

ACC

10000/142/158

CONDITIONAL SUSPENSION OF
ALLIED INTERESTS
JUN. - AUG. 1944

10000/142/158

CONDITIONAL SUSPENSION OF PUNISHMENT FOR CRIMES AGAINST
ALLIED INTERESTS
JUN. - AUG. 1944

file

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

(10A)

ART. /Tm

AGC/4011/12/L

26 Aug 44

Subject : Italian Military Courts, Sardinia.

To : RMO (thru : RC) , Region VI .

1. Reference is made to AGC/4011/12/L dated 20 July 44.

2. Further to para 3 of the above letter, enclosed for your information is the copy of a letter from the L.O. , Apulia who acts as liaison officer with the Procuratore Generale Militare.

Self
A. R. THACKRAH, 15
Lt. Colonel,
Italian Branch
for Acting Chief Legal Officer.

1. Incl.

Chief Legal Officer,
A.C.C., HQ.

ALLIED CONTROL COMMISSION FOR,
Legal Office - Apulia.
Taranto, 22nd August 44
INCI

Subject: Italian Military Courts, Sardinia.
Your Ref. ACC/40II/I2/L.

I) I have brought to the attention of the Procuratore Generale Militare the excessive number of suspended sentences in Sardinia and he will take action thereon. It however is stated in the report of the Procuratore Militare del Regno, Oristano dated 5 July no 23080, that only 12 cases affecting Allied interests had there been decided: a further 45 were then either in instruction or awaiting trial. There cannot be "ricorso" (appeal on a point of law) against the suspension of penalty.

2) Article 2 of the Law of 9 July 1940 no 924 does not permit postponement of the punishment but of the trial of offenders where the trial cannot be carried out in the normal way e.g. by reason of the absence of witnesses. This is likely to occur frequently in Sardinia by reason of the transfer of the Nembo Division to the front and other troops to Sicily and elsewhere; if any specific case of abuse of the powers conferred by this article is referred to him, General Traina will issue a directive and if necessary, a reproof to the court concerned. Art. 9, however, which permitted of the deformant of the penalty, has been replaced by article 2 of Proclamation 26 of 26.5.44. Abuse of the powers conferred by this article must be taken up with the Comando Supremo or War Ministry. =

3) The report referred to in paragraph I contains a reference to the circular of the 6th May. Accordingly, it has now apparently arrived. =



№ 04505

25 Jul 44

Andersson Major
Legal Officer - Apulia.

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Life Counsel

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CL RKS

Policy ex 4011 1226 10
Officers against Allied interests
MINISTERO DI GRAZIA E GIUSTIZIA
Direzione generale affari penali
Ufficio I

Prot. N.

Roma, luglio 1944.

OGGETTO : Reati commessi in pregiudizio degli Alleati e sospensione condizionale della pena.

ALLE LL.EE. I PROCURATORI GENERALI
AGLI AVVOCATI GENERALI PRESSO LE SEZIONI DI CORTE
DI APPELLO

AI SIGG. PROCURATORI DEL RE

e, per conoscenza :

ALLE LL.EE. I PRIMI PRESIDENTI DI CORTE D'APPELLO
AL MINISTERO DELLA GUERRA
AL MINISTERO DELLA MARINA
AL MINISTERO DELL'AERONAUTICA

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Con circolare 8 marzo c.a. n. 25022 ebbi già occasione di segnalare, ai competenti uffici del pubblico ministero, la necessità di assicurare la più rapida e rigorosa repressione di quei reati che, per essere commessi in danno dei Governi militari Alleati, delle loro forze armate o delle persone ad esse appartenenti, debbono considerarsi, nelle attuali contingenze di guerra, come menomativi dello sforzo bellico contro il comune nemico

tedesco.

Mi viene ora segnalato autorevolmente che, anche rispetto ai reati suddetti, alcune Autorità giudiziarie applicano, con eccessiva larghezza e frequenza, il beneficio della sospensione condizionale della pena, frustrando così in sostanza quelle direttive di giusto rigore che, nell'attuale momento, devono ispirare le decisioni dell'Autorità giudiziaria nella considerata materia.

