

ACC

10000/142/26

UNLAWFUL
JAN. - AU

10000/142/26

UNLAWFUL PRACTICES OF DEFENDING COUNSELS IN AMG COURTS
JAN. - AUG. 1944

FILE CLOSED : 29 AUGUST 1944



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'1

IL COMMISSARIO FEDERALE

✓
4002/5

(9A)

HEADQUARTERS
SOUTHERN REGION, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

L/3042

29 Aug 44

Subject: Unlawful Practices.

To : Chief Legal Officer, Legal Sub-Commission, A.C.C., Rome.

8A

1. Reference is made to your letter ACC/4002/5/L, 26 August 1944 relative to the above subject.

2. I have this day forwarded a copy of said letter to all Legal Officers operating in the Southern Region.

L. F. Dawson By *E. T. A.*
L.F. DAWSON,
Lt.Col., G.L.,
Regional Legal Officer.

ETK/pv

LEGAL SUBCOMMISSION	
CLO	
DCLO	
→ Chief Counsel	<i>JP</i>
CJO	
Italian Sub-Commission	
G.L. RG	

14

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4002/5/L.

26 August 1944. /rip.

SUBJECT : Unlawful Practices.

TO : Acting Regional Legal Officer (THREE Regional Commissioners),
Region III.

1. Reference your letter 23 August 1944, L-3042 and enclosures.
2. At the time of the report of the Italian Commissioner of Public Safety (24 Jan 44) it was permissible under the provisions of Proclamation No. 4, Article IV, Section 2 for laymen to appear before Allied Military Courts to represent the accused. Subsequently, however, that privilege was restricted to lawyers only. (Rules of Procedure for Allied Military Courts, para 3b).
3. It follows that Allied Military Courts have ample power to meet the situation complained of, and to enforce such power, if need be, in appropriate cases by contempt proceedings.
4. It would accordingly seem unnecessary further to legislate on the subject in so far as Allied Military Courts are concerned since the right to commit as for contempt is a most far reaching and powerful weapon.
5. If deemed necessary, you could by appropriate measures, direct the attention of your judicial officers to the above.
6. We are assured by our Italian associates that adequate remedies already exist in the Italian administration of justice to cope with the problem in so far as Italian courts are concerned.

MARC J. GROSSMAN,
Lt. Col.,
Chief Counsel,
for Acting Chief Legal Officer.

4002/5

(7A)

HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

L-3042.

23 August 1944

SUBJECT: Unlawful Practices.

TO : Legal Sub-Commission, H.Q. A.C.C.

1. The Italian Commissioner of Public Safety stationed at the Castelcapuano Court House in Naples, has resubmitted a report heretofore made by him on 24 January 1944.

2. The said Commissioner contends that many persons have been falsely representing themselves to be lawyers or lawyer's secretaries or agents. This practice has seriously interfered with the administration of justice both in the Allied Military Government Courts and the Italian Courts. It is suggested that the present punishment provided by law for such illegal activities is inadequate and therefore ineffective.

3. The above mentioned report is therefore forwarded to you for your consideration.

For the Regional Commissioner:

*G.A. Bamlet*G.A. BAMLET
Major, G.L.

Actg. Reg. Legal Officer

CCB/ga →

*See file attached
particularly (1A)*

EL/fb

(7B)

24/1/44

MEMORANDUM for Major Dr. PALMIERI of the A.M.G. and
for information to Major HOLT, Chief of
A.M.G. Legal Office at Castelcapuano.

Lt. Kazen, as President of the 1st Summary Military Court, sitting at Castel Capuano, stated it was not necessary the assistance of the lawyers as defenders in the behalf of the accused, so that their defense could be exercised by whatever person who had the trust of the accused.

Such a policy was also followed further by the 2nd and 3rd Summary Courts; but Prof. Avv. Claudio Ferrà, the legal representative of the lawyers and procurators of Naples, informed the M. Questura that he had obtained from the competent office of the A.M.G. that only the lawyers and procurators, regularly inscribed in the list, might act as defenders for the accused, and this, in order to break down the nest of speculations which was established around the above mentioned Courts.

