

ACC

10000/142/46

HARBOR
MAR. 194

10000/142/46

HARBORING OF ALLIED DESERTERS BY ITALIANS
MAR. 1944 - AUG. 1945

NO: Legal Sub-Commission ✓ (6)

1 Will you consider the points made about the sentences of persons found harbouring deserters and put up your recommendation.

2 My own inclination is to ignore it but I am afraid that this is not possible.

1 AUG 45.

L. D. B. M. L. 1/61
 L. D. B. M. L. 1/61
 VP CA Section.

CAS.

1. I am not clear whether the desecration referred to are Italian or allied personnel, altho' the reference to MIA indicates the former.
2. The Italian Govt is fully alive to the requirements of the situation, indeed at the beginning of this year a special decree was passed making it a crime, offence to harbour allied deserters.
3. I personally know of at least 1 case in Calabria where a sentence of 15 months was imposed in this type of offence. 36
4. There may well be reasons which are perfectly sound for the delay in the hearing of the case, even if they don't appear to 3 Dis. Most of these cases occur in country districts where courts are difficult and "inconvenient" with prolonged and difficult.
5. I am quite prepared to write to the M. of S. however as I have

- personnel, also the equipment.
2. The Italian Govt is fully alive to the requirements of the situation. Indeed at the beginning of this year a special decree was passed making it a serious offence to harbor allied deserters.
 3. I personally know of at least 1 case in Calabria where a sentence of 14 months was imposed in this type of offence. 38
 4. There may well be regions which are perfectly sound for the delay in the hearing of the case, even if they don't appear to. Most of these cases occur in country districts where courts are difficult and "inconvenient" both for the judges and the lawyers as shown.
 5. I am quite prepared to write to the M. of S. however as shown repeatedly, but apparently ineffectively, to the effect, General reports of this nature are useless. At the best they lead to a Ministerial Circular which travels by fast trajectory to the 38.

2 Aug. 45.

*W. D. S. / Ca
C.A.*

CAS.

Reply to 7A and 7B necessary for signature, if approved. Waldman
10 NOV 1947 DECA.

Kish

Land Force Subcommittee.

Folios 7A, 7B, 8A, 9A. The proposed legislation amounts to an emergency amendment of the Military Penal Code. It should therefore be initiated by the Minister of War - though he would be collaborating with the Minister of Justice. There is no objection to the proposed decree - it is either declaratory of the existing (but obscure) Italian law or it is curing a manifest lacuna. Can you take up the question with the Min. of War, and get him to frame a short, simple decree. If you like we can then carry on with any

technical work involved.

1 Dec. 47

Waldman
DECA.

Legal Subcommittee.

Request has been placed. Waldman
The Minister for War as indicated in 10 above. Waldman
Letter sent you.
3 Dec 47
R. J. McManis
DECA.

a short, simple decree.
technical work involved.

1 Dec. 44

(3)

Legal Subcommittee.

Request has been placed. 10/30/44

Request has been placed in 10 above. 10/30/44

The Minister for War is indicated in 10 above. 10/30/44

Letter sent you.

3 present

Legal Subcommittee

Ref 17A: It is understood from Province General Military that draft decree referred to has been in the hands of the War Minister for some time. It is suggested that you should request Corps Executive in the Minister himself to expedite the matter. Please inform us of the result in order that we may advise 95 AF42.

22 Jan 45.

C. S. Hammond
please
reply

LEGAL SUB-COMMISSION

The decree is (being) to be discussed at next Council of Ministers for final approval. It is not yet known whether Ministry of Grace and Justice will agree. 10/30/44

MMFA.

25.1.44

26A

HEADQUARTERS ARMYED COMMISSION
AFS 301
CIVIL AFFAIRS SECTION

Ref: AC/400/L.

3 August 45

SUBJECT: Italian Police.

TO: AFHQ, G-5 Section.

Reference your G-5: 014.12 dated 30 Jul 45.

- 1 While the facts in this letter may very well be true and will certainly be brought to the attention of Land Forces Sub-Commission (M.M.I.A.) so far as they are of interest, it must be pointed out that it is quite impossible to approach the Italian Government on such very brief evidence as is supplied.
- 2 If No. 3 District can give chapter and verse there would be some hope of obtaining results from the Government but if put to them in this way I cannot believe that any notice will be taken of the report.

FOR THE CHIEF COMMISSIONER:

G.R. Upson
G.R. UPSON, Brig.,
VP CA Section.