Reputo perciò necessario richiamare la particolare attenzione delle EE. e SS.II. sul concetto che, per il combinato disposto degli art. 133 e 164 cod. pen., il potere di concedere la sospensione condizionale della pena, pur costituendo una facoltà ampiamente discrezionale del giudice, non può, nel pratico esercizio della potestà giurisdizionale, non essere ispirato al criterio della obiettiva gravità del reato; la quale va a sua volta oculatamente valutata caso per caso, tenendo conto, fra l'altro, dell'oggetto del reato e delle circostanze generali di tempo e di luogo in cui l'attività delittuosa si avvera, essendo ovvio che la medesima azione penalmente illecita possa assumere carattere di gravità assai diverso col variare della situazione generale, sociale e politica del momento in cui si verifica, e col mutare dell'oggetto del reato e degli interessi collettivi che a tale oggetto, in un determinato momento risultano connessi.

Non mi par dubbio di conseguenza che, nelle speciali contingenze attuali del Paese, qualsiasi reato commesso in pregiudizio degli interessi delle Nazioni Alleate assume obiettivamente il carattere di una particolare gravità, denunciando nell'autore una spiccata capacità a delinquere, che raramente può conciliarsi con la previsione che il colpevole si asterrà dal commettere

ulteriori reati, venendo in tal modo a mancare il presupposto giuridico fondamentale per l'applicabilità della sospensione condizionale della pena.

Prego pertanto le EE. e SS. LL. di voler urgentemente provvedere, alla stregua delle suesposte considerazioni, affinché l'accennato criterio restrittivo venga sostenuto col massimo impegno da tutti gli organi del P.M. dinanzi alle rispettive autorità giudiziarie, anche mediante eventuali opportuni mezzi di impugnazione.

Gradirò intanto un cortese cenno di assicurazione.

I L M I N I S T R O

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4011/12/L.

/rlp.
28 July 1944.

SUBJECT : Conditional suspension of penalty in cases of offences against Allied personnel and property.

TO : See Distribution List.

1. The enclosed circular addressed to all Procuratori Generali, Avvocati Generali and Procuratori del Re has been forwarded by the Minister of Justice at the request of this Hq. Sufficient copies are provided for distribution to RLOs, FLOs and LOs.

2. Its main object is to restrict as much as is permitted under Italian law, the granting of conditional suspension of sentence in cases affecting Allied interests.

3. If followed closely, the terms of this document should meet the requirements of the Allied authorities in this connection and it will be the duty of LOs to see that all Italian officials concerned follow the spirit as well as the letter of the ministerial directive.

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

DISTRIBUTION:

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" 2	- 12	"
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" 8	- 15	"
" 9	- 15	"
ROME Region	- 20	"
5th Army	- 8	"
8th Army	- 13	"

To RLOs (THRU: RCs)
for distribution to FLOs and LOs.

To SLOs (THRU: SCAOs).

ACC/4011/12/L.

MINISTRY OF PARDON AND JUSTICE
OFFICE OF THE DIRECTOR GENERAL
FOR PENAL MATTERS

Prot. No.

OFFICE 1

ROME

July 1944.

SUBJECT : Offences to the prejudice of the Allies and conditional suspension of the penalty.

TO : E. Procuratori Generali
Avvocati Generali at Court of Appeal Sections
Sig. Procuratori del Re,

and for information,

TO : E. First Presidents of the Courts of Appeal
Ministry of War
Ministry of Navy
Ministry of Air.

In my circular of 8 March 1944, No. 250022 I had already an opportunity to advise the competent offices of the Pubblico Ministero of the necessity to ensure a speedy and most rigorous repression of offences which are committed to the prejudice of the Allied Military Government, their Armed Forces or persons belonging to them and which in the light of the present war emergency must be considered as hampering the war effort directed against the common German enemy.

I have now received information from authoritative sources that some judicial authorities are granting the benefit of conditional suspension of penalty also in respect to the aforesaid offences with an excessive breadth and frequency.

For this reason I deem it necessary to direct your attention to the principle underlying the combined provisions of Art. 133 and 164 of the Penal Code according to which the power to grant conditional suspension of penalty, although within the broad discretion of the judge, must in the practical application be guided by the criterion of the seriousness of the type of the offence; the latter in turn must be carefully appraised case by case with due consideration being given among others to the nature of the offence and general circumstance of the time and place at which the criminal act took place; it is obvious that the same illegal act may assume a different degree of seriousness according to the varying general social and political situation prevailing at the time of its perpetration and also according to the different type of the offence and according to the collective interests connected at a certain moment with such type of offence.

