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ALLIED FORCES AS "
MAR. - OCT. 1944

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ALLIED FORCES AS "PARTE CIVILE" IN ITALIAN COURTS
MAR. - OCT. 1944

FILE CLOSED : 21 October 1944

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
21 October 1944.

AGC/4011/6/L.

SUBJECT : Representation of Allied interests in Italian Courts (Parte Civile).

TO : Regional Commissioners (Attn: Regional Legal Officers),
SICILIA, SARDEGNA, SOUTHERN, LAZIO-UMBRIA, ABRUZZI-MARCHE, TOSCANA,
EMILIA, LIGURIA, PIEMONTE, LOMBARDIA, VENEZIA Regions.

1. Cases frequently occur in which Allied financial interests are prejudicially affected by offences committed by Italians, e.g., by thefts of Allied stores.

2. Under Italian law a party whose interests are so affected by a criminal act may appear by an advocate at the criminal trial of the offender as "parte civile" and may be awarded damages. He can, of course, file a claim for damages after the criminal case has been determined, but procedure by way of "parte civile" eliminates the necessity for such action.

3. Parties may select any qualified legal representative they desire, but the Italian State has created a permanent body of legal representatives, the "Avvocatura dello Stato", composed of salaried functionaries whose duties are to represent the Italian State, the Government, Provinces and Communes as claimants or defendants before all judicial or administrative jurisdictions of the Kingdom.

4. The Italian Government has now passed D.L. No. 166 of 3 July 1944 (transmission on reverse), which extends to Allied authorities or members of the Allied Forces the benefit of the services of the "Avvocatura dello Stato" to defend their interests in such cases. It should be observed that it is not compulsory for the Allied Forces to employ the services of the "Avvocatura dello Stato" as any person duly qualified to appear before the competent Italian court can be specially briefed for this purpose if so desired.

5. Branches of the "Avvocatura dello Stato" exist in the seventeen districts of Court of Appeal of Italy, i.e., ANCONA, AQUILA, BARI, BOLOGNA, BRESCIA, CAGLIARI, CATANIA, CATANZARO, FIRENZE, GENOVA, MESSINA, MILANO, NAPOLI, PALERMO, TORINO, TRIESTE, AND VENEZIA. All those situated in liberated territory are functioning normally in spite of the fact that the number of their members has been somewhat depleted owing to the war and political considerations.

6. Whenever any military authorities decide that Allied interests should be represented by the "Avvocatura dello Stato" in Italian Courts, it will be the duty of the legal officer concerned to request the "Avvocato distrettuale dello Stato" (head of the local branch of the "Avvocatura") to appoint a suitable member of his staff for this purpose. It will be the further duty of the legal officer to advise the Military authorities concerned as to the advisability of such step according to the circumstances of each individual case.

By Command of Commendatore STONE;

Webster

for RICHARD H. WILMER,
Colonel, CAC.

Chief Legal Advisor

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TO : Regional Commissioners (Attn: Regional Legal Officers),
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By Command of Commodore STONE;

for
Webster
RICHARD H. WILLER,
Colonel, MAC,
Chief Legal Advisor.

COPY to: AFHQ - for info,
HQ AAI - " "

LEGISLATIVE DECREE OF THE LIEUTENANT GENERAL OF THE KINGDOM No. 166OF 1 JULY 1944

Conferring upon the Avvocatura dello Stato the defense of property interests of the Allied Armed Forces' rules for retention and reinstatement in service of the personnel of the Avvocatura dello Stato.

ULBERTO DI SAVOIA, etc.

ART. 1

For the duration of the present war the Avvocatura dello Stato may upon request of an Allied Command undertake the representation and defence of the property interests of the Allied Armed Forces and members thereof in civil and criminal proceedings taking place in liberated territory.

The exercise of such functions shall be governed by the provisions of Art. 1, para 2 of the consolidated law No. 1611 of 30 Oct. 1933.

ART. 2

In order to meet the temporary and urgent requirements of the service arising out of the present war emergency the regular functionalities and employees of the Avvocatura dello Stato who distinguished themselves by their diligence, zeal and efficiency, may be retained in service beyond the ordinary limit until six months after the cessation of the present state of war and not beyond the completion of the 75th year of their age.

Furthermore on account of the same requirements of service such regular functionalities and employees who have been retired for not more than two years, may be temporarily reinstated in their functions until they have completed their 75th year.

The relative provisions shall be enacted by a decree of the President of the Council of Ministers in agreement with the Minister for Finance upon favourable recommendation of the Commission for personnel matters.

The personnel reinstated in service shall for the period of service receive such allowances as fixed by R. Decree-law No. 34 of 31 Jan. 1944.

ART. 3

The personnel thus retained or reinstated in service in accordance with the preceding article may be dismissed from active service by a decision of the President of the Council of Ministers without right of appeal.

The services rendered by said personnel in accordance with this decree shall not be considered in the computation of the pension nor do they give rise to any claim for payment of allowances upon retirement.

ART. 4

reinstated in service of the personnel of the Avvocatura dello Stato.