36

40040
✓C.A. ¹⁹³
(25A)ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

FGAP/pc

30 July 1945

G-5: OLA.12

SUBJECT : Italian Police

1 - AGO. 1945

TO : Headquarters, Allied Commission, APO 394

1. The attached copy of a note from DAG, G-1 (Br) of this Headquarters dated 26 July is forwarded for your information.
2. The facts in para 1 are not in dispute, and it is understood that the Italian Government are fully aware of the situation and its implications.
3. The question of the lightness of sentences for deserters would appear, however, to be one which might well be taken up with the Italian Government, and you will no doubt inform MHA of the situation.

For the Assistant Chief of Staff, G-5:

F.G.A. PARSONS
Colonel, G.S.Encl:
as above.

SUB COMMISSION	
CLO	
DCLO	
Chief Counsel	
CIO	
Italian Section	
CL RYS	AUG 1945

1256

SUBJECT: Italian Police.

ALLIED FORCE HEADQUARTERS
G-1(Br)/6406/A-3
26 Jul 45

G-5

1. The following is an extract from the report of PL(Br) for the month of Jun 45:-

"As is well known the civil police in ITALY are greatly handicapped by lack of personnel (not all of the best quality), poor communications, poor pay and lack of transport. Taking these considerations into account the force has on the whole co-operated to the best of their ability. It has, however, resulted in the Corps of Military Police accepting heavy additional responsibilities which under normal circumstances would be undertaken by the Civil Police force of the country. Provest resources will now progressively diminish with a proportionate decrease in the scope of their present activities. The criminal tendencies of a large section of the civil population has been well demonstrated in the past, and the recent outbreak of serious crime in SOUTHERN ITALY is an indication of what conditions will obtain with a lessening degree of control.

It is therefore considered that apart from the grave effect of civil disorder on the military commitments in this country it is in Italy's own interests that the civil police is placed on the soundest possible footing without delay. This would mean priority in the supply of first class personnel, equipment and clothing, and the institution of better conditions of service. In addition to being a well trained and equipped force the morale of its members should be of the highest quality."

2. It is considered that this is a matter which should be represented to the Italian Government without delay and that it should be stressed most forcibly to them that unless action is taken it seems likely that they will be unable to cope with a wave of crime or of serious civil disorder as the Military Police, resources become progressively smaller.
3. It is also reported by No. 3 District that the results of action

32

258

in the Corps of Military Police accepting heavy additional responsibilities which under normal circumstances would be undertaken by the Civil Police Force of the country. Provost resources will now progressively diminish with a proportionate decrease in the scope of their present activities. The criminal tendencies of a large section of the civil population has been well demonstrated in the past, and the recent outbreak of serious crime in SOUTHERN ITALY is an indication of what conditions will obtain with a lessening degree of control.

It is therefore considered that apart from the grave effect of civil disorder on the military commitments in this country it is in Italy's own interests that the civil police is placed on the soundest possible footing without delay. This would mean priority in the supply of first class personnel, equipment and clothing, and the institution of better conditions of service. In addition to being a well trained and equipped force the morale of its members should be of the highest quality."

32

2. It is considered that this is a matter which should be represented to the Italian Government without delay and that it should be stressed most forcibly to them that unless action is taken it seems likely that they will be unable to cope with a wave of crime or of serious civil disorder as the Military Police, resources become progressively smaller.
3. It is also reported by No. 3 District that the results of action taken against civilians for a breach of the Italian decrees against harbouring deserters was so far proved disappointing. Charges preferred as long ago as War 45 have been postponed for what appear to be trivial reasons, and sentences so far known to have been awarded range from fines of 500 lire to 2000 lire. In only one case known to No. 3 District has a term of imprisonment been awarded, the period being four months.

This matter is being taken up with the local Italian authorities by No. 3 District, but it is also considered that representations in the matter to the Italian Government would be timely. The deserters now at large are principally men often with criminal records in civil life who are living by gang activities and black market transactions. It is in the interests of the Italian Government, as well as our own interests, that these men should be rounded up immediately, but unless Italian civilians can be dissuaded from harbouring them the task of tracing and arresting them is made infinitely more difficult.

/4. May we.....

1256

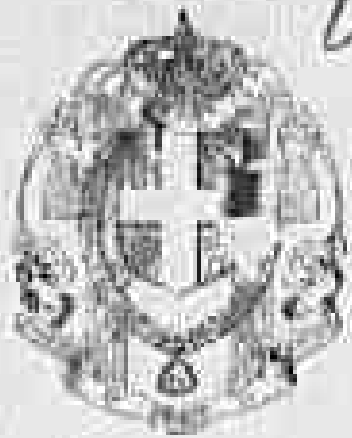
2.

f. May we please be informed of any action which is being taken in the matters represented above.

/s/ J. Napier
/t/ J.L. C. NAPIER, Brigadier,
ADAGP),
Major General,
DAG., G-1(Br).

BP/jaml.

