

ACC

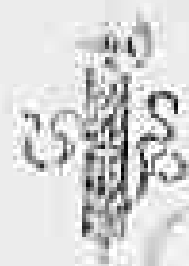
10000/142/42

POSSESSION OF I
FORCES
MAR. - JULY 194

10000/142/42

POSSESSION OF ITALIAN CIVILIANS OF PROPERTY OF THE ALLIED
FORCES
MAR. - JULY 1945

FILE CLOSED 31 July 1945



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URBE

IL COMMISSARIO FEDERALE

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

10A

AC/4002/16/L.

/rlp.
31 July 1945.

SUBJECT : Purchase of goods from R.F.I.

TO : AFHQ, G-5.

1. Reference is made to your G-5:015 of 26 July 1945.
2. According to AMG Proclamations it is an offence, punishable by imprisonment for life and an unlimited fine, for any person "wrongfully" either to "receive or have in his possession" property of the Allied Forces or of any member thereof. If the value of the property exceeds Lire 10,000 a death sentence may be imposed, although no death sentence has up to now been imposed for such a charge.
3. The following paragraph from a directive issued by this Commission explains the construction which this Commission attached to the word "wrongfully." You will see that substantially it agrees with paragraph 2 of the letter from I District.

"5. (a) Articles from PX stores, NAAFI or the officers' shop are obtained by purchase and title to articles so obtained passes to the purchaser. It is true that the purchaser obtains the articles at a reduced price, frequently without paying duty, that he is prohibited by regulations and orders from disposing of any such articles particularly to civilians and that the articles are supplied for the sole use of the purchaser. The effect of this is to render a purchaser liable to disciplinary action if he resells articles purchased; it does not preclude him from passing title to such articles. If therefore civilians receive from Allied troops any such articles by way of gift, purchase or exchange, the civilians obtain a good title to the articles, provided that the Allied troops themselves were in proper possession of the articles.

(b) At the same time, trading by Italian civilians in these articles must be prevented. While it is possible that civilians in possession of large stocks of articles may have accumulated their stocks gradually and by legal means, either directly from troops or indirectly from other civilians who had themselves had a good title, it is more probable that such stocks have been obtained as a result of an initial theft of the goods in question. Such cases will therefore be treated with the gravest suspicion and Allied Military Courts must not easily be persuaded to accept the stories put forward by the persons involved."
4. By way of explanation of sub-paragraph (b) above, it should be added that AMG Courts are directed to treat all possession as *prima facie* wrongful so that the onus of proof of rightful possession is on the accused.
5. AMG Courts cannot confiscate property in such cases unless they convict the accused of wrongful possession. If therefore a conviction cannot be had, the property cannot be confiscated by the court and should not be impounded by the C.M.P.

6. In Italian Government territory, where of course law is administered under Italian law and not under AM proclamations, the position is not quite so unsatisfactory as stated in 1 District letter, since Art. 166 of the CPM, allied with Art. 15 of the CPMG, provides that:

"Whoever acquires or for whatever reason retains articles of clothing, equipment or armaments of (Allied) military origin or other articles destined for (Allied) military use unless they are marked with a mark or sign of rejection or unless he can show that such articles have legitimately ceased to belong to (Allied) military service, shall be punished..."

7. It is appreciated that there are many articles of E.F.I. origin which are not covered by this article, in which case the law is as stated by 1 District.

8. In all cases, confiscation is possible when, but only when, a conviction is obtained.

9. In the specific case of cigarettes and tobacco, it should be possible to prevent illegal trade by the strict application of Legge Organica sul Monopolio dei Salii e dei Tabacchi N. 67 of 21 Jan 1929, Arts. 1-82 (4) 92 et seq which make it a criminal offence to buy or sell tobacco or its products except such as have passed through the State monopoly agencies. The goods can be confiscated.