Thus there does not seem to be any doubt that in the exceptional circumstances existing at present in our country any offence committed to the prejudice of the interests of the United Nations assumes a particularly serious character in that it reveals a conspicuous criminal tendency which can only seldom be reconciled with the assumption that the guilty person will be deterred from committing further crimes and thus the fundamental juridical supposition that is the basis for applying conditional suspension of penalty is lacking.

I, therefore, ask Your Excellencies, kindly, to provide along the general lines of the above considerations, that the aforesaid restrictive rule shall be applied as strongly as possible by all the organizations of the Pubblico Ministero before the competent judicial authorities, also where suitable by contesting decisions.

(7A)

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in certificate of A.C.

all. 1.6 C.F.

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APPENDIX REFERRED TO: List of Cases in Civil and Military Tribunals
where a Suspension of Punishment has been granted.

NAME	DATE OF ARREST	TIME SPENT IN JAIL BEFORE SENTENCE	TRIBUNALE	ARTICLE OF PENAL CODE	Short Particulars of Circumstances	Punishment
Mallus, Enrico Mallus, Vincenzo	Not arr. Offence on 3 May 44	None	Cagliari	Art 624, 625 no (7) Theft	Stole 40 kgs Barley from American Trucks on Via Roma	4 months penal servitude and L. 4000 fi
Spurio, Mario	18 April 44	1 month 23 days	Cagliari	Art 624, 625 no (16) (15) (10) Theft	Stole clothes, milk and coffee from Amer. Red Cross (acts not stated)	6 mos per servitude L. 600 fi
Seddas Antonio	14 April 44	1 month 27 days	Cagliari	Art 624, 625 no (7) Theft	Stole a drum containing 200 liters of Machine Oil from Almas Airport	6 mos per servitude L. 1000 fi
Rivano, Paolo	16 May 44	25 days	Cagliari	Art 624 Theft	25 kgs of flour (not known where stolen, hence simple theft)	4 mos per servitude L. 800 fi
Anedda Giovanni	Not Arrested	None	Cagliari	Art 624 Theft	Stole box of Biscuits from Port where there were guards, hence simple theft	4 mos per servitude L. 600 fi
Gann Antonio	15 May 44	26 days	Cagliari	Art 624, 625 Art 61, no (11) Theft (11)	Stole 3 cans of meat of 1 kilo ea. 24 pieces of Chocolate, 2 cans of milk, 2 cans of Sardines, 2 kilos of Potatoes, 18 boxes of 50 cigarettes ea; stolen from Port where he worked.	6 mos per servitude L. 800 fi
Del Campo Emilio	22 April 44	1 month 19 days	Cagliari	Art 648 Receiving;	7 pairs of American shoes found in his house	8 mos per servitude L. 2000 fi
Noli Umberto	25 April 44	1 month 16 days	Cagliari	Art 624, Art 64 no (11) Theft	Stole 1 can of butter of 1/2 kilo; 3 cans of sausages from Hosp. at Monticani where he was a cook; also 1 can of tomatoes of 1 kilo	4 mos per servitude L. 800 fi
Parria Ignazio and 3 others	9 May 44	1 month	Cagliari	Art 624 Art 64, no (11) Theft	Stole 52 kilos of wheat from the Monticani Warehouse where he worked	1 mo per servitude L. 500 fi

in Civil and Military Tribunals
of Punishment has been granted.

To be returned to legal Sub. Com.

TRINUNALE	ARTICLE OF PENAL CODE	Short Particulars of Circumstances	Punishment	Date of Sentences	Date of Appeal	REMARKS
Cagliari	Art 624, 625 - (7) Theft	Stole 40 kgs Barley from American Tracks on Via Roma	4 months penal Ser- vitude and L.4000 fine	10 June 44	10 June 44	Conditionally sus- pended under Art 163 Sentence appears inadequate
Cagliari	Art 624, 625 - (11) (16) (17) Theft	Stole clothes, milk and coffee from Amer. Red Cross (acts not stated)	6 mos penal servitude & L.600 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624, 625 - (7) Theft	Stole a drum containing 200 liters of Machine Oil fromplane Airport	6 mos penal servitude & L.1000 fine	10 June 44	10 June 44	Suspended under Art 163. Sentence appears inadequate
Cagliari	Art 624 Theft	25 kgs of Flour (not known where stolen hence simple theft)	4 mos penal servitude & L. 800 fine	10 June 44	10 June 44	Suspended under Art 163. Sentence appears inadequate
Cagliari	Art 624 Theft	Stole box of Biscuits from Port where there were Guards, hence simple theft	4 mos penal servitude & L.600 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624, 625 Art 61, - (11) Theft (2)	Stole 3 cans of meat of 1 kilo ea. 24 pieces of Choc- olate, 2 cans of milk, 2 cans of Sardines, 2 kilos of Potatoes, 18 boxes of 50 cigarettes ea; stolen from Port where he worked.	6 mos penal servitude & L.800 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 645 Receiving	7 pairs of American shoes found in his house	8 mos penal servitude & L.2000 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624, Art 64 - (11) Theft	Stole 1 can of butter of 1/2 kilo; 3 cans of sausages from Hosp. at Montargini where he was a cook; also 1 can of tomatoes of 1 kilo	4 mos penal servitude & L.800 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624 Art 64, - (11) Theft	Stole 52 kilos of wheat from the Monticani Ware- house where he worked	1 mo penal servitude & L.300 fine	7 June 44	7 June 44	Suspended under Art 163. Sentence appears inadequate