Consequently the Commissariato of P.S. Castelcapuano, served verbally an intimation to those improvised defenders to abstain from accepting the defence, and among those persons ascertain De Rosa Guglielmo.

However, De Rosa demonstrated to have been authorized to do so, by the President of the 1st Court, notwithstanding the above said provision, and the Commissariato of P.S., by a letter dated 6 January 1944 addressed to Capt. Madil, Chief of the Secretary office of the Summary Courts asked whether the defence above said should be still assumed only by lawyers and procurators inscribed in the list or by whatever person; but until today no reply has been received.

In addition to this category of persons, generally composed by pseudo-secretaries of lawyers, there are also the businessmen, i.e. persons who forestall the cases and who turn over the same to those lawyers who give them the best reward, so that these men succeed even to collect the half of the lawyers honorarium. They develop their activity in the neighbourhood of the Tribunale, in the rooms and blind alley of Castelcapuano.

Such forestallers can only be denounced, according to the provisions in force, to the ordinary judicial authority for breach to Art. 123 law of P.S. as "brokers without license", without being arrested, and with a maximum penalty of 100 lire fine, which is a little thing in comparison of their sumptuous profit.

To break down such an inconvenience we think it would be advisable that the A.M.G. issued an order under which these forestallers of business could be denounced, under arrest, before the Summary Courts, and sentenced to a fine of 500 lire, to be converted forthwith into imprisonment, when the payment of such fine would not be effected forthwith.

There are then other businessmen who develop their activity in the requesting and delivering of penal certificates in behalf of persons who being unable to leave their occupations, ^{and who} trust them with these business, on compensation.

Where you would tolerate the last category of businessmen it could be fixed an indemnity of 10 lire ^{per} each document.

transl. by mo/.

C O P I A

24/1/1944

PRO-AMERICA

Per Maggiore Dott. Pallavicini del Governo Militare Alleato e per conoscenza al Sig. Maggiore Capitano Capo dell'Ufficio Legale del G.M.A. in Castelcapuano.

Istituiti in Castelcapuano la I^a Corte Sommaria del G.M.A., presieduta dal Gen. Kessel, questi sostituiti che non era indispensabile l'opera degli avv. vi nella difesa degli imputati e pertanto la difesa stessa poteva essere sostenuta da qualunque persona di fiducia dell'imputato.

Tale norma venne successivamente applicata anche dalla 2^a e 3^a Corte Sommaria, benché il Prof. avv. Claudio Neri, legale rappresentante degli avvocati e procuratori di Napoli, comunicò alla V. Questura che a strictezza in base degli arresti che si era formata intorno alle competenze Corti aveva ottenuto dall'Ufficio competente del G.M.A. che la difesa degli imputati fosse sostenuta esclusivamente da avvocati e procuratori iscritti nell'albo.

A seguito di ciò il Commissario di P.S. Castelcapuano, di cui ver- balmente quei difensori improvvisati ed assenti dall'assumere difesa e fra di essi tal De Rosa Guglielmo.

Avendo però il De Rosa dimostrato di essere legato a tanto autorizza- to dal Presidente della Prima Corte, valendo la disposizione il cui in- nerui è corno, il suddetto Commissario di P.S. con lettera in data 5 gennaio u.s. diretta al Capitano Sig. Mario Capo della Segreteria del- le Corti Sommarie chiese sapere, per norma dell'Ufficio, se la difesa di cui sopra è come doveva essere ancora sostenuta solamente da avvo- cati e procuratori iscritti all'albo o da qualunque altra persona, ma al- no ad oggi nessuna risposta è pervenuta.

Oltre tale categoria di persone, generalmente formate da pseudosogra- vari di avvocati, vi sono poi gli affaristi, cioè accaparratori di cause che portano a questo o a quello avvocato che meglio li compense ad arri- vato a percepire sino alle metà dell'onorario ebbene l'avvocato. Essi esplicano la loro attività aggirandosi nei pressi del Tribunale, negli ambulatori e negli angoli di Castelcapuano.