Copy to : PM(Br)


 fn 4004 ✓
MINISTERO DI GRAZIA E GIUSTIZIA

 Direzione Generale degli Affari Penali (24A)
 delle Grazie della Statistica e del Casellario

Ufficio I° A.P.

Roma, 30 aprile 1945

Prot. N° 131.138/735/245

Risposta al f. N° A.C. 4004/I.

del

 ALLA COMMISSIONE ALLEATA
 Sottocommissione Legale

OGGETTO: Istanza per revisione

 f. N° 131.138/735/245
 W. E. multum allato

R. G. M. A.

e per conoscenza

 ALL'UFFICIO DI COLLEGAMENTO MINISTERO
 CABINETTO

Preso visione della nota sopra distinta si assicu-
 ra che questo Ministero provvederà con ogni sollecitudine
 ad effettuare le comunicazioni che saranno richieste da
 codesta On.le Sottocommissione.

 per il MINISTRO
 (A. Spellanzeni)

LEGAT. SUB. C. 1945

GLO

DOLO

Chief. Guardia

C.D.

Italia

Ca. Italia

3 MAY 1945

31

23A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

EM/pa.
1 Mar 45.

AC/4002/L.

SUBJECT : Decree on Harboring of Allied Deserters etc.
TO : ANHQ, C-5 . (Attn: Maj Anderson)

Enclosed herewith as requested are 2 copies of Gazzetta Ufficiale
No. 25 of 27 February 1945 containing the above decree.

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

Incls.: 2 copies of G.U. No. 25.

23

1:

(22A)

Memorandum

2 Telephone conversation (Maj Anderson -
S/Sgt Stein); C-5 was informed that
the names on laybourns of Allied
deserters will appear in tomorrow's
Gazette of India no 24.

28

26 Feb 45.

fz

File
HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

(21A)
GG/mt.
2 February 1945.

AG/4004/L

SUBJECT : Harboursing of Allied Deserters and
Absentees by Italians.

TO : AFHQ. G-5.

Further to our letter AG/4004/L of 26 January 1945, please find enclosed the decree dealing with the harboursing of allied deserters by Italian citizens. It was signed by the Lieutenant General of the Realm yesterday and will be published in one of next weeks Gazzette Ufficiali.

W. B. BIRRENS,
Colonel,
Deputy Chief Legal Advisor.

Incl: Decree.

27

21

20A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
26 January 1945.

AC/4004/L.

SUBJECT : Harboring of Allied Deserters and Absentees by Italians.
TO : AFHQ, G-5.

1. Ref your G-5; 251.1 of 20 Jan 45 it is regretted that the decree was not presented to the Council of Ministers on 12 Jan 45.

2. The information contained in this sub-commission's letter of 3 Jan 45 was obtained from the Procuratore Generale Militare. Unfortunately the decree had to pass through several ministries before presentation to the Council and had not been cleared by all these ministries by the 12th Jan.

3. Since that date, the Minister of Justice has been ill.

4. An assurance has, however, been received from the Ministries of War and Justice that the decree is now ready and will be presented next Wednesday, 31 January.

5. After the decree is passed, publication will be expedited as much as possible.

For the Chief Commissioner,

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

26

4004
please file file
this memo
in the file
on handling
of Allied deserters

Memo.

19A

Telephone conversation (Chairman -
 Spataro (President of the Council):
 The draft bill on harboring
 allied deserters will be brought
 to next Council if the Ministry
 of War feels it is; he will
 also try to press Min. of War.

25 Jan.

PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DI ROMA

AMMINISTRAZIONE

ESERCIZIO 194 - 194

N. 1233

Scric di quietanza a

per la somma di L.

(lire

e cent.

)

per altrettante versate a questa Cassa per

come da ordine di incasso N.

del

di questa Federazione

Roma, li

194 - A.

IL CASSIERE

Bollo

Chief Bowell told me that the Ministry of Justice has sent
 to the Ministry of War on the 25 Jan. the approval
 on the draft decree concerning the harboring of
 desertors of allied forces. The Ministry of Justice
 has expressed to the Ministry of War the urgency of the
 matter and has asked to set on it as soon as possible.

25 Jan. 1945

Dir

AMMINISTRAZIONE

FEDERAZIONE DI ROMA

PARTITO FASCISTA REPUBBLICANO

PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DI ROMA

AMMINISTRAZIONE

ESERCIZIO 194 - 194

N. 2189

Serve di quietanza a

per la somma di L. (lire

cent.)

per altrettante versate a questa Cassa per

come da ordine di incasso N.

del

di questa Federazione

Roma li

194 - A.

IL CASSIERE

Dello

Col. Lombardi, Chief of Cabinet of the Minister of War, has promised to inquire with the office regarding two on the position of the draft decree concerning the "harboring" of deserters of the allied forces and to all possible to have it submitted for approval to the next Council of Ministers. He will let us know something on the subject.

