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Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/173

MINUTES OF MEETINGS
NOV. 1944 - JULY 1945

10000/142/173

MINUTES OF MEETINGS, ITALIAN GOV'T
NOV. 1944 - JULY 1945

MINUTES OF MEETING HELD ON 26 JULY 1945

Present:

Col. DENNIS, C.E.O.
Lt. Col. HUNNARD
Sgt. STAIN

Minister TOGHIANI
H. G. BRILLANTINI
Dott. BONELLI

MEETING COMPLETED AT 1110

1. EXTRAORDINARY COURTS OF ASSISE. PETITION FOR PARDON.

Lt. Col. HUNNARD states that up to date there have been about 120 death sentences according to Legal Sub-Commission's files; Regional Legal Officer PINOCHI is disturbed by some sentences such as that in the case of Soffio Sante. Another case which appears to be doubtful is that of Valerio Valeri; furthermore the proceedings in connection with the petitions of pardon is too slow. The Minister states that the Ministry received about 60 petitions but no action can be taken without an extract of the sentence of the Court of Assise. Chief Legal Advisor states that he will issue instructions to send the sentences immediately as per the directive dispatched on 12 July 45.

2. ROMA AND VERONA - MURDER OF BRISQUINS.

Agreed that the Minister will send a letter to Procuratore del Regno of Verona thru Legal Sub-Commission saying that the Court of Assise of Verona has jurisdiction in this case but if this view it is in the interest of public order to hold the trial in a different place he should apply to the Court of Cassation for transfer of the case to Mantova, or possibly Padova or Vicenza. The Minister fully agrees that the trial should be held before an Italian Court and thinks it should not be held before **65.**

3. TRANSFER OF SECTION OF CASSATION FROM MILAN TO ROME.

Lt. Col. HUNNARD is inclined to agree with President Giuliano that the above transfer should be effected. The Minister states that the transfer at the present time could be interpreted as a move to change the general "indirizzo" of the Special Section; furthermore the advocate would have to travel from the North to Rome to appear before the Court; in any case he will present the matter to the Council of Ministers; in the Minister's view the Section should be moved to Rome when the entire Northern Italy is restored to Italian Government. With reference to the question of personnel of the Procura Generale of the Special Section the Minister presents a letter of the Personnel Dept Prot. No. 3969/026 09 of 24 July 1945; he states that all efforts will be made to find a suitable magistrate among the Coniglieri of Cassation at the Ministry.

4. ITALI DEOS.

The Minister promises an early reply in writing and agrees that a Commissioner must be appointed.

5. THREE JUDGES FOR VERONA GIULIA.

120 death sentences according to Legal Sub-Commission's files; Regional Legal Officer RIMIGGI is disturbed by some sentences such as that in the case of Corio Sante. Another case which appears to be doubtful is that of Valerio Valeri; furthermore the proceedings in connection with the petitions of pardon is too slow. The Minister states that the ministry received about 60 petitions but no action can be taken without an extract of the sentence of the Court of Cassation. Chief Legal Advisor states that he will issue instructions to send the sentences immediately as per the directive dispatched on 12 July 45.

2. ITALIA AND VERONA - NUMBER OF PRISONERS.

Agreed that the Minister will send a letter to Avvocato del Regno of Verona thru Legal Sub-Commission saying that the Court of Cassation of Verona has jurisdiction in this case but in this view it is in the interest of public order to hold the trial in a different place he should apply to the Court of Cassation for transfer of the case to Mantova, or possibly Padova or Vicenza. The Minister fully agrees that the trial should be held before an Italian Court and thinks it should not be held before

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3. TRANSFER OF SECTION OF CASSATION FROM MILANO TO ROME.

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4. ITALIAN DROS.

The Minister promises an early reply in writing and agrees that a Commissioner must be appointed.

5. THREE JUDGES FOR VENETIAN CUILIA.

Names of three judges speaking the Slovenian language are given to the Minister who agrees to their transfer from their present seats to

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VENERIA GIULIA in exchange for three judges now in service in VENEZIA GIULIA. The Minister will be advised as to whether or not Judge TRACCHINI will be recalled in VENEZIA GIULIA.

6. VERONIA OR OUTS.

The Minister states that the death of Minister Solari prevented the realization of the original plan; consequently he has ordered the vacations reduced from 45 to 30 days.

7. UNDERSECRETARY VERONI'S VISIT TO MILAN.

Lt. Col. HARRISFORD states that this visit proved helpful although Sig. Veroni discussed prison matters only; if the Sub-Commission had been given advance notice other matters could have been taken up. The Minister explains that Sig. VERONI left in a great hurry and expresses his regret for the oversight to advise the Legal Sub-Commission.

8. Avv. DECCI.

Lt. Col. HARRISFORD states that in his view the appointment of a Commissioner to the Republican ex-Ministry of Justice would not serve any useful purpose and would lead to confusion only; the Minister proposes to have Avv. DECCI come to Rome and appoint him to the Commission for Expiration of Magistrates functioning in the North; the Commission would have 5-6 members. Lt. Col. HARRISFORD sees no objection to that.

9. OFFICERS COMMITTED AT LUNARELLA.

Agreed that the Ministry will instruct the authorities at Treviso to grant provisional liberty to offenders from Pantelleria on condition only that they will not return to Pantelleria. This of course will apply to future cases only.