10. On the subject of any possible amendment of the Italian law it should be pointed out:-

(a) It is difficult to expect the Italian law to provide a greater protection than AM Proclamations;

(b) Any proposed amendment would go far beyond what the British, American or Italian legislations have been prepared to contemplate as necessary for their civilian population up to the present time;

(c) The Italian Government may justifiably object to disciplining British troops by punishing Italian civilians in Italian courts;

(d) Any amendment is most difficult to frame since it would presumably make "possession" of an E.F.I. article an absolute offence, including e.g., one cigarette given by a soldier to his girl friend, or an article, such as a fountain pen, which has no distinguishing mark but which in fact came from E.F.I. sources.

(e) The Italian Government, for many obvious reasons, is far stronger and in a far stronger position than heretofore, and may well refuse to consider any amendment.

For the Chief Commissioner:

W. E. PERKINS,
Colonel,
Chief Legal Advisor.

13

CLA

GA

I entirely agree with the various points expressed in your opinion.

Para 166 makes the mere fact of acquiring or being in possession an offence, but it only relates to clothing & equipment distinct from military use.

This coupled with the action you suggested in para. 7 would cover many of the articles of E.F.C. origin, but would leave all such things as foodstuffs unsupplied for.

The amendment desired would make it an offence to be in possession of any article that came from E.F.I. The few reasons you give in para 10 should definitely deter AFHQ from taking any further step to amend the Italian Law.

Amc.

17

4002/16
 LEGAL S/c 9846 347
 CONFIDENTIAL
 8A

ALLIED FORCE HEADQUARTERS
 G-5 Section
 APO 512

FTH/jre

G-5: 015

26 July 1945

SUBJECT: Purchase of Goods from EPI

TO : Headquarters, Allied Commission,
 (Attn: Legal Sub-Commission), APO 394

1. It will be appreciated if you will comment upon the inclosed letter from Headquarters No. 1 District to this Headquarters from the point of view of the possibility of criminal proceedings against civilians found in possession of EPI goods in circumstances in which it is not possible to prove that the goods were stolen or otherwise illegally acquired.

2. Will you please also state your views regarding confiscation of such goods.

For the Assistant Chief of Staff, G-5:

Gen. Puller
for W. H. R. S.
 W. T. HAYMOND, JR.
 Colonel, G.S.C.
 Legal Adviser

Incl:
 Ltr 10/11/18/4 dtd 18
 Jul 45 fr HQ no.1 Dist.

LEGAL SUB-COMMISSION

CLO

DCLO

Chief Counsel

CJO

Italian Section

CL RKS

28 JUL 1945

CONFIDENTIAL

C O P Y

SUBJECT:- Purchase of Goods from EFICONFIDENTIAL1D/11/19/A

18 Jul 45

AFHQ, G-1(Br)

Reference GRO 886/44, which prohibits the disposal of EFI goods to civilians.

1. When goods are purchased from EFI by military personnel and good legal title thereto passes to the purchaser, the effect of this is that a soldier who is in proper possession of any EFI goods and who passes them to a civilian by way of gift, sale or exchange, commits an offence under military law but is able to pass a good title to these goods and the civilian who receives them does not commit any offence.

2. As a result, ANG and ITALIAN Courts can not convict a civilian who is found to be in possession of EFI articles unless there is evidence that the goods were stolen or otherwise improperly obtained in such circumstances as not to pass a good title thereto. It would also appear to be improper for Provost to impound such articles from civilians unless such evidence is available.

3. In view of the prevalence of thefts of and trafficking in EFI goods, it is considered most important that a means should exist of dealing adequately with civilians who are found in possession thereof as once it becomes apparent that they are not being successfully prosecuted, such offences are bound to increase in number. It is accordingly requested that you consider the desirability of calling for a revision of the ITALIAN law in this respect.

10

(sd) X X X X Col

for Major-General,
Commanding,
No 1 District.

CMF

Copy to:- Q
Fro
O IC JAG Branch

HEADQUARTERS ALLIED COMMISSION

AFC 394

OFFICE AFFAIRS SECTION

/rnp.

24th April 1945.

LC/4002/16/L.

SUBJECT : Possession by Italian civilians of property of the Allied Forces.

TO : Regional Commissioners
 UMBRIA-MARCHE, TOSCANA, EMILIA, LIIGURIA, PIEMONTE, LOMBARDIA and
 VENETIA Regions; SICILIA, 5th and 6th Armies; HQ IV Corps;
 Provincial Commissioner (Attn: Senior Legal Officer), MILANO Command.