Detti accaparratori per tale azione e per le vicenti disposizioni, possono essere volentieri sennò, a piede libero, all'autorità giudizi- aria ordinaria per contravvenzione all'art. 123 legge P.S. "Mediocr- vi senza licenza", la cui penalità va ad un massimo di lire 100 di ar- menda, ben poco cosa di fronte al lucro guastato che essi ritraggono da tale attività.

A stroncare tale inconveniente si pensa che sarebbe opportuno che

(70)

ha seguito di più in CO...
balmente quei difensori improvvisati ed enterati all'assunzione difesa
e fin di così del De Rosa Guglielmo.

Avevo però il De Rosa dimostrato di essere stato a tanto autorizza-
to dal Presidente della Prima Corte, allegando la disposizione di cui in-
nanzi è cenno, il suddetto Commissariato di P.S., con lettera in data
5 gennaio u.s. diretta al Capitano Sig. Medici Capo della Segreteria del-
le Corti Sommerie e delle sapersi, per nome dell'Ufficio, se la difesa
di cui sopra è sanno doveva essere ancora sostenuta solamente da avvoca-
ti e procuratori iscritti all'albo o da qualunque altra persona; ma si
ne ad oggi nessuna risposta è pervenuta.

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che portano a questo o a quello avvocato che meglio li compiacce ed arri-
vano a percepire sino alla metà dell'entrata che riceve l'avvocato.
Essi applicano la loro attività aggirandosi nei pressi del Tribunale,
negli studi e negli appartamenti di Cristoforini.

Detti accaparratori per tale azione e per le vigenti disposizioni,
possono essere solamente denunciati, a piede libero, all'Autorità giudi-
ziaria ordinaria per contravvenzione all'art. 123 legge P.S. "mediante
il senno illecito", la cui pena è ve ad un massimo di lire 100 di ar-
resto, ben poca cosa di fronte ai tanti guadagni che essi ritraggono da
tale attività.

A stroncare tale inconveniente si pensa che sarebbe opportuno che
il G.M.A. emanasse ordine in base al quale gli accaparratori di affari
potrebbero essere denunciati in istato di arresto alle Corti S.M. e
infliggendo ad essi una multa di lire 500, con multa immediatamente
in carcere qualora non venisse effettuato il pagamento immediato della
multa.

Vi sono poi altri affaristi i quali prestano la loro opera nella ri-
e iusti, e conseguono di vertiginosi renditi per conto di persone che non
potendo sostenere la loro causa, si affidano ad essi per affidare oc-
casione.

Nel caso si volesse tollerare quest'ultima categoria di affaristi si
dovrebbe stabilire l'entità del compenso in lire 10 per ogni documento.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4002/5/L

/gb.
17 Aug 44.

SUBJECT: Communication of decisions on Review.

TO : Regional Legal Officer, Region III.

1. I have, this morning, had a visit by one AVV. Guido CASAGRANDE of Naples, who assured me that the day before yesterday he called at your H.Q. to ask the result of petitions for Review in three cases in which he was professionally engaged. He saw Capt. KERR who referred him to your girl clerk. This clerk told him that in none of these cases had a Decision on Review had been received. This was untrue as in all 3 cases the decision on review had been received at your H. . and receipt thereof acknowledged by your H. . to us.

The following are the particulars:-

NAME OF CASE	DATE RECORD RECEIVED	DATE REVIEWED	RECORD DISPATCHED	DECISION ACK'D/ BY H.Q. REG 3
CURCIO GIORGIO				
ADRAINO UMBERTO	26 June	26 June	27 June	28 June
D'URSO ANTONIO	16 July	31 July	1 Aug	4 Aug
et al				
TODISCO CARMINI	23 July	10 Aug	10 Aug	14 Aug.
et al				

CURCIO GIORGIO				
ADRAINO UMBERTO	26 June	26 June	27 June	28 June
D'URSO ANTONIO	16 July	31 July	1 Aug	4 Aug
et al				
TODISCO CARMINI	23 July	10 Aug	10 Aug	14 Aug.
et al				

2. Obviously, if this is going on, the avvocati of Naples must be forming an impression that we are unduly dilatory: and therefore I bring it to your attention.