10. AMENDMENT TO DIL 142 (EXTRAORDINARY COURT OF ASSISE).

The Minister states that the Presidency has prepared a draft decree amending DIL 142. The amendment would, among others, limit the reasons for ricorso in cassazione and provide that a petition for pardon must be filed simultaneously with the ricorso. Lt. Col. HARRISFORD states that the Allied Commission does not favor the limitation of the reasons. The Minister states that this being the most important provision of the amendment he might drop the amendment altogether; he will discuss it with the Presidency and a copy of the eventual new draft will be sent to Legal Sub-Commission.

11. Comm. HARRISFORD TO GOV. DECCI.

Lt. Col. HARRISFORD states that the above received unofficial advice that he has been promoted from grade 5 to grade 4. Assuming that the information is correct could he be officially informed? The Minister

7. UNDERSECRETARY VERONI'S VISIT IN ROME.

Lt. Col. HUNTERD states that this visit proved helpful although Sig. Veroni discussed prison matters only; if the Sub-Commission had been given advance notice other matters could have been taken up. The Minister explains that Sig. VERONI left in a great hurry and expresses his regret for the oversight to advise the Legal Sub-Commission.

8. LTV. BORDA.

Lt. Col. HUNTERD states that in his view the appointment of a Commissioner to the Republican ex-Ministry of Justice would not serve any useful purpose and would lead to confusion only; the Minister proposes to have LTV. BORDA come to Rome and appoint him to the Commission for Duration of Magistrates functioning in the North; the Commission would have 5-6 members. Lt. Col. HUNTERD sees no objection to that.

9. OFFICERS COMMITTED TO ANTONIO TRAPANI.

Agreed that the Ministry will instruct the authorities at Trapani to grant provisional liberty to offenders from Pantelleria on condition only that they will not return to Pantelleria. This of course will apply to future cases only.

10. AMENDMENT TO DDL 142 (EXTRAORDINARY COURT OF ASSISE).

The Minister states that the Presidency has prepared a draft decree amending DDL 142. The amendment would, among others, limit the reasons for ricorso in cassazione and provide that a petition for pardon must be filed simultaneously with the ricorso. Lt. Col. HUNTERD states that the Allied Commission does not favour the limitation of the reasons. The Minister states that this being the most important provision of the amendment he might drop the amendment altogether; he will discuss it with the Presidency and a copy of the eventual new draft will be sent to Legal Sub-Commission.

11. COMM. MAGGIORI AMENDAMENTI 300. A. 1944.

Lt. Col. HUNTERD states that the above received unofficial advice that he has been promoted from grade 5 to grade 4. Assuming that the information is correct could he be officially informed? The Minister promises to do so.

12. MEETINGS ON COMPLETION WITH LIMITED DELEGATES.

The Minister promises reply in writing to our letter of 9 June 1945.

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13. REURUTION.

The Minister reports that it is proposed to set up a Central Emigration Commission for North Italy if proper personnel can be found; the problems connected with the selection of such personnel are extremely difficult; the Commission would examine the magistrates Court by Court; the matter will be discussed today by the Minister with Sig. PRONTI-GAY.

MEETING CLOSED AT 1200.

AGENDA FOR MEETING OF 30TH JUNE.

A) ADMINISTRATIVE AND GENERAL PROCEDURE.

1) - Communications.

- a) Rome to Milan - Cassation to Ministry
- b) Milan and other Regions of Northern Italy
- c) Time limits and responsibility of AMG for delays - Definition of time limits - From when do they start running in each case under Art. 17 of D.L.L. 142

2) - Death Sentences.

- a) Their execution - Role of Minister of Justice
- b) Correct procedure to be adopted - Amendments of existing rule if necessary (by Decree or Ministerial Circular) ?

*Min want sentence of AGA
+ other cases
C.P. can be applied
we want AG to speed
up the execution*

3) - Amendments to D.L.L. 142

- a) Speeding up procedure
- b) Increasing number of Extraordinary Courts
- c) Definition of meaning of word "collaborazione" (Art. 31 of C.P.P.)

*Guide VI judges hearing.
law to force advocates to come
to see with public
magistrates in response
to requests provided by P.R.*

4) - Jurisdiction of High Court of Justice

- a) When and how should jurisdiction be claimed - after or before Cassation -
- b) Lists of prisoners for decision by High Commissioner as to jurisdiction. *62*

5) - Congestion of prisons

How is it proposed to speed up the release of prisoners against whom there is no charge or charges without foundation - (many cases reported) - (cases of revenge, false denuncie, etc.)

- a) Rome to Milan - Cassation
- b) Milan and other Regions of Northern Italy
- c) Time limits and responsibility of AMG for delays - Definition of time limits - From when do they start running in each case under Art. 17 of D.L.L. 142

2) - Death Sentences.

- a) Their execution - Role of Minister of Justice
- b) Correct procedure to be adopted - Amendments of existing rule if necessary (by Decree or Ministerial Circular) ?

3) - Amendments to D.L.L. 142

- a) Speeding up procedure
- b) Increasing number of Extraordinary Courts
- c) Definition of meaning of word "collaborazione" (Art. 21 of C.P.P.)

4) - Jurisdiction of High Court of Justice

- a) When and how should jurisdiction be claimed - after or before Cassation -
- b) Lists of prisoners for decision by High Commissioner as to jurisdiction. *60*

5) - Congestion of prisons

How is it proposed to speed up the release of prisoners against whom there is no charge or charges without foundation - (many cases reported) - (cases of revenge, false denuncie, etc.)