1. Under the AFD provisions an offence is committed by any Italian civilian who wrongfully either receives or has in his possession any property of the Allied Forces or of any member thereof.

2. In addition to the purely personal and private property of individual members of the Allied Forces such property may include:

- a. WD equipment and necessities
- b. WD rations and similar articles
- c. Articles purchased at PX stores, NAFI and the Officers' Shop.

3. Neither officers nor soldiers have any title to articles of WD equipment or necessities in their possession and commit an offence if they sell, exchange or give away any of such articles. Under Italian law, it is likewise an offence for any Italian soldier to dispose of Italian Army equipment by any of these methods. This fact must be presumed to be, and is generally, known to Italian civilians. Mere possession therefore by an Italian civilian of any item of Allied WD equipment or necessities raises the presumption that such possession is wrongful, and the Italian does not rebut that presumption by proving that possession was obtained by purchase or gift or in exchange for goods or services.

4. (a) It is an offence for any Allied officer or soldier to sell, exchange or give away any portion of WD rations in which likewise they have no title. There are certain conditions under which, in Italian law, an Italian soldier may dispose of his rations but Italian civilians are in general aware that this is not the case in the Allied Armies. Moreover, in past cases notices are posted to inform the population of this fact. Nevertheless, it is well known that Allied troops frequently exchange items of rations for other food articles of a possibly more palatable nature. This practice is frequently encouraged, and indeed encouraged in, by Allied officers.

(b) In these circumstances the strict legal view would seem to be that Italian civilians who exchange food for WD rations commit an offence. Nevertheless, Italian civilians who exchange food for WD rations are punished for transac-

7A

2. Whether officers or soldiers have any title to articles of WD equipment or necessities in their possession and commit an offense if they sell, exchange or give away any of such articles. Under its law, it is likewise an offense for any Italian soldier to dispose of Italian Army equipment by any of these methods. This fact must be presumed to be, and is generally, known to Italian civilians. Were possession therefore by an Italian civilian of any item of Allied WD equipment or necessities raises the presumption that such possession is wrongful, and the Italian does not rebut that presumption by proving that possession was obtained by purchase or gift or in exchange for goods or services.

4. (a) It is an offense for any Allied officer or soldier to sell, barter, exchange or give away any portion of WD rations in which likewise they have no title. There are certain conditions under which, in Italian law, an Italian soldier may dispose of his rations but Italian civilians are in general aware that this is not the case in the Allied armies. Moreover, in most cases officers are posted to inform the population of this fact. Nevertheless, it is well known that Allied troops frequently exchange items of rations for other food articles of a possibly more palatable nature. This practice is frequently encouraged, and indeed indulged in, by Allied officers.

(b) In these circumstances the strict legal view would seem to be that Italian civilians who exchange food for WD rations commit an offense. Nevertheless, it is flagrantly unjust that the civilians should be punished for transactions conducted in good faith and that, having so traded their eggs, chickens or other foodstuffs, they should be punished by fine or imprisonment or even confiscation of the WD rations. It is not the function of the Allied Military Courts to enforce discipline in Allied armies by the indirect method of punishing Italian civilians.

(c) While therefore possession by an Italian civilian of WD rations is prima facie wrongful Allied Military Courts will not convict in cases where the defence establishes that the rations were exchanged on a reasonable basis for foodstuffs supplied by the nation.

(d) Where rations are obtained for services rendered and not for foodstuffs supplied, the same legal considerations apply. In such cases, however, it is generally true that the Italian civilian is well aware that troops are not permitted to trade rations upon such terms and he is accordingly unlikely to have acted in good faith, at least to the same extent, in making the exchange. Courts, therefore, should scrutinize the good faith of such transactions with care before

HEADQUARTERS EMILIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

WHL/nec.
3 April 1945.

REF : RIX/LE/212/408.

SUBJECT: AMG Poster -- Forli'.

TO : Headquarters, Allied Commission, APO 394.
(For Deputy Chief Legal Advisor).

1. Reference your AC/4002/16/L, 23 March 1945, enclosed is copy of letter of 30 March 1945 from SCAO AMG 8th Army, which is self explanatory.