26 Jan. 1945 D.H.

Col. Lombardi has telephoned later on assuring that the decree will be submitted to the next Cabinet meeting.

26 Jan. 1945

D.H.

PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DI ROMA

AMMINISTRAZIONE

ESERCIZIO 194 - 194

N. 2138

Serve di quietanza a

per la somma di L. (lire e cent.)

per altrettante versate a questa Cassa per

come da ordine di incasso N. del di questa Federazione

Roma li 194 - A.

CASSIERE

Hollo

U R E N T

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

18A
GCH/pa.
25 Jan 45.

AC/4004/L.

SUBJECT : Harboring of Allied Deserters and Absentees by
Italians.

TO : H.E. The Minister of Pardon and Justice.

1. This decree has been prepared by the Ministry of War and has been approved in principle by Your Excellency.

2. In view of the fact that the Allied High Command is insisting that it should be promulgated at once, could Your Excellency be good enough to give your formal consent for its immediate publication in the Gazzetta Ufficiale as soon as passed by the Council of Ministers.

3. It is understood that the Council of Ministers will give its decision this morning.

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

13
2

4004

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

Legal 8411
HYA/fb

17A

G-5: 251.1.

20 January 1945.

SUBJECT: Harboring of Allied Deserters and Absentees by Italians.

TO: Headquarters, Allied Commission, APO 394.

21 JAN 1945

1. Reference your AC/4004/L dated 3 January 1945.
2. Please report whether the Council of Ministers accepted the decree which was to be presented to them on or before 12 January 1945 and, if so, the date when this will be published in the Gazzette Ufficiale.

LEGAL SUB-COMMISSION

For the Acting Assistant Chief of Staff, G-5:

CIO

CCIO

Council

C

Secretary

H. Y. ANDERSON,
Major.

21

16A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
3 January 1945.

AC/4004/L.

SUBJECT : Harboring of Allied Deserters.

TO : AFHQ. G-5.

1. Reference your G-5, 251.1 of the 1st January 1945, the decree in question has been prepared, will be presented to the Council of Ministers on or before the 12th of January and should be published in the Gazzetta Ufficiale shortly after that date.

2. In view of the Government crisis, it was not possible to have the decree prepared or passed in shorter time and it was intended to delay replying to your letter until the decree had in fact been passed and become law.

For the Chief Commissioner,

W. R. BETHENS.
Colonel,
Deputy Chief Legal Advisor.

20

4004
✓Legal S. C.
6993

ISA

ALLIED FORCE HEADQUARTERS
G-5 SECTION
APO 512

HYA/ahs

G-5: 251.1

1 January 1945

SUBJECT: Harboring of Allied Deserters and Absentees by Italians.

TO : Headquarters, Allied Commission, APO 394.

QA (see also 1001)

1. Reference our letter G-5: 251.1 dated 29 November 1944.
2. Information is requested as to when a reply may be expected to above mentioned letter.

For the Acting Assistant Chief of Staff, G-5:

H. Y. Anderson
H. Y. ANDERSON,
Major

2 JAN 1945

LEGAL SUB-COMMISSION	
GLO	
CCLO	
Chief Counsel	
1st	
2nd	
3rd	
4th	
5th	
6th	
7th	
8th	
9th	
10th	

8 JAN 1945

19

File
HEADQUARTERS, ALLIED COMMISSION
APO 994
LEGAL SUB-COMMISSION

14A
19 December 1944.

13/4004/44

SUBJECT: Harboring of Allied Deserters.

TO: Regional Commissioner (Attn. Regional
Legal Officer), Sicilia Region.

1. Reference your RLE 013.03/AM of 16 December 1944 the opinion which you received from your then Regional Legal Officer is still the position in Italian law. No case has yet occurred in Italy when the opinion there given has been put to the test.

2. In view of this uncertainty the Italian Government is now preparing a decree which will make it a specific offence for civilians to harbour Allied deserters or absentees. This decree should appear very shortly.

By command of Rear Admiral STONE.

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

18

4004

ALLIED COMMISSION
VICE REGION HEADQUARTERS
APO 394

(13A)

FILE / ELE 013.03/233

16th December 1944

SUBJECT : Harboursing of Allied Deserters.

TO : A.C. HEADQUARTERS
Attention Legal Sub-Commission.

I have recently been approached by 204 Sub-Area on this matter and should be grateful for your opinion as to whether it is an offence under existing Italian Penal law for Italian civilians to harbour Allied deserters.