6) - Suppression of legal holidays for the Magistracy.

AMG orders for the whole of Northern Italy

- 7) - Does the simple fact of having been a member of P.F.R. constitute an offence?

*Min want sentence of 1942
+ 1943. Can't
C.P.P. 1943. 1943. 1943.
we were 10-11-1943
after 1943-1944*

*Grade VI judges leaving
law to form extraordinary courts
from 1943-1944
magistrates in 1943-1944
magistrates provided by P.P.*

*6) -
Rome 1943-1944
X*

8) - Does the fact of having been a member of the republican army constitute in itself an offence?

9) - Camp Followers - Chaplains to the Forces etc.

what is their legal position?

under whose jurisdiction do they come under.

10) - Goods and services placed at the disposal of the enemy.

Extent of personal responsibility - General rules to be agreed upon.

11) - Jurisdiction of Courts of Assizes -

a) Form of offence

b) Type of offender

General agreement to be reached on definition of jurisdiction (civil and military, common crimes, fascist motives, fascist functions)

12) - Personnel for all Courts.

a) Appointment of judicial officials to Court of Assizes grade V and grade VI

b) Promotions of personnel in the North

c) Transfer of the personnel from the South

d) Criteria for epuration - Commissions

e) Status of personnel of Republican Ministry of Justice and Cassation of Brescia - Re-employment of some of this personnel

f) Increase of salaries

i) to members of P.M.

ii) to members of Commission of Epuration

g) Salaries of judicial personnel

advance of pay not a solution

early implementation of 18B etc.

13) Miscellaneous questions

a) Liguria

*excluse magistrali
per 1935.
implement 159 per
magistrali quickly
- inter-
municipal
Cura*

*Indennità di missione
per 163 di 1912*

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agreed upon.

11). - Jurisdiction of Courts of Assizes -

- a) Form of offence
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(civil and military, common crimes, fascist motives,
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13) Miscellaneous questions

- a) Liguria

- b) Venezia

B) INTERNAL PROCEDURE

- 1) - Amendment of Art. 14 of C.P.P.? How to deal with "denuncie" without foundation - order of release to be given by Giudice Istruttore or Corte d'Assise?
- 2) - Responsibility of Giudice Istruttore or P.M. respectively for dealing with cases by "istruzioni" formale or sommaria.
- 3) - Accused sent before Courts of Assizes after "istruttoria sommaria" is completed - Whose responsibility
 - a) - P.M. or
 - b) - Courts of Assizes in chambers?
- 4) - Inadmissibility of recourses to Cassation
 Who decides?
 - a) Court of Assizes, art. 207 of C.P.P.
 - b) Court of Appeal (Penal Section) art. 153 ^{c.p.p.}
 - c) Court of Cassation.
 Possible amendments to the Code of Penal Procedure.
- 5) - Mitigating and aggravating circumstances.
 Application of Art.s 147 and seq. of CPMP and 26 of CPMP etc?
- 6) - Selection of popular judges - Extraction of names from the urn.
 How is it to be done? at each session?
Oath? Must it be taken at each session also.

0014

file

DEPARTMENTS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

40/4013/5/1.

12 July 1945.

SUBJECT : Minutes of meeting of Italian judiciary and AGC, held
at Milan.

TO : The Minister of Pardon and Justice.

This Sub-Commission has the honor to forward a copy of the
above minutes for your information.

Incl.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LOMBARDIA REGION
APO 394
Legal Division

Ref.: LEG/5053

7 July 1945

SUBJECT : Legal Conference.

TO : HQ. Allied Commission - (Legal Sub-Commission)

1. Enclosed herewith are three copies of the Report received from H.E. Giuliano on the Conference held in Milan on June 30th.
2. May one copy please be forwarded to the Ministry of Justice and another to On. Boeri.
3. Copies of the Minutes of the morning session are also enclosed. Distribution has been made direct to the R.L.Os of the Northern Regions.

For the Regional Commissioner :

H.M. Dickie
H.M. DICKIE
W/CDR. RAF
Regional Legal Officer

Encl.: Report of Meeting
(3 copies)
Minutes of morning
session (2 copies)

vb

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8 JUL 1945

File 4013/3

PROCESSO VERBALEDELL'ADUNANZA 30 GIUGNO 1945

Addì 30 Giugno 1945 in un'aula del Palazzo di Giustizia di Milano si sono riuniti, sotto la presidenza del Grand'Uff. Dott. Michele Giuliano, Presidente della Sezione Speciale della Corte Suprema di Cassazione, i Capi delle Corti d'Appello dell'Italia Settentrionale, con l'intervento degli ufficiali della Commissione Legale del Comando Alleato e delle Sottocommissioni Legali Regionali dell'alta Italia, dell'avv. Boeri Alto Commissario Aggiunto per l'epurazione e del Grand'Uff. Dott. Alfredo Spallanzani in rappresentanza del Ministro di Grazia e Giustizia.