- 2 -

3. In conversation, the same Avvocato made the general remark that, in Naples, it is very difficult for an Avvocato to find out the result of a Petition for Review, the Decision being only communicated to the prisoner. I do not know if there is any justification for this comment; if you think that there is, perhaps you could devise some scheme for listing decisions on review in some place where they could be seen by Avvocati.

1C
RICHARD H. WILDER
Colonel, OAC
Acting Chief Legal Officer.

Copy to 4083/1/L File.

8

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission

/jpl

11 July 44

AGC/4002/5

Subject: Visits by Avvocati to clients awaiting trial.

To : His Excellency the Minister of Grace and Justice.

1. I have the honour to refer to your excellency's recent letter, addressed to Lt. Col. G.G. HANNAFORD, in which you drew to our attention the fact that certain avvocati had met with difficulty in seeing clients held in custody pending trial before Allied Military Courts.

2. I would like to take this opportunity of saying that it is much regretted that these difficulties should have arisen: they arose through some misunderstanding and not through any order of the Allied Military Government.

3. I enclose for your information a directive which has been issued: this particular directive applies only to Rome, where the difficulties arose. You will notice that para 1 (b) lays it down expressly that all persons charged with violation of Allied Proclamations and orders have the right to see and consult, between specified hours, legal representatives of their own choice.

4. It is very much hoped that there will be no ^{repetition} of these difficulties in the future.

K
I.G.H. CAMPBELL
Lt. Colonel
Chief Judicial Officer
for Chief Legal Officer.

Enc: 1 Directive.

4002/5
HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

Recd 1400 hrs
11/5 July
44

8 July 1944

SUBJECT : Rights and privileges of persons charged with
offences in occupied territory.

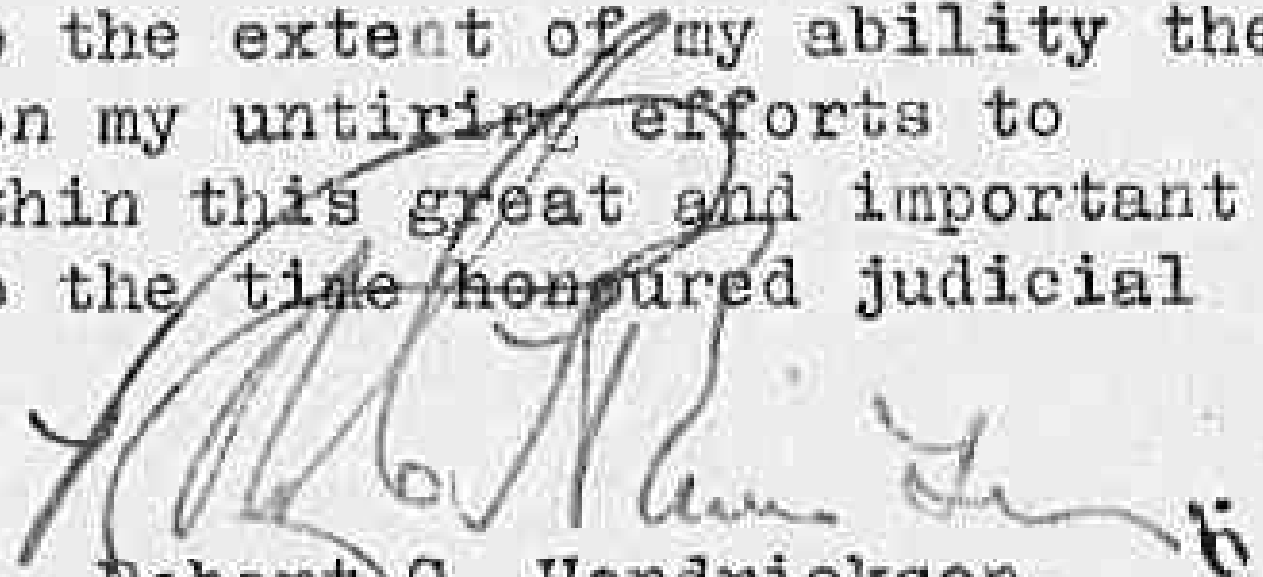
TO : Chief Judicial Officer,
Legal Sub Commission, A.C.C.
(Lt. Col. Campbell).