This matter first arose some months ago when I was a P.I.O. and I append an extract from a letter I then received from the P.I.O.:-

As
paras
2.
3
of
Folio
(4A)

- 'As the Italian law on this point is obscure the question was referred to the Minister of Justice for clarification.
- 'Whilst the opinion expressed is that in Italian law there is no provision making the harbouring of military deserters a specific crime, it is considered that as desertion constitutes what is termed a "continuing offence" therefore whoever harbours a deserter is aiding and abetting its commission (Article 110 P.O.).
- 'The harbouring of a deserter from the Allied Forces would be brought within the gambit of military offences under Italian law by the application of Article 15 of the Military Penal Code which is interpreted to assimilate co-belligerents.

Since the above occurred I was under the impression that there had been either a Decree Law or some quite definite proceeding dealing with the matter but I have been unable to trace anything in this office. It also occurs to me that any such cases must have been dealt with on the mainland.

I should therefore be obliged for your comments and assistance.

I have not approached the local Courts for an opinion as I felt it better to first have a ruling from you or the Minister of Justice if necessary.

For the Regional Commissioner :

E. K. Matthews C.M.

E.K. MATTHEWS, Capt.
Regional Legal Officer.

cls.

13/12/44

12A

10

IN MATTERS UNITED COMMISSION
APO 394
LEGAL SUB-COMMISSION

WJH/DA.
8 Dec 54.

AC/4000/L.

SUBJECT : Harboring of Deserters.

TO : Procurement Military General del Regno.
11A

1. In reply to your 1278 P.G. of 7 Dec 1944 the provisions of English and American law concerning deserters and absentees are almost identical.

2. Under these laws a soldier is guilty of the offence of absence without leave if without leave properly granted, he absents himself from his place of duty for any period of time or fails to appear at the fixed time at the properly appointed place of duty.

3. A soldier is guilty of desertion if he absented himself without leave in such circumstances as to justify the inference

- (a) that he did not intend to return to military duty in any corps; or
- (b) that he intended to avoid some particular household or other important duty.

4. It is not the practice for British or American laws to lay down minimum punishments of any kind. The laws do prescribe maximum punishments but there are only for the most serious cases, and in all cases the question has to be determined by the discretion of the Court. The actual maximum punishments prescribed are :-

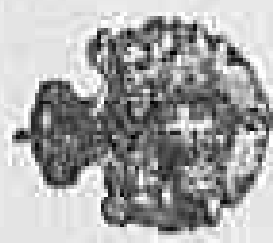
Desertion - death
Absence without leave - imprisonment for life.

5. In practice however the punishments which are now being awarded in the American Army are generally in the nature of

Desertion 10-20 years imprisonment
Absence 5-8 years imprisonment.

These punishments are exclusive of punishments for any other crimes which may be committed during the period of absence or desertion.

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



PROCURA GENERALE MILITARE
DEL RE IMPERATORE REGNO

PRESSO IL

TRIBUNALE SUPREMO MILITARE

prot.

risp.

N.

STAMPERIA REALE DI ROMA

ALLEGATI N.

OGGETTO: Assenti e disertori riacquarati presso civili.

ALLA COMMISSIONE ALLEATA

Sottocommissione Legale - Via Veneto

= ROMA =

Codesta Commissione Alleata ha richiesto, con la lettera che si allega in copia, al Ministero della guerra la preparazione urgente di uno schema di decreto con il quale dovrà prevedersi come grave reato il fatto di dar ricovero ad assenti e disertori alleati.

Affinchè questo Generale Ufficio possa corrispondere subito alla richiesta rivoltagli dal Ministero della guerra, prego codesta On. Sottocommissione di voler mi precisare la definizione giuridica di "assenza" secondo le legislazioni inglese e americana e quali sono le penalità stabilite per l'assenza e per la diserzio-

Roma, addì 7 dicembre

1944

UFFICIENTE

Indicare sempre nella risposta, la data e i numeri della presente.

ALLA COMMISSIONE ALLEATA

Sottocommissione Legale - Via Veneto

= ROMA =

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Ringrazio anticipatamente.

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

W. Borsari

MINISTERO DELLA GUERRA - GABINETTO
Ufficio Collegamento Miss. All. Sez. 3 (L.O. 9)

Traduzione n. 7462/c.
Data 5-12-44-ore 12,45

L.F.S.C. A.C. (M/M/I.A.)

AQ/6 - 4 dicembre 1944

OGGETTO: Disciplina - Assenti e disertori ricoverati presso civili.

AL MINISTERO DELLA GUERRA

1. La questione del ricovero di assenti e disertori alleati presso civili è stata posta in vista del fatto che l'art. 15 del Codice Penale Militare non indica chiaramente se l'ospitare detti disertori renda i civili colpevoli e passibili di condanna.