Erano presenti, oltre alle persone sopra nominate, il Col. Behrens Capo della Sezione Legale Comando Alleato Roma, il Ten. Col. G.C. Hannaford Ufficiale Collegamento Corti italiane, il Col. H.M. Dickie Ufficiale Legale Regionale Lombardia, il Col. Elder Ufficiale Legale Regionale Liguria, il Col. Levitt Ufficiale Legale Regionale Emilia, il Magg. Alexander Ufficiale Legale Regionale Piemonte, il Magg. Oats Ufficiale Legale Regionale Veneto, il Magg. Palmieri Capo Sezione Affari Civili Comando Alleato Roma, il Cap. Falk Capo Ufficio Legale Provinciale Brescia, il Cap. Sabatini della Sottocommissione Legale del Piemonte ed altri ufficiali, e i Dott. :

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Artasegna Aldo e Ciaccia Giuseppe della Corte di Appello di Milano, Sangiorgio Vito e Carnaroli Secondo della Corte di Appello di Bologna, Peretti Griva Riccardo e Bozzi Giacinto della Corte di Appello di Torino, Giudice Giuseppe e Lanero Francesco della Corte di Appello di Genova, Pellegrini Gilberto e Segati Pietro della Corte di Appello di Venezia, Ginennesco Giuseppe e Castellano Giorgio della Corte di Appello di Brescia, Gray Carlo Sostituto Proc. Gen. presso la Sezione Speciale della Corte di Cassazione. Segretario i Dott. : Emanuele Dansi e Antonio Ciampoli giudici del Tribunale di Milano.

Il Presidente, dichiarata aperta la seduta, pone in rilievo che oggetto della riunione è l'esame di numerosi problemi attinenti all'applicazione del D.L.L. 22 aprile 1945 n° 142 in relazione al D.L.L. 27 luglio 1944 n° 159. Questi problemi possono raggrupparsi in tre categorie, a seconda che concernano questioni sostanziali, questioni procedurali o questioni amministrative. Di fronte a tutti bisogna tener conto che la legge è ispirata al proposito di armonizzare nella maggior possibile misura le garanzie di giustizia con l'esigenza di un rapido procedimento. Bisogna altresì avvertire che su parecchi dei problemi delle due prime categorie la parola definitiva non potrebbe essere detta che dalla Corte Suprema. Tuttavia dall'esame che ne sarà fatto ⁵⁶ in questa sede potranno scaturire utili elementi, anche, eventualmente, per suggerire riforme legislative.

1° - Si inizia la discussione circa la posizione degli appartenenti alle forze armate neo-fasciste. Si dà lettura di una circolare allcata sé condo cui, poichè i neo-fascisti appartenenti a formazioni militari

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regolari vanno considerati come prigionieri di guerra, i giudici italiani non possono procedere contro gli stessi per il solo fatto che hanno appartenuto a formazioni armate della cosiddetta repubblica sociale. A questo proposito gli Alleati fanno rilevare che fu proprio richiesta del Governo Italiano che venne a suo tempo conclusa tra il Comando Alleato e quello tedesco una intesa che assicurava, con reciprocità, il trattamento di prigionieri ai componenti delle forze armate italiane regie ed a quelli delle forze armate italiane repubblicane. Ad ogni modo gli Alleati non intendono pregiudicare la decisione dei magistrati italiani su questo punto nonchè su quello relativo al trattamento penale da riservarsi agli appartenenti alle forze neo-fasciste già catturati dalle autorità italiane o che saranno arrestati in avvenire.

Su questi argomenti si svolge un'ampia discussione. Vi è divergenza di opinioni circa la possibilità di procedere penalmente, ai sensi delle leggi italiane, contro coloro che abbiano appartenuto alle forze armate repubblicane, per il solo fatto di tale appartenenza o per operazioni di guerra da essi compiute: alcuni ritengono che lo stato di prigionieri di guerra ad essi riconosciuto non consente di riscontrare nel fatto o nelle operazioni di guerra accennate, nè ora nè mai, gli estremi del reato di aver portato le armi contro la Patria; altri invece ritengono che lo stato di prigionieri costituisca solamente un'ostacolo di fatto a procedere penalmente per detto reato, e concludono che si possa senz'altro procedere contro coloro che non si trovano in potere degli alleati, come prigionieri, e che si potrà procedere contro coloro che sono attualmente detenuti dagli Alleati come prigionieri, non appena tale stato sarà cessato.

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Di fronte a questa di urgenza appare evidente che, a evitare disparità di trattamento che potrebbe essere irrimediabile, convenga soprassedere alla prosecuzione dei procedimenti, beninteso per il solo fatto dell'appartenenza a regolari formazioni armate della repubblica sociale o per operazioni di guerra compiute da tali formazioni, anche nei confronti dei militari neo-fascisti che sono attualmente in potere delle autorità italiane, sino a quando la questione non sia decisa in sede definitiva, salvo a promuovere per i militari neo-fascisti attualmente detenuti e nei cui confronti non risultino altre imputazioni specifiche, misure di polizia.

Circa la questione sollevata da parte italiana se gli appartenenti a reparti neo-fascisti con compiti di polizia (G.M.R., brigate nere, X Mas, Muti, ausiliarie ecc.) debbano essere equiparati a quelli appartenenti a formazioni dell'esercito regolare, gli Alleati esprimano l'avviso che tutti coloro che hanno impugnato le armi e combattuto secondo la legge internazionale debbano essere considerati prigionieri di guerra e dichiarano che essi applicheranno tale trattamento anche ai militari di detti reparti che siano in loro potere.