	44	27 days		Theft	Cross (axis not stated)	L. 500 fine
Arillas Antonio	14 April 44	1 month 27 days	Cagliari	Art 624, 625 - (1) Theft	Stole a drum containing 200 Liters of Machine Oil from Almas Airport	6 mos penal servitude L. 1000 fine
Alvano, Paolo	16 May 44	25 days	Cagliari	Art 624 Theft	25 kgs of flour (not known where stolen, hence simple theft)	4 mos penal servitude L. 800 fine
Arreda Giovanni	Not Arrested	None	Cagliari	Art 624 Theft	Stole box of Biscuits from Port where there were Guards, hence simple theft	4 mos penal servitude L. 500 fine
Arreda Antonio	15 May 44	25 days	Cagliari	Art 624, 625 Art 61, - (1) Theft (1)	Stole 3 cans of meat of 1 kilo ea. 24 pieces of Choc- olate, 2 cans of milk, 2 cans of Sardines, 2 kilos of Potatoes, 18 boxes of 50 cigarettes ea; stolen from Port where he worked.	6 mos penal servitude L. 800 fine
Del Caspo Eraldo	23 April 44	1 month 19 days	Cagliari	Art 648 Receiving	7 pairs of American shoes found in his house	6 mos penal servitude L. 2000 fine
Soli Roberto	23 April 44	1 month 16 days	Cagliari	Art 624, Art 64 - (1) Theft	Stole 1 can of butter of 1 kilo; 3 cans of sausages from Hosp. at Montargini where he was a cook; also 1 can of tomatoes of 1 kilo	4 mos penal servitude L. 800 fine
Parria Ignazio and 3 others	9 May 44	1 month	Cagliari	Art 624 Art 64, - (1) Theft	Stole 52 kilos of wheat from the Monticani Gara- house where he worked	1 mo penal servitude L. 300 fine
Basso Giovanni	11 April 44	21 days	Cagliari	Art 624, 625 - (7) Theft	Stole a pair of boots at the Port	3 mos penal servitude L. 800 fine

	Theft	Cross (acts not stated)	L. 500 fine	44	44	May 1944
Cagliari	Art 624, 625 - (1) Theft	Stole a dress containing 200 fibers of machine oil from Mass Airport	6 mos penal servitude & L. 1300 fine	10 June 44	10 June 44	Suspended under Art 163. Sentence appears inadequate
Cagliari	Art 624 Theft	25 kgs of flour (not known where stolen hence simple theft)	4 mos penal servitude & L. 500 fine	10 June 44	10 June 44	Suspended under Art 163. Sentence appears inadequate
Cagliari	Art 624 Theft	Stole box of biscuits from Port where there were Guards, hence simple theft	4 mos penal servitude & L. 500 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624, 625 Art 61, - (11) Theft (11)	Stole 3 cans of meat of 1 kilo ea., 24 pieces of chocolate, 2 cans of milk, 2 cans of sardines, 2 kilos of potatoes, 10 boxes of 50 cigarettes ea; stolen from Port where he worked.	6 mos penal servitude & L. 800 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 643 Receiving	7 pairs of American shoes found in his house	6 mos penal servitude & L. 2000 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624, Art 64 - (11) Theft	Stole 1 can of butter of 1/2 kilo; 3 cans of sausages from Hosp. at Montargini where he was a cook; also 1 can of tomatoes of 1 kilo	4 mos penal servitude & L. 500 fine	10 June 44	10 June 44	Suspended under Art 163
Cagliari	Art 624 Art 64, - (11) Theft	Stole 52 kilos of wheat from the Monticani warehouse where he worked	1 mo penal servitude & L. 300 fine	7 June 44	7 June 44	Suspended under Art 163. Sentence appears inadequate
Cagliari	Art 624, 625 - (1) Theft	Stole a pair of boots at the Port	3 mos penal servitude & L. 800 fine	7 June 44	No Appeal	Suspended under Art 163. NORA: The Provost Marshall's Office acquiesces in this suspension as case is regarded as trivial.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

ES/ps

(6A)

REFERENCE : AGO/4011/12/L. 20 Jul 44.

