

ACC

10000/142/159

JURISDICTION OVER ITALIANS
GERMAN OCCUPIED TERRITORY
JULY 1944

10000/142/159

JURISDICTION OVER ITALIANS FOR ANTI-ALLIED ACTIVITY IN
GERMAN OCCUPIED TERRITORY
JULY 1944

FILE CLOSED JULY 1944



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URBE
IL COMMISSARIO FEDERALE

400/13
HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Legal
15 JUL 1944
B

Ref/58/29/CA.

15 July 1944.

SUBJECT: Anti-Allied Activity.

TO : R.C. Region V.

1A 3A
1. I have received from Legal Sub-Commission copies of FLO's letter dated 3 July 1944 and reply of the Legal Sub-Commission dated 13 July with reference to the alleged action of certain civilians in ASCOLI PICENO Province in handing over to German or Fascist authorities British POWs and/or Allied Italian agents.

2. Whilst legal action against these people may not be possible the RRSC should investigate and if the allegations are supported they could be interned. There is also the threat to public order caused by the intentions of the local patriot element.

NORMAN E. FISKE,
Colonel,
Deputy Executive
Commissioner.

mtw
Copy to: Admin Section (2) ✓

Legal SC

7
D/197

HEADQUARTERS
ALLIED CENTRAL COMMISSION
Legal Subcommittee
APO 394

HRW/gaf

3A

ACC/4011/13/L

15 July 1944

SUBJECT: Anti-Allied Activity.

TO : HLD Region 3.

1. Ref your RS/511/19 dated 3 July 1944.
2. It does not appear that there is any basis for charging the persons mentioned in para 1 of your letter with the violation of any law, even though to us their conduct may seem despicable.
3. I am passing on to the HQ & MC Section a copy of your letter.
4. To avoid trouble for all concerned the patriots should be tactfully advised against the proposed acts of violence.

Copy to: HQ & MC Section
File ACC/4086/L

RICHARD H. WILSON
Colonel, GAO
Acting Chief Legal Officer.

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file
RESEARCHERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

(2A)
137/101

13 July 1944.

REC/101/13/1

SUBJECT: Anti-Allied Activity.

TO : HQ & HQ Section.

I enclose a copy of a letter R5/511/19 dated 3 July 1944 from R10 Region 5 and a copy of my reply as this is a matter of more than legal import alone.

RICHARD E. WILLER
Colonel, GAC
Acting Chief Legal Officer. 5

TO C.L.O. REAR H.Q.A.C.C.
 FROM H.Q. REGION 5, A.M.G.
 SUBJECT ANTI-ALLIED ACTIVITY.
 REF R5/511/19.
 DATE 3rd JULY 1944.

4011/13
 LEGAL SUB-COMMISSION

CLO

SCLO

Chief Counsel

CJO

Italian Section

SXS

1A
 Col Humphreys
 answer to
 par 6

1. Several cases have come to light recently in ASCOLI PICENO Province in which Italian civilian surrendered to German or fascist authorities British P.O.W.s and/or Allied Italian agents at a time when ASCOLI PICENO was ~~not~~ behind the German lines.
2. Local patriots are now threatening murder or other violent remedial action unless punishment is applied immediately.
3. It appears that strong action of some kind is necessary as soon as possible.
4. The Italian civilians appear to be outside A.M.G. jurisdiction since at the time of their actions the territory was under German control.
5. The local Procuratore del Re advises that they have committed no offence against Italian civil law but that they may be amenable to proceedings before an Italian military tribunal.
6. It would be appreciated if you could advise as ~~as~~ soon as possible whether proceedings can in fact be taken against these persons before an Italian military tribunal, and if so whether such a tribunal should be authorised to sit in ASCOLI PICENO.

For the Regional Commissioner:

W. E. BEHRENS
 Colonel
 R.L.O.

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WEB/EP

7. It is not known whether the German had in operation any provision similar to our Proc 1. IV. 1. but it is presumed that some such obligation on local Italian, must be ^{imagined} ~~presumed~~.

POINTS OF COL. BRENN'S LETTER. ANTI-ALLIED ACTIVITY.

1. Under Art. 15 of C.P.M.G. any offence against members of Allied or co-belligerent forces are punishable as if these forces were Italian, provided always that reciprocity exists.
2. Therefore if the surrendering by an Italian civilian of an Italian or Allied escaped P.O.W. to the enemy, is an offence punishable under the Code, the Italian Military Court can proceed against them.
3. However, if the Germans when in occupation published orders similar to Procl. 1-IV-1, there appears to be no offence under International Law.
4. Furthermore Italian civilian surrendering Allied P.O.W. before Italy became cobelligerent would not be triable. i.e. persons committing the same offence would be triable or not, according to the date of the offence; shot for an act committed on the 25 or set free if this act was committed on 24.

TRANSLATION

Appx to Para 2 (1c)

Military Personnel or persons outside the Armed Forces of the State who cooperate in committing a military offence are subject to the military Penal Laws (Art.1 et seq. military Penal Code of War) - Art.84 of that Code is concerned with the giving of information by a soldier to an alien with the intention of assisting the military operations of a State at war with the Italian State.. Art.101 states that the penalties established by Art.84 et seq. shall also apply if the offence is committed to the prejudice of a State allied with or associated in war with the Italian State. If it is not a case of military personnel or of association with military personnel Art.247 of the ordinary Penal Code applies, which deals with aiding (the enemy) in time of war. Art.268 of this Code gives equivalent status to foreign state allied with or associated in war with the Italian State.

(1E)

Alla legge penale militare sono soggetti i militari o le persone estranee alle forze armate dello Stato che concorrono a commettere un reato militare -art. 1 e segg. C.P.M. di pace- all'art. 84 detto codice é prevista la intelligenza di un militare con lo straniero diretta a favorire le operazioni militari di uno Stato in guerra con lo Stato italiano. L'art. 101 stabilisce che le pene stabilite dal citato art. 84 e segg. si applicano anche se il reato é commesso a danno di uno Stato alleato o associato a fine guerra con lo Stato italiano. Se non si tratta di militare o di correati con militari si applica l'art. 247 cod. penale comune, che prevede il favoreggiamento bellico in tempo di guerra. L'art. 248 detto codice parifica lo Stato estero alleato o associato a fine di guerra allo Stato italiano.