In conclusione rimane stabilito :

- a) soprassedere dal procedere penalmente contro neo-fascisti per il solo fatto di aver appartenuto a ~~questi~~ formazioni armate o per operazioni di guerra condotte da tali formazioni, salvo ad adottare nei loro riguardi misure di polizia, ove del caso;
- b) procedere contro di essi per altri reati, di cui eventualmente si siano resi responsabili richiedendo agli Alleati quelli che fossero in loro potere come prigionieri ;

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c) non costituire " collaborazione col nemico " ai sensi dell'art. 5 del D.L.L. 27 luglio 1944 n° 159 la sola iscrizione al p.f.r..

A questo punto viene avanzata da parte italiana la richiesta di ottenere dagli alleati quanto meno l'invio degli elenchi nominativi dei prigionieri neo-fascisti in loro potere, onde accertare se fra essi vi siano criminali di guerra o civili camuffati da militari. I rappresentanti alleati in via di massima si dichiarano favorevoli all'accoglimento della proposta salva l'approvazione delle autorità militari alleate proposte al comando dei campi di prigionia. Si fa peraltro osservare che, in ogni caso, i prigionieri neo-fascisti in mano alleata, alla cessazione dallo stato di prigionia, dovrebbero essere consegnati alle autorità italiane e non lasciati in libertà.

2° - Sulla questione del termine per la presentazione dei motivi in caso di ricorso per Cassazione (art. 17 p.p. D.L.L. 22 aprile 1945 n° 142), si riconosce che tanto lo spirito che la lettera della legge portano a ritenere che il termine di tre giorni debba decorrere dal deposito della sentenza e che la notifica dell'avviso di deposito, dalla quale la legge non dispensa, non serve più ai fini del compute del termine stesso. Il Presidente fa rilevare al riguardo che la Cassazione è larga nell'ammettere la presentazione di motivi aggiunti. Ad ogni modo la questione sarà decisa dalla Corte stessa in una prossima udienza.

3° - Sulla questione relativa al procedimento da seguire circa le istanze di grazia nel caso di condanna a pena capitale, si adottano, d'intesa coi rappresentanti alleati, le seguenti decisioni:

a) il Presidente della Corte d'Assise, pronunciata la sentenza, avverte

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l'imputato e il difensore dell'opportunità di presentare subito, se credono, istanza in grazia, date le difficoltà delle comunicazioni col Ministero ;

b) Il Procuratore Generale presso la Corte d'Appello deve iniziare subito l'istruttoria per la grazia anche se non sia stata presentata l'istanza relativa ed anche se sia stato proposto ricorso per cassazione, e deve inviare al Ministero, a mezzo della Commissione alleata, copia della sentenza di condanna non appena depositata ;

c) il Presidente della Sezione Speciale della Corte di Cassazione, pro
nunciata la sentenza, se rigetta il ricorso e non risulta ancora pro
se tale istanza di grazia, deve avvertire il difensore che, se si in
tende chiedere la grazia, è necessario farlo immediatamente ;

d) il Procuratore Generale presso detta Sezione deve dare avviso telegrafico del rigetto del ricorso al Ministero ed al Procuratore Generale della Corte d'Appello ed inviare copia della sentenza e gli atti di causa al Ministero a mezzo della Commissione alleata, unendovi l'istanza di grazia, se a lui presentata;

e) Il Procuratore Generale presso la Corte d'Appello, conosciuto il rigetto, deve comunicare immediatamente al Ministero il suo parere circa la grazia, anche se la relativa istanza non è stata presentata a lui, sempre ⁵² ~~52~~ ^{mez} ~~mez~~ ^{so} ~~so~~ della Commissione allentata;

f) se l'istanza di grazia sia presentata successivamente, ~~prima~~
~~venuta a conoscenza delle circostanze~~, il Procuratore Generale della Corte
d'Appello dovrà trasmetterla al Ministero a mezzo della Commissione Al-
leata sospendendo l'esecuzione;

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- g) il ministro comunica alla Commissione allentata il proprio parere circa l'istanza di grazia, se presentata, e l'eventuale nulla osta per l'esecuzione ;
- h) l'eventuale presentazione dell'istanza di revisione dovrà avere corso nei modi di legge, ma non interrompere le pratiche su indicate e non sospende l'esecuzione.

Il Col. Behrens tiene a mettere in rilievo che sui territori sotto controllo alleato il potere di grazia spetta al governo alleato, il quale ha delegato i suoi poteri al Consulente Legale Capo Alleato in Roma che seguirà normalmente l'avviso del Ministro della Giustizia.

4° - I magistrati italiani illustrano i gravi inconvenienti che derivano alla sollecita definizione dei processi dalla deficienza numerica del personale giudiziario in relazione all'elevato numero dei procedimenti stessi. Fanno presente che ormai il personale rimasto a disposizione degli uffici giudiziari ordinari è ridotto al minimo indispensabile al loro funzionamento.

Per il personale addetto alle Corti di Assise Straordinarie si formano le seguenti proposte :

- a) provvedere all'aumento del numero dei magistrati di grado quinto assegnati agli uffici giudiziari dell'Italia Settentrionale⁵¹ oppure ~~sterig~~zare magistrati ~~soppressi~~ di grado scatto ad assumere le funzioni di Presidenti delle Corti d'Assise ;
- b) sospendere il collocamento a riposo dei magistrati che abbiano raggiunto il limite di età ;
- c) definire rapidamente la posizione dei magistrati sospesi per epurazione
- d) prendere accordi con la Commissione Alleata per i trasferimenti dal mezz

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rogiorne e per le nomine, convalidando le nomine fatte dalle sottocommissioni alleate.