2. There is no need for the poster to be reissued as there is an Army poster covering the same general subject.

For the Regional Commissioner:

W. H. Levitt
WILLIAM H. LEVIT
Lt. Col., J.A.G.D.
Regional Legal Officer.

1 Incl: as above.



LEGAL SUBCOMMISSION	
CLO	
DELO	<i>WHL</i>
Chief Counsel	
CID	
Italian Section	
CL RKS	
8 APR 1945	

5 APR 1945

COPY

Tel. Ext: 93

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
EIGHTH ARMY

Subject: Poster.

OA/73.

30 March 1945.

Lt-Col. W. H. Levit,
Senior Legal Officer,
AMG Rear(Admin) H.Q.
RICCIONE.

1. Reference your RIX/LE/212/367 of 28 March, 45.
2. Exhibition of this poster without authority has been taken up with the officer concerned, and arrangements made for any copies now exhibited, to be immediately withdrawn.

S/J. H. Giffin Lt. Col.
for Air Commodore,
Officer Commanding,
H.Q., A.M.G., EIGHTH ARMY.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/pa.
23 Mar 45.

AC/1002/16/L.

SUBJECT : AEC Poster 'KRII', in connection with Possession of
armed lands by that nation.
TO : Regional Commissioner, ASIA Region.
(Attn: Regional Legal Officer)

1. A letter has been received at this Headquarters from ASHQ calling attention to the publication, in 'KRII', of the AEC poster enclosed herewith.

2. There appears to be considerable confusion in the use of the term "war crime" and it is often employed indiscriminately by text writers. Under correct modern usage, however, an offence such as that referred to in the poster does not constitute a war crime.

3. On instructions from ASHQ the poster will be withdrawn. If it is desired to reissue it the word "offence" will be substituted for the term "war crime".

By command of Rear Admiral STONE :

W. E. WIGGINS,
Colonel,
Deputy Chief Legal Advisor.

Copy to : ASHQ, G-5, (G-5 000.5-1 of 19 Mar 1945 refers).

4002116
ALLIED CONTROL COMMISSION
INTER-OFFICE MEMORANDUM

4A

SUBJECT:

FILE No.

TO : Legal Sub Commission

21 March 1945

The attached letter from AFHQ (G-5.000.5-1) dated 19 March is forwarded alongwith poster referred to for your attention.

Plutarchus May
C.A. Section

LEGAL SUB COMMISSION	
CIO	
→ DDO	
Chief Counsel	
CIO	
Italian Section	
CL RKS	
22 MAR 1945	

5

21 MAR 1945

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

HYA/cjm

4B

G-5: 000.5-1

19 March 1945

SUBJECT: AMG Poster FORLI.

TO : Headquarters, Allied Commission, APO 394.

1. The attached poster, said to be exhibited in FORLI, has been passed to us by G-1 (B) who draw attention to the inaccuracy of the second line of the text.

2. The English text is certainly wrong as the offence referred to is not a "war crime" but it may be that the words "REATO DI GUERRA" in the Italian text are not misleading.

3. The effect of the poster may be good but it is considered that it should be amended.

For the Asst. Chief of Staff, G-5:

H. Y. Anderson
H. Y. ANDERSON
Lt. Col., R.A.

Incl:
as above.

Copy to: G-1 B
DPM



ALLIED COMMISSION	
CO	
ECLO	
Chief of Staff	
CIO	
Italian Section	
CL RICS	
20 MAR 1945	



HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

IGHC/pa.
14 Mar 45.

AC/407/41A

SUBJECT : Title to PX - NAIFI Articles.

TO : Regional Commissioner, TOSCANA Region.
(for Regional Legal Officer)

1. Reference RVIII/19/3008 of 8 March 1945. (1st Ind to letter from PIO Siena).

2. The question raised by the above is under consideration and it is hoped to issue a considered opinion on the subject soon.