2. Si considera necessario che venga emanato un decreto applicabile in tutto il Territorio Italiano col quale si stabilisca che durante il ricovero da parte di civili agli assenti o ai disertori costituisca un grave delitto.

3. La proposta legislazione costituisce una modificazione di emergenza al Codice Penale Militare.

4. Si richiede che l'abozzo di un breve e semplice decreto in tale materia venga sottoposto a questo Comando, per l'approvazione in modo da poterlo promulgare d'autorità affinché le Autorità e i Carabinieri Italiani possano prendere provvedimenti effettivi tanto pubblicando il decreto quanto infliggendo condanne esemplari alle persone che si siano rese colpevoli per aver dato ricovero a militari alleati.

2. Si considera necessario che venga emanato un decreto applicabile in tutto il Territorio Italiano col quale si stabilisca che dare ricovero da parte di civili agli essenti o ai disertori costituisce un grave delitto.
3. La proposta legislazione costituisce una modificazione di emergenza al Codice Penale Militare.
4. Si richiede che l'abozzo di un breve e semplice decreto in tale materia venga sottoposto a questo Comando, per l'approvazione in modo da poterlo promulgare d'autorità affinché le Autorità e i Carabinieri Italiani possano prendere provvedimenti effettivi tanto pubblicando il decreto quanto infliggendo condanne esemplari alle persone che si siano rese colpevoli per aver dato ricovero a militari alleati.

P. IL MAGGIORE GENERALE, ROMA
F.to Col. P.J. NOAKES

LFOOT
✓

(10A)

Subject: Discipline - Absentees and Deserters Harboured by Civilians.
-----Land Forces Sub Comm. A.C.
(M. M. I. A.)
R O M E
AQ/S11 Dec 44.
-----MINISTRY OF WAR.

1. The question of the harbouring of Allied absentees and deserters by civilians has been raised owing to the fact that Article 15 of the Military Penal Code does not make it clear that civilians harbouring such deserters are guilty of an offence and liable to sentence.

2. It is considered necessary that a decree, with general application throughout Italian territory, be passed making the harbouring of absentees by civilians a serious offence.

3. This proposed legislation amounts to an emergency amendment of the Military Penal Code.

4. It is requested that a short, simple decree be framed and submitted to this HQ on this subject for approval in order that it may be authoritatively quoted and that the Italian civil authorities and carabinieri may take effective action both by publishing similar warnings and imposing exemplary sentences to persons found guilty of the offence of harbouring Allied personnel.

/wk

F. J. Noakes
F. J. NOAKES, Col.
for Major General,
M. M. I. A.

LEGAL SUB COM

13

Copy to HQ A.C. (2) for Legal Sub Commission
(your minute dated 1 Dec/44 reference AC/4004/1 refers)

CHIEF COUNSEL

CJO

CL RKS

5 DEC 1944

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

TEJ/seb

29 November 1944

G-5: 251.1

SUBJECT: Harboring of Allied Deserters
and Absentees by Italians.

TO : Headquarters, Allied Commission
APO 394.

1. Reference is made to your AC/4004/L of
15 November.

2. In view of the obscurity of the Italian
law of the point and of the desirability of giving
adequate publicity and taking effective action on
such cases as may be reported it is requested that
urgent consideration be given to the promulgation
by the Italian Government of a special decree on the
matter which would be of general application.

3. It is requested that you will take up the
matter accordingly and notify this Section soonest
of the action proposed to be taken to implement it.

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

LEGAL SUBCOMMISSION

T. B. JACKMAN
Lt. Colonel.

Copy to:

G-1(B) your CR/4368/G-1 Br of 24 Nov. refers.

The Counsel

30 NOV 1944

1 DEC 1944

See 10A

82

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

(8A)

AC/4004/L.

WEB/ap.
15 November 1944.

SUBJECT : Absentees-Harboring by civilians.

TO : AFHQ, G-5.

1. In reply to your G-5 251.1 of 12 Nov 44 no local or general decree has been passed in Salerno or elsewhere making it an offence for civilians to harbour Allied deserters or absentees.

2. The general Italian law on the point is not clear. In May 1944 the then Minister of Justice gave his opinion that while there is no express provision making the harbouring of a deserter an offence, nevertheless desertion constitutes a " continuing offence " and therefore whoever harbours a deserter is guilty of aiding and abetting this offence (Art. 110 Penal Code). By the application of Article 15 of the Military Penal Code any person harbouring an Allied deserter would be similarly guilty.

3. So far as is known no proceedings have so far been taken to test this opinion. If in any particular case a court were to take a contrary view this Commission could refer the matter to the present Minister of Justice for an authoritative ruling.

SPM
G. R. UFGOHN, Brigadier,
VF CA Sec
Dep COS

4004 ✓

C-4 Section 3104 (71) ✓

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 251.1

12 November 1944

14 NOV. 1944

SUBJECT: Absentees - Harboring by Civilians.

