO : R.O's Emilia, Liguria, Lombardia, Piemonte,
Venezia, Naples, Ancona, Livorno
(attention of RCO's)
L.O's Sardinia, Sicily, Bari, Legal SVC
Ex. Comm. C.O. Ministry of Interior
(for information)

1. The following instructions are forwarded in order that you may be aware of the procedure to be adopted in AMG territory, if an Italian civil execution has to be carried out.

2. Under Italian law, where a sentence of death is imposed by an Italian court, the execution of the death sentence is regulated by the Code of Criminal Procedure, Art. 580. The Procureur General of the Court of Appeal concerned is instructed by the Minister of Justice to carry out the execution and he is solely responsible for the necessary arrangements.

3. The actual physical execution is carried out by one or other of the following forces :

Carabinieri
Agents of Public Security
Guardia di Finanza
Italian Army

It is the practice that each force is called on in turn to perform the duty.

4. In AMG territory, the Procureur General will normally receive his instructions through AMG channels and not from the Ministry of Justice. Apart from this the normal procedure will be employed and the Procureur General will be solely responsible for the execution.

Death sentence is imposed by an AMG

3272

1. The following instructions are forwarded in order that you may be aware of the procedure to be adopted in AMG territory, if an Italian civil execution has to be carried out.

2. Under Italian law, where a sentence of death is imposed by an Italian court, the execution of the death sentence is regulated by the Code of Criminal Procedure, Art. 580. The Procurettore Generale of the Court of Appeal concerned is instructed by the Minister of Justice to carry out the execution and he is solely responsible for the necessary arrangements.

3. The actual physical execution is carried out by one or other of the following forces:

Carabinieri
Agents of Public Security
Guardia di Finanza
Italian Army

It is the practice that each force is called on in turn to perform the duty.

4. In AMG territory, the Procurettore General will normally receive his instructions through AMG channels and not from the Minister of Justice. Apart from this the normal procedure will be employed and the Procurettore General will be solely responsible for the execution.

5. When the death sentence is imposed by an AMG Court and confirmed by the Chief Commissioner, similar arrangements will be made for execution, except in security cases, where a British or American military firing party will be made available.

6. The Questore, acting under the orders of the Prefect, details the execution party and makes the local arrangements. The duties of the Officers of AMG are to ensure as far as possible, that public order and safety are not endangered, specially in cases where the accused has been sentenced by an AMG Court.

7. R. 14/11/51
G.A. 10/11/51, Trig.
G. 11/11/51

Declassified E.O. 12356 Section 3.3/NND No. 785020

Subject : Death Sentences on Civilians.

Land Forces Sub Comm. A.C.
M.M.I.A.
R O M E.
A 238

15 Aug 45.

To : A.C. CIV. AFFAIRS SUB COMM.

1. Attached copy of a letter (G/7/9 dated 10 Aug 45) received from the No 50 British Liaison Unit with BRUILLI Combat Group is passed to you as it brings up a question of principle concerning the whole Italian Army.
2. In order that appropriate action may be taken will you please furnish this Mission with a copy of the letter referred to in para 1.

PH *PH*
Major General,
M.M.I.A.

/vml

5271

Subject:- Execution of Death Sentence.

URGENT AND SECRET.

C-3 FIFTH ARMY.
C-5 FIFTH ARMY.

A 238.

50 British Liaison Unit.

6/7/9.

10 Aug 45.

Copy to:- Land Forces Sub Comm AD
(MIA).

Public Security Offr.,
REMIANO Prov.

1. A request has recently been received by one of the Battalion Commanders of "TRIULI" ICG to provide a firing party to carry out the death sentence on a civilian. This request was made by the AMI Public Security Officer of REMIANO Province and is based on a letter from HQ AG, Civil Affairs Section (APO 394) dated July 45. The letter is addressed to all Regional Commissioners and paragraph 3 states that the execution of a civilian will be carried out by one or other of the following:-

Carabinieri.
Agenti di Pubblica Sicurezza.
Guardie di Finanze.
Italian Army.

and suggests that these be employed in turn.