SUBJECT : Cases of offences against Allied interests-
Suspension of sentences.

TO : RLO (thru Regional Commissioner) Region 6.

1. Reference is made to your L/1421. (1A)
2. Upon request of this Sub-Commission the Minister of Justice is preparing an amendment to the circular dated 8 March which would cover the suspension of sentences provided for by Art. 103 C.P.
3. The IO to the Procuratore Generale Militare was instructed to discuss all the points raised in your letter and regarding military tribunals with the view of obtaining a speedy action and information requested by you.

Def
A. R. THAYER, Lt. Colonel,
Italian Branch,
for Acting Chief Legal Officer.

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Copy to :- A. C. & M. Y. Section.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ES/gaf

(5A)

ACU/4011/12/1.

16 Jul 44

SUBJECT: Offences against Allied interests. Conditional suspension of punishment.

TO : R.E. the Minister of Pardon and Justice.

1. A new problem has arisen in connection with proceedings in respect to the above offences for the solution of which this Subcommittee wishes to solicit Your Excellency's cooperation.

2. It is reported from Sardinia that in a number of cases involving Allied interests the courts are ordering conditional suspension in both civil and military courts of punishment in accordance with Art. 163 C.P. and succeeding Articles, as a result of which the convicted delinquents go unpunished except for the stigma of the sentence. Your Excellency will no doubt understand that although such suspension of penalty is not mentioned in Ministry's directive circulated on 6 March 1944, at the request of this Subcommittee the excessive use of this device completely nullifies the intended effects of the aforesaid directive.

3. It is therefore suggested that Your Excellency instruct the competent judicial authorities to exercise the discretion in respect to suspension of punishment with a very careful regard to the seriousness of offences under consideration and also with regard to the deterrent effect of immediate punishment on prospective offenders. It would appear that Arts 163 & 164 in connection with Art. 133 of the Penal Code affords sufficient latitude for obtaining the desired result without causing any infringement of the prevailing Italian penal law.

4. Particulars of cases where suspension of punishment was ordered in Sardinia are given in appendix attached hereto for Your Excellency's perusal and return please.

5. This Subcommittee would appreciate an early advice on this subject.

Ref
P. C. HATHAWAY, Lt. Col.
Officer in Charge Italian Branch
for Acting Chief Legal Officer. 9

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ART/est

ACC/1011/12/L

16 Jul 44

SUBJECT: Offences against Allied Interests.
Conditional Suspension of Punishment.

TO : EIO (thru HQ) Region 2 (attn Major Franklyn).

1. Attached for information is the copy of a letter of even date addressed to the Minister of Justice concerning the suspending of sentences for offences against Allied interests by both civil and military courts in Sardinia.

2. In so far as the Military Courts are concerned this question requires to be immediately brought to the attention of the Procuratore Generale Militare so that concerted action shall be taken.

3. A further question has arisen in connection with Military Tribunals in Sardinia in as much as it appears that under Art. 2 of the Law of 9 July 1940 - No. 924 the punishment of soldiers may be postponed for various reasons, and that this has in fact been done in several cases already reported to this Subcommittee.

4. The EIO Region 6 also reports that the Circular No. 3 of the Procuratore Generale Militare on the subject of offences against Allied interests, dated 6 May 44, purporting to have been sent to the HQ of Oristano Military Territorial Tribunal for Sardinia has not yet been received there. May immediate action be taken by the P.C.M. to ensure that this directive is repeated.

A. R. THORP, Lt. Col.
Italian Branch
for Acting Chief Legal Officer.

Enclos: 1 copy letter.

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

4 July 1944.

REFERENCE : ACC/1011/2/L.

SUBJECT : Crimes against Allied Forces - Conditional Suspension
of Punishment.

TO : R.C. & M.C. Section.