TO : Headquarters, Allied Commission, APO 394.

1. There is inclosed herewith copy of letter from Provost Marshal (Br) on the above subject.

2. It will be appreciated if you will advise this section if a local decree such as that referred to, or a general decree on the same subject exists. If there is a general decree we should be grateful to have a copy to make available to the Provost Marshal (Br).

Norman P. Spofford
(Sgt) CHARLES M. SPOFFORD, *myself*
Brigadier General, G.S.C.,
Assistant Chief of Staff, G-5.

Incl:
Cy ltr, as above,
dtd 7 Nov 44.

LEGAL SUB COMMISSION	
CJO	—
DJO	—
Chief Counsel	—
CJO	—
Italian Section	—
CLERKS	—
14 NOV 1944	

*See Place see opinion at
folio 4A. Understood from
the Italian Section that the
position is unchanged - no Dec
has been published in connection
therein.*

1214

COPY

SUBJECT:- Absentees - Harboursing by Civilians.AFHC/PM/57/187 Nov 44GI(B)A3.

1. Information obtained from weekly absentee returns in the possession of this office and other sources, confirms that in a very large number of cases absentees and deserters have been assisted both in transit and otherwise by civilians who have given them lodging and food.
2. The harboursing of absentees by civilians was a serious offence in North Africa, and was dealt with as such by the French authorities when proof was given. Much publicity was also given to the warning of civilians, of the consequences of such acts which were prejudicial to the Allied war effort.
3. It is understood that an Italian decree has been promulgated in the Province of Salerno, which makes it an offence under Italian civil law for civilians to give lodging to Allied personnel. It is not known, however, whether this decree is applicable throughout all Zones and Provinces.
4. The necessity for such a decree with general application throughout Italian territory is obvious. It would be appreciated if information could be given in order that the decree may be authoritatively quoted and the Italian civil authorities and Carabinieri required to take effective action both by publishing similar warnings and imposing exemplary sentences to persons found guilty of the offence of harboursing Allied personnel.

/s/ ??
for G.D. LOCKETT, Major,
APM,
for Colonel,
Provost Marshal.

MW

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ATC/ST

6A

16 June 1944

AGC/LEGAL/L

SUBJECT: Harboring of Allied Deserters. Case of Pte Page.

TO : HQ (thru HQ) Region 1.

Ref your RLE 015.01/PLV dated 10 June 44, the required statements in the above case are returned herewith.

ay
A. R. THACKER, Lt. Col.
for Chief Legal Officer.

Enclosed: File.

8

4804
ALLIED CONTROL COMMISSION
SICILY REGION HEADQUARTERS
APO 394

5A

File : RLE 013.03/FLV

10th June 1944

SUBJECT : Military Court - Harboursing of Allied Deserters.

TO : Legal Sub-Commission, A.C.C. Headquarters (REAR)

4A
Reference your ACC/4004/L dated 31st May 1944. 1A

Would you please return the Statements enclosed with my letter of even reference number dated 13th April 1944, so that the matter can be taken up with Messina Court.

For Colonel A.N. HANCOCK :

Frank L. Vecchiolla
FRANK L. VECCHIOLLA
Major, JAGD.
Regional Legal Officer.

js.

ART/da

44

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

31 May 1944

AOC/4004/L.

SUBJECT : Military Court - Harboring of Allied Deserters.

TO : R.L.O. (thru RG) Region 1.

1. Reference is made to your EHC/013.03/PLV dated 13 April 44 forwarding particulars of the cases of harbouring of a British deserter by Italian civilians.

2. As the Italian law on this point is obscure the question was referred to the Minister of Justice for clarification.

3. Whilst the opinion expressed is that in Italian law there is no provision making the harbouring of military deserters a specific crime, it is considered that as desertion constitutes what is termed a "continuing offence" therefore whoever harbours a deserter is aiding and abetting its commission (Article 110 P.C.).

4. The harbouring of a deserter from the Allied Forces would be brought within the ambit of military offences under Italian law by the application of Article 15 of the Military Penal Code which is interpreted to assimilate cobelligerents.

4. It would be interesting to know how your Procuratore del Re re-acts to the above line of argument.

A. R. Thackrah

A. R. THACKRAH,
Major,

for Chief Legal Officer.

ACC/4013/3/L

Minutes of Meeting with the Ministry
Justice held on 25 April 44

Present: Col. Upjohn
Lt. Col. Wilmer
Major Franklyn
Major Hennesford
Major Theckrah
Sgt Stein

Comm. Zeoli
Comm. Spinelli
Comm. Vito
Lt. Ciulli

Place : Office of the CLO.

Meeting called to order at 1015.