ULBERTO DI SAVOIA, etc.

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The exercise of such functions shall be governed by the provisions of Art. 1, para 2 of the consolidated law No. 1611 of 30 Oct. 1933.

ART. 2

In order to meet the temporary and urgent requirements of the service arising out of the present war emergency the regular functionaries and employees of the Avvocatura dello Stato who distinguished themselves by their diligence, zeal and efficiency, may be retained in service beyond the ordinary limits until six months after the cessation of the present state of war and not beyond the completion of the 75th year of their age.

Furthermore on account of the same requirements of service such regular functionaries and employees who have been retired for not more than two years, may be temporarily reinstated in their functions until they have completed their 75th year.

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ART. 4

This decree shall become effective on the date subsequent to the date of its publication in the Gazzetta Ufficiale of the Kingdom - special series.

We order, etc....

Given at Naples, the 3rd of July 1944, etc.
Transl. 21 Oct. 44.

MINISTERO DI GRAZIA E GIUSTIZIA
GABINETTOProt.n. 60
risp. nota n. ACC/4011/6/L
del 27/4/944 — (3)

Salerno, 28 aprile 1944

OGGETTO: Costituzione di parte civile delle Forze Armate Alleate e loro appartenenti nei giudizi penali innanzi l'autorità giudiziaria italiana.

ALLA COMMISSIONE ALLEATA DI CONTROLLO
Sottocommissione Legale

S A L E R N O

Con riferimento alla nota cui si risponde, si assicura che è in preparazione un R.D.L. nei sensi prospettati da codesta Commissione, e che pertanto la proposta modificata sarà attuata immediatamente, senza attendere la definitiva eventuale riforma del Codice di rito penale.

Quanto al patrocinio giudiziale delle Forze Armate Alleate e loro appartenenti da parte della R. Avvocatura dello Stato, questo Ministero ha inoltrata la richiesta nei sensi voluti alla competente Presidenza del Consiglio dei Ministri, con parere favorevole all'accoglimento.

IL MINISTRO

*V. Arangio-Ruiz*

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

27 April, 1944.

REFERENCE : ACC/4011/6/L.
SUBJECT : Allied Forces and Members thereof as Parte Civile.
TO : H.E. The Minister of Pardon and Justice.

1. Your Excellency will have been informed that amongst the matters agreed upon at the Conference held on Wednesday last was the preparation of an R.D.L., consisting of one Article only, providing that failure to serve a "citation" on the injured party in criminal proceedings should not constitute a ground for nullity.

2. It was the understanding of this Sub-Commission that this provision would be carried into immediate effect, whereas it now appears from the minutes as recorded that there was a suggestion that this modification might be reserved for ultimate amendment of the Code of Penal Procedure. Obviously the adoption of such a course would involve too great a delay in application, and Your Excellency is accordingly requested to please confirm that action will be taken in the desired form.

3. In regard to the other points at issue, it is further confirmed that :-

- (a) a directive should be prepared by your Ministry stating that a citation should be made in every case where an individual member of the Allied Forces was the injured party or where the sum involved exceeded a certain figure (which is now fixed at 100,000 lire) that the citation should be in the name of the representative of the Allied Military Administration (without naming any individual officer) and should be forwarded to the Provincial Commissioner's Office of the Province where the crime was committed.
- (b) the Avvocato dello Stato would, where called upon to do so, represent the Allied Military Administration or any member of the Allied Forces who constituted the injured party.

GERALD R. URJEN.
Colonel,
Chief Legal Officer.

AME/wow.

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4005/L.

/rlp.
26 March 1944.

SUBJECT : Citation of "Parte Iena" or "Parte Civile" (C.P.P. 91-106, etc).
TO : RLO (THRU: RC), Region II.

1. Reference your 2201/60/A dated 20 March 1944.
2. It appears that the provisions of the Italian C.P. and C.P.P. cover such cases as set out in your letter of 20 March 1944 (Ref Parte Civile and Parte Offesa. Art 61, para 7-120-121-126-130 C.P. & 539 C.P. ch and 108 C.P.P. for the latter).
3. In any case it is not proposed at this stage to request the Italian Government to modify existing legislation in this respect unless proved defective by practical experience.
4. The question of Allied representation in Italian Courts is however, a delicate matter and it might be preferable to discuss this at the next meeting of 3 April.

G. G. HANNAFORD,
Major,
Officer i/c Italian Section,
for Chief Legal Officer.

HEADQUARTERS
ALLIED CONTROL COMMISSION
REGION II

20 March 44

Ref: 2201/60/A

SUBJECT:- Citation of Parte Cesa

TO :- Chief Legal Officer
Legal Sub-Commission A.C.C., - Salerno -

It is observed that in ordinary cases it is not necessary to introduce the parte Cesa as a party to proceedings. Is it however correctly assumed that this does not apply in such cases as:-

- (i) where the question arises of restitution of property to the Allied Forces or to individuals, and
- (ii) In the case of injury to individuals.

Backhouse
D.E.S. COUSINS, Lt. Col.
R.I.O.
REGION II