Per il personale addetto all'Ufficio Speciale del P.M. presso le Corti stesse si pone in rilievo da vari intervenuti che il comma secondo dell'art. 10 del D.L.L. 27 aprile 1945 n° 142 ha avuto scarsissima applicazione perchè gli avvocati cercano in ogni modo di sottrarsi alle dette funzioni, sia perchè non è stato stabilito a loro favore un compenso adeguato, sia perchè non vogliono pregiudicare la possibilità di essere nominati difensori avanti alle stesse Corti e sia, infine, perchè la funzione di istruttore non è da loro gradita.

A questo proposito il Cole Hammford fa presente che in Francia è stata resa obbligatoria per legge l'assunzione delle funzioni di istruttore da parte di avvocati combinandosi adeguate penalità per l'ipotesi di sottrazione a tali obblighi. Egli propone pertanto che anche in Italia venga adottato analogo provvedimento. Il Presidente sarebbe d'avviso di demandare agli ordini forensi il compito di fissare turni mensili tra avvocati in modo che ciascuno dei designati possa condurre a termine l'istruttoria dei procedimenti assegnatigli, in considerazione del fatto che tale periodo di tempo è, di regola, sufficiente alla chiusura dell'istruttoria. Dovrebbe poi essere concesso ai designati di continuare la loro attività nel ramo civile.

Viene fatta altresì presente la necessità di aumentare adeguatamente il numero del personale di cancelleria, affinché ogni magistrato istruttore possa avere a disposizione un cancelliere.

Si fa inoltre presente l'insufficienza degli organi della polizia giudiziaria, che ritarda lo svolgimento dell'istruttoria e l'accertamento dei reati.

Infine si propone che per quest'anno venga sospesa per tutto il personale

- 9 -

la concessione delle rio (come già è stato proposto dal Primo Presidente della Corte d'Appello di Milano per il personale del suo distretto), benchè si apprezzino e si considerino le ragioni che inducono tanta parte del personale stesso, che proviene dalle regioni centro-meridionali, a desiderare che venga loro concessa la possibilità di rivedere i famiglia ri da cui sono lontani da oltre due anni. Si fa tuttavia presente che un siffatto provvedimento solleverebbe gravissimo e spiegabile malcontento se non fosse accompagnato almeno dall'assicurazione di adeguato compenso eco nomico.

- 5° - Sull'epurazione della magistratura il Primo Presidente Giudice pone in rilievo il gravissimo inconveniente che deriva dall'attribuire il potere di sospensione a commissioni composte da elementi locali e, almeno in parte, da persone estranee alla magistratura, le quali non offrono le necessarie garanzie di serietà e competenza e insiste sul pericolo che vengano esercitate vendette personali dati i rancori che i magistrati, per le funzioni stesse che ad essi sono affidate, suscitano inevitabilmente tra il pubblico e i professionisti. Gli alleati aderiscono alla proposta di sospendere l'ordinanza n° 35 per ciò che riguarda i magistrati, affermando che essi si rendono perfettamente conto dell'esigenza di indipendenza e prestigio dei magistrati. Si propone che i relativi procedimenti siano rimessi o alla Corte Suprema Disciplinare o alla Commissione di Epurazione del Ministero della Giustizia o, quanto meno, che venga istituita una sezione di tale Commissione per l'alta Italia, ma non con elementi locali. Si riconosce la necessità di norme integrative che definiscano la posizione del personale del Ministero della Giustizia repubblicano e della Sezione della Cassazione di Brescia.

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6° - Sul trattamento economico del personale giudiziario gli italiani danno assai ragione che sono in corso anche provvedimenti particolari per i magistrati. Non si dichiarano favorevoli alla corrispondenza di indennità speciale ai magistrati addetti all'ufficio del P.M. presso le Corti di Assise Straordinarie, salvo, per i magistrati destinati fuori sede, l'indennità di missione, di cui è in corso l'aumento in misura adeguata.

7° - Nella seduta pomeridiana che, salvo un breve intervento del Col. Behrens, del Col. Hannaford e dell'avv. Beerli, si svolge in presenza ~~dei~~ soli magistrati italiani e del rappresentante del Ministero, viene anzitutto discussa la questione relativa al proscioglimento in sede istruttoria degli imputati denunciati a sensi del D.D.L.L.L.L. 27 luglio 1944 n° 159 e 22 aprile 1945 n° 142 contro i quali si sia svolta l'istruzione sommaria.

Vengono prospettate ed illustrate cinque possibili soluzioni :

- a) che la richiesta di non luogo^a procedere venga rivolta al giudice istruttore ;
- b) alla sezione istruttoria ;
- c) alla stessa corte d'assise straordinaria in camera di consiglio ;
- d) che venga restituito al Procuratore Generale della Corte d'Appello il potere di procedere all'archiviazione estendendo tale potere anche all'ufficio speciale del P.M. presso ogni Corte d'Assise Straordinaria ;
- e) che siano tenuti sospesi tali procedimenti sino alla scadenza dei sei mesi per poterli definire secondo le norme ordinarie scarcerando intanto gli imputati.

