

ACC

10000/142/9

SPECIAL COURTS FOR
MAY 1944

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SPECIAL COURTS FOR DEALING WITH PEOPLE AWAITING TRIAL
MAY 1944

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394
ADMINISTRATIVE SECTION

ACC/4001/7/L

13 Apr 44

SUBJECT : Courts for dealing with persons awaiting trial.

TO : Chief Commissioner.

- 1 The attached correspondence is forwarded for your information.
- 2 It is understood that the Vice President Admin Section concurs in the proposals of the CLO contained in paras 5 and 8.

R.R.
R.F. CRIPPS,
Lt. Colonel,
CDO Admin Sec.

HEAD HEADQUARTERS
ALLIED COMMISSION COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4001/7/L

/rlp.
10 May 1944.

SUBJECT : Courts for dealing with persons awaiting trial.

TO : Vice President, Administrative Section.

1. I have considered carefully the suggestion made by Brigadier Lash in his letter dated the 8th of May which you handed to me yesterday afternoon and which I return herewith.
2. In my opinion, there are grave objections both legal and practical to the suggestion put forth by Brigadier Lash.
3. In the first place I think that the setting up of an entirely new type of court in occupied territory is probably a breach of Article 43 of the Hague Convention. The matter is not free from doubt, but the better opinion in my view is that if the occupying power desires to supplement the courts of the country, he should set up his own military courts (as has in fact of course been done) and not attempt to create an entirely new court of the occupied territory.
4. Secondly, I think Brigadier Lash has overlooked several great practical difficulties in appointing lay magistrates. The system of having unpaid lay magistrates has been in force in England since before the time of Queen Elizabeth, but even after 300 years of this system it is still thought necessary that the lay magistrates should have a competent and technically trained clerk of court to advise them on matters of law. The Italians having never recognised a form of lay magistrate and the selection of and training of such laymen and of the clerk of the court presents in itself a problem which it would take months if not years to solve before such courts could in any way become effective. I would point out to you in this connection that the supervision of Allied officers as suggested would be quite useless, for such proposed Summary Courts would administer Italian law and Allied officers would not be competent to train or supervise the lay magistrates in their duties.
5. If the matter is to be dealt with drastically and a solution found within the next six weeks, I have the following suggestion to offer; (on the footing that the imposition of AM in Gardinia and setting up of Allied Military Courts there is out of the question), namely:
A review, by a mixed commission of Allied and Italian representatives, of the cases of those in prison awaiting trial and the release

(24)

without further trial of those who have been imprisoned for a long time and who have in fact already served in prison the length of sentence which they would have been likely to have received after trial. This method has been employed already in Regions I and II in isolated cases where jails were over-flowing.

6. The gravity of the situation in Sardinia though serious can be overestimated. It must be remembered that no courts sat for nearly two years until opened by Major Palmieri in April, but they are now beginning to function and the following steps have already been taken to deal with the situation:

7. I promised to Brigadier Carr at the last monthly meeting, twelve additional judges, but this figure will shortly be exceeded because the Italian Ministry has promoted temporarily eleven auditori (young judges) to higher positions, thereby releasing eleven pretori who can return to their seats in the smaller towns. Furthermore, I have this morning, as a result of considerable pressure brought to bear on the Minister at a meeting yesterday morning, now received the names of eight judges to go over to Sardinia in a few days and I am asking Brigadier Lash to provide a special aeroplane for that purpose. This increase to nineteen in the staff of the civil courts should greatly alleviate the position.

8. One of the great difficulties is the large number of soldiers and others who are awaiting trial before the Military Tribunal in Sardinia. There is a very great shortage of judges here. I discussed this matter with General Traina, the Procuratore Generale Militare who came over from Catani yesterday. If Major Palmieri and General Traina could be sent at the earliest possible moment to Algiers to inspect the Prisoner of War Camps in North Africa, I feel convinced that they will be able to find a number of prisoners there who could be repatriated to serve as members of the military tribunals. A preliminary list of twenty-four judges, thought to be imprisoned in North Africa, was submitted some time ago, but so far nothing has occurred. I should be grateful if you will take this up with the Chief Commissioner as a matter of urgency as I am sure that the provision of judges from North Africa will go a long way to cure the present position in Sardinia.

Frederick Rhymer
 HERALD E. RHYMER,
 Colonel,
 Chief Legal Officer.

1 Encl.

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394

40617 (1A)

Regional Control and Military Government Section.

Ref:

8th May 1944.

SUBJECT: Courts for dealing with persons awaiting trial.

TO : Vice President, Adm Section.

1. You will remember that at your meeting on May 5th I put forward a proposal that in order to overcome the present serious delay in dealing with arrested persons awaiting trial, we should constitute some kind of tribunal or court on which laymen could sit with judicial powers to deal with minor cases.

2. I am aware that this is an innovation in Italian procedure but some drastic measures are necessary and the institution of summary courts with specially selected lay magistrates appears to be a sensible and speedy means of preventing what was, or is, a scandal. I realise that it will take some time before the Italian Government can be persuaded to make such an innovation in liberated territory. I suggest, therefore, that experiments be made in AMG territory with the least possible delay so that in the event of success, which I anticipate, the Italian Government can be shown that in practice such a procedure is possible.

3. Moreover, the problem of dealing with an increasing amount of crime affects the Allied Military Government equally with the Italian Government. There are over 30 Allied judges working in Region III. Courts such as I have suggested could be set up under the supervision of some of these judges. The experiment should be made in my opinion and in my experience can succeed.

MSL/JG.


Brigadier,
Executive Commissioner.

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