1. Offences against Allied interest. Representation of Allied civil interest in the criminal proceeding.

CLO points out that:

(a) Whenever Allied authorities so request the Avvocato dello Stato shall assume the representation of civil interests of the Allied Party.

(b) If the request under (b) is not made the proceeding will be completed without any representation and without delay.

Comm. Spinelli points out that a "citazione" (serving of notice upon the civil party) is obligatory under Italian law.

Agreed that:

(i) in the decree amending certain articles of the Code of Penal Procedure which is in course of preparation the following article shall be inserted:

"The failure to serve notice upon the offended party shall not constitute a ground for nullity of the proceeding". (Non e' causa di nullita' la mancanza di citazione della parte lesa).

(ii) A circular shall be prepared by the Minister setting forth the cases in which a "citazione" shall be required (i.e. cases where the offended party is an individual member of Allied forces or where damage of certain minimum value is involved), the form and machinery of "citazione", the address to which the citazione is to be directed (Provincial Commissioner)

2. Dissolution of fascist organizations.

Major Hennesford requests that "Unione Fascista Famiglie Numerose" be included in the list of organizations to be dissolved. Lt. Ciulli thinks it

3A

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(b) If the request under (b) is not made the proceeding will be completed without any representation and without delay.

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Major Hennesford requests that "Unione Fascista Famiglie Numerose" be included in the list of organizations to be dissolved. Lt. Ciulli thinks not.

~~avvocatissimo~~ ~~avvocatissimo~~ that it has already been included.

3. Marriages of Allied Forces in Italy.

Due to the recent request of the Legal Subcommittee that not only the Catholic but also all other chaplains representing religions "admitted" in Italy be authorized to officiate at the above marriages, the draft had to be changed and will be produced in short time.

4. Inspection of the Reggio Calabria Court.

CLO stresses the urgency of the inspection trip although he appreciates the new element brought in the picture by the change of Government.

5. Harboring of Allied deserters.

The representatives of the Ministry believe that there is no express provision in Italian law declaring the above to be a separate offence. However, Comm. Spinelli maintains that desertion constitutes a continuing offence and whoever harbours a deserter is aiding and abetting in the commission of the crime of desertion and becomes punishable as accessory. Art. 15 of the Penal Military Code justifies the application of the above reasoning upon harbouring Allied deserters.

Case of Italians aiding & sheltering a British Scientist

(2A)

1. Italian Military Code does not provide for such an offence by civilians.
2. Arts. P.C. 414 - 415 would not appear to apply.
3. Query? But does not Art 110 cover -
 Pena per coloro che concorrono nel reato.
 " affinché l'ingerzia costituisca, durante, partecipazione
 al reato, occorre che essa sia l'effetto di un
 accordo o, comunque, del proposito di
 favorire l'esecuzione del reato." (Commentato p 6-17)
4. Also under Art 15 of Italian Penal Military Code for
 War crimes forces of States associated in War are
 punished.

ay.

4004

ALLIED CONTROL COMMISSION
SICILY REGION HEADQUARTERS
APO 394

Legal S. Comm.
(Dear Sirs)

U
4441 **(1A)**

File : RLE 013.03/FLV

13th April 1944

SUBJECT : Military Court.

TO : Legal Sub-Commission - A.C.C. Headquarters.

The attached case is forwarded for your instructions as to disposition.

I have discussed this matter with the Procureur del Re, who informs me that there is no Italian Law under which any charge could be brought against the civilians concerned.

For Lt. Colonel A.N. HANCOCK :

Frank L. Vecchiolla
FRANK L. VECCHIOLLA
Captain, JAGD.
Regional Legal Officer.

js.

Concurrence

Ref.G/204/L

ALLIED CONTROL COMMISSION
C A T A N I A

(18)

4 April 1944

TO : R.L.O. (Thru Reg. Commissioner) (2 copies)
Region I
From: L.L.O. Catania.

I enclose statements relating to the harboring of an Allied deserter by Italian civilians. The Messina Court of Appeal appears to be very doubtful whether any charge could be brought under Italian law against the civilians concerned. Having regard to the circumstances I feel very doubtful whether you would consider this a case for a A.C.C. General Court but perhaps you will let me have your instructions in due course.

E. K. Matthews Capt.
E.K. MATTHEWS CAPT.
L.L.O.
CATANIA

SUBJECT: Reports.

To:-
A.C.C. Legal Branch.

PRO/40/30/25.

Herewith copy of Police reports and Statements for
your information and action as you deem necessary.

20 March 44.
HES/GEP.

W. H. H. H.
Lieut.
A/Deputy Assistant Provost Marshal,
H.Q. 40 Div.

Copy To:-
D.P.M. No. 1 District.

1318