1. Reference your Ref/281/23/CA dated 3 July 1944.
2. The letter from Region 6 to which you refer was received in this office yesterday afternoon. It raises a number of intricate procedural points which are now being looked into. I will send you a copy of the letter which goes to Region 6.

RICHARD H. WILDER,
Colonel U.S.A.
Acting Chief Legal Officer.

RHW/1011.

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. SECTION
APO 394

Ref/281/23/CA

3 July 1944

SUBJECT: Crimes Against Allied Forces - Conditional Suspension
of Punishment.

TO : Admin. Sect. (for Legal Sub-Comm.)

Reference is made to letter from Reg. VI (L/1421 of
26 June 44) addressed to this Hq. copy to Admin Section and
relative list of cases attached. May we have your views and
comments in due course.

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JSR/JR

J. Keane Maj
NORMAN E. FISKE
Colonel
Deputy Executive
Commissioner

BY FAST AIR COURIER

HEADQUARTERS

ALLIED CONT L COMMISSION

REGION 6

26th June 1944. 4-3709

To : Headquarters, Allied Control Commission,
(R.C. and M.G. Section).

Subject : Crimes Against Allied Forces - Conditional
Suspension of Punishment.

Reference : L/1421.

1. It has been noted with concern that in some cases falling into the above category, the accused, after conviction and sentence, have been granted conditional suspension of punishment both by the civil and military Tribunals of Sardinia. Particulars of these cases are given in appendix attached hereto.

2. Under ARTS 163 ET SEQ of the Italian Penal Code, the judge may, if the period of imprisonment for a crime or offence does not exceed one year, and if it is a first offence, order conditional suspension of punishment for two or five years if he has grounds (see Art 133) for presuming that the guilty person will abstain from committing further offences. If such conditional suspension is granted and if, within the period fixed, the convicted person does not commit another crime or offence of a similar nature, the offence is extinguished.

3. Nearly all crimes against Allied Forces committed in Sardinia are cases of theft. The punishment for theft, if it is unaccompanied by aggravating circumstances, is imprisonment up to three years with no minimum punishment stated. (See Art 624 of the Penal Code). If, however, as frequently happens, the theft is accompanied by any one of the fairly numerous classes of aggravating circumstances enumerated in Art 625, the punishment is from one to six years imprisonment. Under Art. 65 of the Code, the above minimum sentence of one year may be reduced to eight months if certain extenuating circumstances exist. In other words, the minimum sentence which can be imposed in aggravated theft cases (however trifling the offence) is eight months imprisonment. In less grave cases of theft, the judge is therefore faced with two alternatives. Either:

(a) He can impose and see carried out the minimum punishment, which in some cases may be too high if regarded as a punishment for an ordinary theft; or

Reference : L/1421.

1. It has been noted with concern that in some cases falling into the above category, the accused, after conviction and sentence, have been granted conditional suspension of punishment both by the civil and military Tribunals of Sardinia. Particulars of these cases are given in appendix attached hereto.

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3. Nearly all crimes against Allied Forces committed in Sardinia are cases of theft. The punishment for theft, if it is unaccompanied by aggravating circumstances, is imprisonment up to three years with no minimum punishment stated. (See Art 624 of the Penal Code). If, however, as frequently happens, the theft is accompanied by any one of the fairly numerous classes of aggravating circumstances enumerated in Art 625, the punishment is from one to six years imprisonment. Under Art. 65 of the Code, the above minimum sentence of one year may be reduced to eight months if certain extenuating circumstances exist. In other words, the minimum sentence which can be imposed in aggravated theft cases (however trifling the offence) is eight months imprisonment. In less grave cases of theft, the judge is therefore faced with two alternatives. Either:

(a) He can impose and see carried out the minimum punishment, which in some cases may be too high if regarded as a punishment for an ordinary theft; or

(b) He can impose the minimum punishment and suspend it under the provisions of the Code mentioned in Para 2 above.

In the latter case, the result may be that the convicted person will go unpunished altogether except for the stigma of the sentence. There is no middle course open.

4. /Over.



/Continued.

4. The question of suspension of punishments in cases affecting Allied Forces does not appear to be covered by the directive issued by the Ministry of Justice, of which a translation accompanied H.Q. A.C.C. (Rear) Legal Sub-Commission letter AGO/4011/L, dated 12th May 1944. It may be mentioned incidentally, that the Tribunale Militare have not yet received the directive from the president of the Italian Supreme Military Code, which is referred to in para 4 of the above quoted letter.