2. It is most strongly represented that this ICG is not called upon for such duty. As has been represented on numerous occasions to MIA, the popularity of the Gruppi di Combattimenti is by no means assured at present. This is particularly true in the NORTH of ITALY where the Partisans appear to have received most of the glory and the Gruppi di Combattimenti all the kicks. If Gruppi di Combattimenti are called upon to provide a firing squad for an execution it is considered that the effect on the civilian population may be extremely serious and furthermore the attitude of the soldiers of the Gruppi in such a matter is by no means certain.
3. Would you please endeavour to have this order rescinded. Meanwhile, pending direct orders from higher authority this ICG will NOT provide firing squads for the execution of civilians. It is pointed out in this connection that information only came to the HQ of TRIULI ICG via a Battalion HQ which in turn received it from the Public Security Officer of REMIANO Province.

M. S. M. S.

to carry out the death sentence on a civilian. This request was made by the AM2 Public Security Officer of BELLUNO Province and is based on a letter from HQ AG, Civil Affairs Section (APO 394.) dated July 45. The letter is addressed to all Regional Commissioners and paragraph 3 states that the execution of a civilian will be carried out by one or other of the following:-

Carabinieri.
Agenti di Pubblica Sicurezza.
Guardie di Finanza.
Italian Army.

and suggests that these be employed in turn.

2. It is most strongly represented that this ICG is not called upon for such duty. As has been represented on numerous occasions to MEIA, the popularity of the Gruppi di Combattimenti is by no means assured at present. This is particularly true in the NORTH of ITALY where the Partisans appear to have received most of the glory and the Gruppi di Combattimenti all the kicks. If Gruppi di Combattimenti are called upon to provide a firing squad for an execution it is considered that the effect on the civilian population may be extremely serious and furthermore the attitude of the soldiers of the Gruppi in such a matter is by no means certain.

3. Would you please endeavour to have this order rescinded. Meanwhile, pending direct orders from higher authority this ICG will NOT provide firing squads for the execution of civilians. It is pointed out in this connection that information only came to the HQ of PRUHI ICG via a Battalion HQ which in turn received it from the Public Security Officer of BELLUNO Province.

FFIE/MIS.

M. S. M. S.

f Lt. Col.
GS.

24. I think this is not our business, unless
you wish AC to put it to AFHQ for a

general ruling

W.D.
13 Aug

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AO/4086/8/L.

8 August 1945.

SUBJECT : Case of DI MARTINO and Cap. Magg. FAZZARI Rocco.

TO : ~~Procuratore Generale Militare.~~

With reference to your note of 1st August, enclosing copy of your letter of 3rd June, this Sub-Commission understands the position to be as follows :-

- (a) MMIA Administrative Order No. 18 was never meant to exclude the jurisdiction of AMG Courts over Italian military personnel. It simply made it clear that although for all other administrative purposes Italian military personnel fall under Allied military administration, the Italian Military Courts were still competent to try them for criminal offences.
- (b) Insofar as Italian Government Territory is concerned RDL 31 of 11 Feb 44 and more so RDL 112 of 13 April 44 (Art. 1) make it abundantly clear that AMG Courts retain full jurisdiction over Italian citizens, whether military personnel or not, who commit an offence against Allied interests.
- (c) As you are aware, these decrees, passed at the request of the Allied authorities, and forming part of the terms of restoration of territory to Italian administration, can only be abrogated, amended or modified by subsequent legislation approved by Allied authorities and not by administrative order.
- (d) It is obvious that the rights of the Allied Courts are not less in AMG territory than in restored territory, indeed under the Laws and Usages of War on Land (Art. 43) and accepted international practice they clearly have full jurisdiction to try Italian citizens.
- (e) Furthermore so far as concerns sentences which have actually been passed by AMG Courts on Italian military personnel in AMG territory you will remember that by Art. 2 of RDL 31 such sentences are recognized as valid without restriction.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

Copy
to 2nd Force
(MMIA)

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