1. Pursuant to my promise this afternoon, I enclose herewith a copy of instructions to all Arresting and Prison Officers pertaining to the above subject.

2. Actually this draft was prepared by me about a week ago, but owing to the fact that I felt it my duty to first submit it to the Public Safety Division and the Regional Commissioner before I ordered it to be printed and distributed, it was not possible to get the final draft into the hands of the printer before July 6.

3. In the light of the communication recently received by your office from the State Department, you will probably be interested to know that while this office was still operating under the Fifth Army, I prepared a similar but much less specific directive to the same effect, and that no use was made of it owing largely to the succession of changes in the Regional Commissioner's Office. I mention the preparation of the earlier directive, merely to indicate that at all times since the occupation of Rome, this Office has been mindful of the importance of the subject in question.

4. You may rest assured that to the extent of my ability the Allied Control Commission may count on my untiring efforts to maintain that standard of justice within this great and important City, which will do lasting credit to the time-honored judicial systems of our respective nations.


Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/PA.

enclosure:

1 copy of instructions to all arresting and prison Officers.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
A.P.O. 394

6 July 1944

SUBJECT : Instructions to all Arresting and Prison Officers.

1. In conformity with the traditions of British and American justice, all persons arrested and charged with violations of Allied Military Government proclamations, notices and orders, will be accorded the following rights:

- a to see members of their families at stated periods to be established by the Prison Authorities on a basis which will not interfere with the efficient operation of the prison;
- b) to see and consult, between 1000 hours and 1200 hours in the morning and 1400 and 1700 hours in the afternoon, with legal representatives of their own choosing when in possession of proper credentials;
- c to have all the rights and privileges defined and declared in article 10 of the consolidated instructions for Allied Military Courts.

2. In accordance with the well established principles of Military occupation, persons arrested, and charged with violation of the Italian law, will be accorded the right and privileges which the law affords; briefly stated those rights are:

- a to receive a copy of the accusation made against him, providing he wishes it;
- b to be defended during the process by a lawyer;
- c to ask for a period of time sufficient to prepare his defence;
- d to bring before the Tribunal, he himself, witnesses for his defence or to ask that the witnesses be cited by the Tribunal;

- d) to provide proofs in his favour without, however, being obliged to provide them;
- f) to obtain a translation of written and oral deeds relating to the procedure, when otherwise he would, not be able to understand them;
- g) to receive visits in prison from his family or relations following permission from the Tribunal,
- h) to have a cell on payment if possible, and to receive, if possible, meals from the outside, from when that it is agreed upon by the Tribunal.

3. In no event shall any persons, except for security reasons, remain under arrest and in confinement for a period longer than 7 days, unless an arrest report and statement of charges has been furnished to the Regional Legal Officer, Rome Region, within that period.

4. Nothing herein contained shall be construed to apply to persons held on strictly security charges.

By order of Col. POLETTI.

John D. Ames
Lt.Col. G.S.C.
Executive Officer.

ADVANCE : DEPARTING
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

1301

(3A)

4002/5
ACG/R/38/L

9 July 44

Subject: Visits by Avvocati to clients awaiting trial.

To : Lt. Col. G.C. Mansford, Officer i/c Ital. Branch.

1. Referring to the letter from the Ministry of Grace and Justice, which you handed to me to-day, stating that difficulties had been experienced by Avvocati who wished to see their clients in prison.

2. Will you be good enough to express to the Ministry our regrets that these difficulties should have arisen. I am sure that it will be appreciated that these difficulties are in no way intentional.

3. I have spoken to H. Q. FONS Region. They were already aware of these difficulties and they have ready for almost immediate publication a directive which, it is hoped, will avoid similar difficulties in future.