5. Matters have been discussed with the Procuratore del Re and with the Procuratore Militare del Re in the light of the suspensions which have already taken place. The former without any hesitation and without any pressure being brought to bear has agreed to instruct the Procuratore del Re of Cagliari to lodge appeals against the decisions of the court in these cases. These appeals have now been lodged. The First President has issued instructions to the depending Tribunal; in terms of the attached letter dated 16th June 1944. The Procuratore Militare on the other hand showed some reluctance when the matter was discussed with him to take any action which might have the effect of interfering with the discretion of judges. It was thought better to refrain from bringing any pressure to bear on him, in view of the fact that an issue of policy is raised involving a possible interference with the normal operation of Italian Law. In any case, it is considered likely that the same questions have arisen on the Mainland, and the Procuratore Militare was informed that the whole matter would be referred to higher authority. It should be stated that whereas the time limit for appeals against Suspensions (3 days) may be extended at the discretion of the Procuratore Generale in civil cases I am informed by the Procuratore Militare that appeals in military cases cannot be made after the expiration of the 3 days. In view of the large number of forthcoming cases before the military Tribunal it is therefore urgent that an early understanding should be come to. Meantime I have requested that all future suspensions be automatically appealed so as to preserve the right to deal with these cases as the Supreme Military Tribunal in agreement with ACC may direct.

6. As regards the Military Tribunal a further question has arisen inasmuch as it appears that under Art 2 Legge 9 July 1940, Number 924, punishment of soldiers may be postponed until such time as their service with mobilised units is completed. Such postponement of punishment has been granted in the cases noted in attached appendix. It is understood that some change has been made as regards this law within the last two or three days. May the situation be clarified, please?

quated letter. *in. 6 May 44 (Circulare no 115 - our fol. 4011)*

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7. It has been arranged with PWB here to carry out a campaign of deterrent publicity in connection with crimes against Allied Interests and it is felt that the suspension or postponement of punishments may well have a stultifying effect on this campaign.

/Continued.

7/Continued.

It is desirable in my opinion that these cases should be tried quickly in the district where the crime has taken place and that the sentence be carried into effect immediately for all to see. It may, however, be impossible in the present state of the law to prevent judges from granting suspensions and postponements of punishments. Perhaps the only action which can now be taken short of an alteration of the law is by way of directives from the Ministry of Justice and the Supreme Military Tribunal instructing judges to exercise any discretion conferred upon them by existing Italian law with very careful regard to the seriousness of offences of the type in question and also with regard to the deterrent effect on prospective offenders of immediate punishment. Will you please advise as to the policy adopted on the Mainland as regards the above matters, and state whether you consider that any independent action should be taken here pending the possible issuance of further instructions from higher Italian Authority?

RGSA/ajs.

M. Carr
M. CARR.
Regional Brigadier.
Regional Commissioner.

Copy to : Administration Section,
Allied Control Commission (Rear).

PRIMA PRESIDENZA
CORTE D'APPELLO DI
CAGLIARI

13
Cagliari 16 Giugno 1944

Prot.N.920

Oggetto: Reato interessanti i Governi Alleati

Ai Sigg.Presidenti dei Tribunali del

DISTRETTO

e p.c.:

all'Ill.mo Sig.Maggiore Alexander
Commissione Alleata di Controllo

Via Roma 37 = CAGLIARI =

Con riferimento alle precedenti mie circolari in data 7 e 14 Maggio decorso N.619 e 658, aderendo ad analoga richiesta della Commissione Alleata di Controllo, dispongo che nel darvi notizie delle sentenze penali per reati interessanti i Governi Alleati, sia specificato se venne ordinata la sospensione condizionale delle pene.

Richiamo, inoltre, l'attenzione delle SS.LL. e dei Signori Giudici sui limiti entro i quali è ammessa la sospensione condizionale della pena (art.164 C.P.), e prego tenere presente che la gravità dei reati, da desumersi dalle circostanze di cui nell'art.133 del detto Codice, deve, caso per caso, essere vagliata tenendo conto anche delle condizioni dell'ora presente.

Gradirei assicurazioni.

IL PRIMO PRESIDENTE
(G.N.Volpe)

133, 1 e 2 unispecifici

APPENDIX 7
REFERRED TO: List of Cases in Civil and Military Tribunals
where a Suspension of Punishment has been granted.