By command of Rear Admiral STONE :

W. E. BARRIS,
Colonel,
Deputy Chief Legal Advisor.

3

40274 4002116

Regal

ALLIED MILITARY GOVERNMENT
PROVINCE of SIENA



(1A)

Subject:

To:

Ref:

Date

PAGE 2

As regards the offence of being in wrongful possession (Proc. I. art. IV. 11 and art. V. 27), this should be confined to property as therein defined, which has been obtained by another in circumstances which amount to a felony or misdemeanour. The prosecution naturally has the onus of proving this.

Your ruling would be appreciated.



PROVINCIAL LEGAL OFFICER.

R/14/3008

1st Ind.
Headquarters, Toscana Region, AMG - 8 March 45.
TO: LEGAL SUB-COMMISSION, Headquarters AC.

1. It has been determined that the question raised are of import to all regions, and a ruling thereon should be made by the Chief Judicial Officer for the guidance of all concerned.

2. In our opinion NAAFI and U.S. Post Exchange property are quasi-governmental property admitted to the occupied territory as private property admitted to the laws of war and force.

be confined to property as therein defined, which has been obtained by another in circumstances which amount to a felony or misdemeanor. The prosecution naturally has the onus of proving this.

Your ruling would be appreciated.

M. Mayhew

PROVINCIAL LEGAL OFFICER.

R/W/14/3008

1st Ind.
Headquarters, Toscana Region, AMG - 8 March 45.
TO: LEGAL SUB-COMMISSION, Headquarters AC.

1. It has been determined that the question raised are of import to all regions, and a ruling thereon should be made by the Chief Judicial Officer for the guidance of all concerned.
2. In our opinion NAAFI and U.S. Post Exchange property are quasi-governmental property. They pass to the buyers, not as private property admitted to the occupied territory thru the avenues of its internal law, but by reason of the laws of war and force of arms. It might well be questioned if a so-called purchaser gets more than a license to use the same under military Orders. We do not attempt, however, to answer the question raised.

For the Regional Commissioner:

John K. Weber
JOHN K. WEBER,
Colonel, Infantry
Regional Legal Officer.

HEADQUARTERS
12 MAR 1945
A. C.

12 MAR 1945

ALLIED MILITARY GOVERNMENT
 PROVINCE of SIENA

Subject: Allied Military Courts.

Ref: SI/6/38.

To:

Date 7 March 1945.

REG TOSCANA REGION.

The fact that the term "military equipment or war-material belonging to the Allied Forces" (Proc. I. art. V. sec. 17) is nowhere defined, gives rise to many difficulties in practice.

To my mind, in so far as British (or US) property is concerned, it should be confined to articles, material etc. purchased by the Army and distributed through the usual military channels e.g. Ordnance, RAEC.

This means that articles purchased by the soldier from NAAPF are excluded. As I understand it, NAAPF is a semi-military, profit-making concern which is recognized by the Army, and is the authorized organization for purchasing and selling certain articles to the troops.

The property in these articles passes to the purchaser, and it cannot in my opinion be argued that it is, or ever was, Military Property. Consequently a civilian receiving such articles either by gift or purchase is committing no offence.

It may be argued that soldiers are not allowed to sell such articles. But this does not alter the position as far as civilians are concerned, as the offence concerns the acquisition of military property.

material belonging to the Allied Forces" (Proc. I. art. V. sec. 37)

is nowhere defined, gives rise to many difficulties in practice.

To my mind, in so far as British (or WD) property is concerned, it should be confined to articles, material etc. purchased by the Army and distributed through the usual military channels e.g. Ordnance, RASC.

This means that articles purchased by the soldier from MAATI are excluded. As I understand it, MAATI is a semi-military, profit-making concern which is recognised by the Army, and is the authorized organization for purchasing and selling certain articles to the troops.

The property in these articles passes to the purchaser, and it cannot in my opinion be argued that it is, or ever was, Military Property. Consequently a civilian receiving such articles either by gift or purchase is committing no offence.

It may be argued that soldiers are not allowed to sell such articles. But this does not alter the position as far as civilians are concerned, as the offence concerns the acquisition of Military property.

As regards PX goods, these are supplied through the U.S. Quartermaster, but the position is the same. The property passes to the soldier, and it is thus not Allied Military property. The local XII.A.E. JAG agrees with this view.

P.J.O.

Amn/19/3008/2496

1129