Scartata senz'altro quest'ultima proposta, il Presidente insiste sull'opportunità di restituire Al Procuratore Generale della Corte d'Appello, limitatamente a questi procedimenti, la facoltà di archiviazione ; e si decide di raccomandare al Ministro l'adozione di tale norma riconoscendo che la questione

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non è di agevole soluzione secondo le vigenti norme processuali.

Viene altresì prospettata la opportunità di riunire in un testo unico le disposizioni dei due decreti luogotenenziali.

8° - Circa la soluzione dei conflitti di competenza si è d'accordo nel ritenere che debbano competere le Sessioni unite della Suprema Corte, mentre se l'eccezione di incompetenza sia sollevata direttamente davanti alla Corte d'Assise stessa, sarà decisa da questa ed eventualmente poi dalla Corte Suprema.

Si accenna a questo proposito alla facoltà spettante all'Alto Commissario per le sanzioni contro il fascismo di avocare il giudizio all'Alta Corte di Giustizia. L'avv. Boeri fa presente l'opportunità che i Capi degli Uffici Speciali del P.M. segnalino all'Alto Commissario, per l'eventuale esercizio di tale facoltà, i processi più gravi (art. 41 D.L.L. 27 luglio 1944 n° 159). Si pone il quesito sulla validità della sentenza della Corte d'Assise quando già sia stata disposta l'avvocazione all'Alto Commissario. La questione si trova già sottoposta alla Corte Suprema (Sessione Speciale). Per ciò si è omessa sulla stessa, in questa sede, ogni risoluzione.

9° - Sulla competenza delle Corti d'Assise Straordinarie si fa rilevare che questa si estende anche ai militari. Tale interpretazione coincide con quella caldeggiata dagli alleati, mentre in un primo tempo prevaleva l'opinione di fare salva la competenza dei Tribunali militari per i militari. Considerata anche la differenza che, in proposito, sussiste tra il settentrione e il resto d'Italia, la questione della competenza dei giudici ordinari e di quelli militari è opportuno venga risolta in via legislativa, tenendo presente, onde evitare una eccessiva estensione della competenza militare che, secondo il codice penale militare, vengono, per i reati di cui trattasi, considerati militari anche tutti coloro che si trovano in congedo. Si reputerebbe opportuno conferire al P.M.

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presso la Corte di App. e Straordinaria la facoltà di deferire il giudizio in determinati casi (ad esempio: contro militari in servizio attivo), ai tribunali militari.

- 10° - Circa la competenza per connessione il Presidente rileva che, dato il carattere delle Corti di Assise Straordinarie di organi speciali della giurisdizione ~~straordinaria~~, la competenza va regolata come avverrebbe per le Corti di Assise ordinarie. E' pacifico che gli effetti della connessione sulla competenza rimangono fermi anche quando, eseguito del giudizio, venga pronunciata la sentenza per il reato che ha determinato la connessione stessa.
- 11° - Sul concetto di collaborazione si pone in rilievo ^{che} l'art. 1 capoverso 2° del D.L. 22 aprile 1945 n° 142 adotta una formulazione assai larga, e comprende anche la collaborazione indiretta, cioè quella data alla repubblica sociale ed alle sue istituzioni, le quali sussistevano allo scopo di appoggiare e di favorire il tedesco invasore.
- 12° - A proposito dell'art. 54 C.P.M.G. , il Presidente ritenerrebbe opportuno che ^{si} si richiamasse l'attenzione delle Corti di Assise Straordinarie sul fatto che esso non importa in ogni caso la pena di morte, ma contiene due ipotesi minori per le quali sono comminate soltanto pene detentive.
- 13° - In merito ai criteri generali da seguire verso le ditte che abbiano lavorato per i tedeschi o i neo-fascisti o commerciato con essi, il Presidente osserva che è questione di fatto lo stabilire se vi fu o meno collaborazione; occorre per esempio indagare se l'offerta di lavoro sia stata spontanea o no e se vi era o no scopo di lucro. Se concorrono gli elementi soggettivi ed oggettivi necessari ad integrare gli estremi dell'art. 51 C.P.M.G. si ha certamente una delle ipotesi più gravi di collaborazione.

- 13 -

Per gli operai che si siano volontariamente offerti alla Todt o per il lavoro in Germania potrebbe dubitarsi che sia da usare loro un trattamento più rigoroso di quello adottato per i componenti delle forze armate neo-fasciste. Occorrerà in ogni caso considerare diversamente la posizione del personale dirigente o di concetto da quello addetto a lavori manuali.

14° - A proposito di applicabilità delle circostanze attenuanti generiche di cui all'art. 26 C.P.M.G., oltre quelle specifiche indicate dall'art. 7 del D.L.L. 27 luglio 1944 n° 159, l'opinione prevalente è per l'affermativa, considerando che il richiamo contenuto nel penultimo comma dell'art. 1 del D.L.L. 22 aprile 1945 n° 142 implichi il richiamo anche alle disposizioni che possono influire sulla determinazione della pena. Non manca però chi ritiene che siano applicabili soltanto le attenuanti previste dall'art. 7 del D.L.L. 27 luglio 1944 n° 159.

15° - Si solleva la questione della possibilità di concedere la libertà provvisoria per i reati di competenza delle Corti di Assise Straordinarie e si rileva che la concessione di questo beneficio deve essere regolata dalle norme del C.P.P. Comune integrate dalle disposizioni del D.L.L. 10 ottobre 1944 n° 194.