4. I will receive a copy of this directive as soon as it is issued and will then forward to the Ministry the information asked for.

1C
I. G. H. CAMPBELL
Lt. Colonel
Chief Judicial Officer.

ADVANCE HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

9
ACC/R/38/L.

/rlp.
8 July 1944.

SUBJECT : Right of Avvocati to see Clients while in Prison.

TO : Regional Legal Officer (THRU: Regional Commissioner), Rome Region.

1. It has been officially reported to the Legal Sub-Commission by the Ministry of Grace and Justice that avvocati instructed to represent persons held for trial before Allied Military Courts are being denied the right to see their clients while in prison.

2. It appears that 4 or 5 cases have already come to the notice of the Ministry: in particular the case of Avvocataessa Bassino, who has been trying for days to see her client Morelli Armando, already in prison 20 days.

3. It is clear that this situation comes about not from any intention, but probably through some misunderstanding; but it is creating an unfortunate impression.

4. As a matter of urgency, please arrange for the issue of a directive on the subject; a copy thereof should be sent to the Ministry of Grace and Justice, to the Council of Lawyers, to all Prison Directors and given publicity in the Palace of Justice.

RICHARD H. WILMER,
Colonel, CAC.
Acting Chief Legal Officer.

COPY

302

4 Jan. 44

1A

MG/4901/2/L

SUBJECT: Re Representation of clients before Allied Military Courts, and the activities of certain undesirable persons in and about the premises of the Tribunale at Naples.

1. I have made several visits to the Tribunale at Naples situated at the Via del Tribunale. This is a large building in which sessions of the Allied Military Courts are held, in addition to sessions of certain parts of the Italian Civil Court System.

2. Proclamation Number 4, Article IV, Section 2 provides:

"RIGHTS OF DEFENDANTS. Every defendant before an Allied Military Court is entitled:

(b) To consult a lawyer before the trial and have a lawyer or other representative of his own choosing defend him at the trial, except that the Chief Legal Officer or any Court may at any time prohibit any lawyer or other person from appearing in any Court. In any case the Court may at the request of the defendant or otherwise, assign to him an officer to assist in the defense of the case."

3. The application of this provision of Article IV, Proclamation 4 has resulted in a situation which I consider to be scandalous and which I believe requires rigorous and urgent attention. I have observed groups of persons in the hallways and in parts of the courtyard leading to the Allied Military Court chambers, who are trafficking in business coming before these courts. I witnessed one incident which involved a conversation between a person who apparently was not a lawyer and an old peasant woman who came to seek information about a case. The person who approached this woman made a statement concerning his ability to represent her interests with the Allies; he said that the lawyers were all fascists and therefore were forbidden to appear before Allied Military Courts and that he could be sure of giving her the proper assistance. They moved away from me so that I could not hear any more of the conversation. I subsequently observed the woman hand this man money.

I have observed a number of persons walking about the corridors who have no proper business in the premises and who are there in order to inflict their presence upon and to sell their services to credulous citizens who are called to appear before the courts and who have proper cause to be there. I have noticed a number of women among these hangers on.

the persons who use

(b) To consult a lawyer before the trial, except representative of his own choosing defend him at the trial, except that the Chief Legal Officer or any Court may at any time prohibit any lawyer or other person from appearing in any Court. In any case the Court may at the request of the defendant or otherwise, assign to him an officer to assist in the defense of the case."

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4. No control whatever appears to be exercised over the persons who use the court premises. I have observed the same group of people there at different times of the day. Apparently no attempt is being made to protect the Allied Military Courts from activities of these undesirable persons. The persons referred to appear frequently as trial counsel before the Allied Military Courts. Their gross ineptness is a discredit to the Court and a disservice to the accused.

5. It is suggested that steps be taken to exercise some control and supervision over persons frequenting the Tribunale and in particular, the premises adjacent to the Allied Military Courts. It is also suggested that immediate consideration be given to the formulation of instructions to Judicial Officers, sitting on Allied Military Courts in Naples, to use great care before permitting persons who are not lawyers to appear regularly before them as representatives of accused persons.

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