NAME	DATE OF ARREST	TIME SPENT IN JAIL BEFORE SENTENCE	TRIBUNALS	CRIME AND ARTICLE OF PENAL CODE	Short Particulars of Circumstances	PUNISHMENT
Nigolli Ireneo Caruso Ugo	12 Dec 43	About 3 months. Precise information not available	Trib. Mil. T.G. Sardinia	Aggravated theft. Art 230 (2), 231 (1), 47 (3) of Military Penal Code and Art 47 of Military Penal War Code	Theft of 2 screwdrivers, 1 key, 1 pair Pliers & other Tools from a box of Aviation Tools. Aggravated because committed by a serving Soldier in time of war to the detriment of the Allies.	1 year Military Servitude
Angioni Giovanni	25 April 44	About 1 month. Precise information not available	"	Aggravated Theft. Art 47(3), 230 p.p.c. Military Penal Code & Art 47 of Military Penal War Code	Theft of a pair of Gloves, 1 cigarette lighter and a packet of cigarettes from an American Soldier. Aggravated because committed by a serving Soldier in time of war.	3 months Military Penal Servitude
Rotta Vittorio Freddi Vittorio	13 April 44	"	"	Aggravated attempted Theft. Arts 46, 47(3), 230(2) of Military Penal Code & Art 47 Penal Military War Code	Attempted Theft of a barrel of Soda. Aggravated because committed by a serving Soldier in time of war to the detriment of the Allies	1 year Military Penal Servitude same for other
Michera Salvatore	27 Feb 44	3 months & 9 days	"	Aggravated attempted Theft. Arts 46, 47(3) 230(1), 231(4) of Military Penal Code & Art 47 of Penal Mil. War Code	Attempted theft of 1 pair of shoes from an American Soldier. Aggravated because committed by a serving soldier in time of war along with other soldiers unknown	6 months Military Servitude 5 yrs for other Crimes
Frigerio Enrico	20 May 44	5 days	"	Improper Purchase of American Military Property. Art 166 Penal Military Code & Art 3 of Penal War Code	Improper possession of a Jacket, Trousers, Blouse and a pair of Shoes the property of the Allied Military Administration	6 months Military Servitude 6 years month other

ivil and Military Tribunals
Punishments been granted.

TRIBUNAL	CRIME AND ARTICLE OF PENAL CODE	Short Particulars of Circumstances	PUNISHMENT	DATE OF SENTENCE	DATE OF APPEAL	REMARKS
Trib. Mil. T.O. Sardegna	Aggravated theft. Art 230 (2), 231 (1), 47 (3) of Military Penal Code and Art 47 of Military Penal War Code	Theft of 2 screwdrivers, 1 key, 1 pair Pliers & other Tools from a box of Aviation Tools. Aggravated because committed by a serving Soldier in time of war to the detriment of the Allied.	1 year Military Penal Servitude	6 June 44	6 June 44 (By Accused)	Suspended under Art 163 of Penal Code. Extenuating Circumstances considered by Judge to prevail over aggravating circumstances under Art 69.
"	Aggravated Theft. Art 47(3), 230 p.p.c. Military Penal Code and Art 47 of Military Penal War Code	Theft of a pair of Gloves, 1 cigarette lighter and a packet of cigarettes from an American Soldier. Aggravated because committed by a serving Soldier in time of war.	3 months Military Penal Servitude	6 June 44	=	"
"	Aggravated attempted Theft. Arts 46, 47(3), 230(2) of Military Penal Code & Art 47 Penal Military War Code	Attempted Theft of a barrel of Soda. Aggravated because committed by a serving Soldier in time of War to the detriment of the Allies	1 year Military Penal Servitude & the same for another crime	6 June 44	=	Punishment Postponed
"	Aggravated attempted Theft. Arts 46, 47(3) 230(1), 231(4) of Mil. Penal Code & Art 47 of Penal Mil. War Code	Attempted theft of 1 pair of shoes from an American Soldier. Aggravated because committed by a serving soldier in time of war along with other soldiers unknown	6 months Military Penal Servitude and 5 yrs & 6 mos. for other Crimes	6 June 44	=	Punishment Postponed
"	Improper Purchase of American Military Property. Art 166 Penal Military Code & Art 3 of Penal War Code	Improper possession of a Jacket, Trousers, Blouse and a pair of Shoes the property of the Allied Military Administration	6 months Military Penal Servitude and 6 years and 1 month for another crime	24 May 44	25 May 44 (By Accused)	Punishment Postponed