16° - Si prospettano alcune questioni relative alle formazioni di più liste dei giudici popolari quando nella stessa provincia si costituiscano sezioni di Corte d'Assise Straordinaria che debbano funzionare in località diverse dal capoluogo. Si ritiene che la legge autorizzi la formazione di una lista unica nel capoluogo. Ne deriva però che le località dove funzionano le sezioni non avranno nelle Sezioni stesse giudici popolari del luogo, e che se questi devono spostarsi dalla propria sede, non basteranno le modeste indennità che ora percepiscono. Il problema meriterebbe di essere considerato legislativamente.

- 14 -

Si conviene, da ultimo, che il giuramento dei giudici popolari deve essere rinnovato all'inizio di cias un dibattimento ai sensi del D.L.L. 5 ottobre 1944 n° 290.

La seduta è tolta alle ore 18

14

File 4-3/3

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LOMBARDIA REGION
APO 394
Legal Division

Ref.: LEG/5053

7 July 1945

SUBJECT : Minutes of Legal Conference
held in Milan on 30th June.
TO : See Distribution.

1. Herewith is enclosed for your information
a copy of the Minutes of the above Conference.

For the Regional Commissioner :

H.M. Dickie

H.M. DICKIE
W/CDR. RAF
Regional Legal Officer

Distribution.

to: HQ. Allied Commission
Legal Sub-Commission (2)
R.L.O. Venezia (1)
Emilia (1) →
Piemonte (1)
Liguria (1)
P.L.O. Brescia (1)

Mr. AC - Major Paterson (1)

Section

13

13

MINUTES

OF A CONFERENCE HELD AT THE PALAZZO DI GIUSTIZIA, MILAN,

on

30TH JUNE 1945

1. The Meeting was opened at 10.00 hours by H.E. Michele Giuliano, President of the Special Section of the Court of Cassation who took the chair.

2. There were present the following Officers and Italian Magistrates :-

Allied Officers :

Colonel W.E. Behrens	-	C.L.A. A.C.
Lt.Col. G.G. Hannaford	-	Officer i/c Italian Courts A.C.
W/Cdr. H.M. Dickie	-	R.L.O. Lombardia
Lt.Col. W.G. Elder	-	R.L.O. Liguria
Major Alexander	-	D.R.L.O. Liguria
Major W.G.R. Oates	-	D.R.L.O. Venezia
Capt. E.V. Falk	-	P.L.O. Brescia
Lieut. L.A. Sabatino	-	Officer i/c Italian Courts Piemonte
Major E. Palmieri	-	HQ. A.C.

Italian Magistrates :

H.E. Spallanzani	-	representing the Ministry of Justice
H.E. Boeri	-	representing the High Commission for Sanctions against Fascism
Primi Presidenti and Procuratori Generali of the Courts of Appeal of -		Milan
do.		Turin
do.		Genoa
do.		Bologna
do.		Venice
do.		Brescia

3. Status of members of the Republican Armed Forces.

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3. Status of members of the Republican Armed Forces.

The President opened the discussion with a reference to the agreement between the Italian Government and the Germans that those who were captured should be treated as P.O.W. Colonel Behrens emphasized that the agreement was made at the request of the Italian Government and said that persons in this class would not be handed over by the military authorities for trial by Italian Courts if there was no charge against them other than mere membership of fascist organizations.

- 2 -

Various arguments were advanced by the Italian magistrates as to whether the agreement meant that these persons could never at any time be tried for membership of fascist organizations, or whether it was merely a practical question that those who were now in Allied hands could not be tried so long as their present status as prisoners of war continued. If the latter was the correct view, it would be unfair in their opinion to try persons in Italian custody for the same type of offence.

After prolonged discussion the following agreement was reached :-

- (a) to defer proceedings against persons now in Italian custody where no charge was made other than membership of fascist organizations.
- (b) to proceed in all cases where additional offences were charged and if the accused was in Allied hands to ask that he be handed over for trial.
- (c) that mere inscription in the P.F.R. did not constitute collaboration with the enemy under Art. 5 of D.L.L. No. 159.
- (d) to ask the Allies to prepare nominal rolls of neo-fascists in P.O.W. camps. Colonel Behrens said that this might be done subject to the approval of the Military Authorities but in any case such persons would not be released by the Allies but would eventually be handed over to Italian custody.

4. Time limits for appeals.

The time limits for presenting appeals to Cassation under Art. 17 of D.L.L. No. 142 were discussed and it was decided that the time ran from deposit of sentence. This question would shortly be decided by the Court of Cassation in a pending case.

5. Procedure on applications for Pardon.

Colonel Behrens pointed out that in AMG territory the granting of pardon was a function of AMG, acting on the advice of the Ministry of Justice and that all communications on this subject must therefore pass through AMG/A.C. channels.

In order to avoid unnecessary delays, the following

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In order to avoid unnecessary delays, the following procedure in cases involving a death sentence was agreed :-

(a) The President of the Court of Assize on delivering the sentence will advise the accused and his advocate that they may, if they think fit, present an application for pardon forthwith.

(b) The Procuratore Generale of the Court of Appeal will begin immediately the "instruction" for pardon whether or not an application has been presented and even if an appeal to /Cassation

- 3 -

Cassation is pending. He will send to the Ministry through A.C. a copy of the sentence as soon as it is deposited.

(c) The President of the Special Section of Cassation upon delivery of the sentence will, if the appeal is rejected and no application for pardon has been presented, inform the defending advocate that if he wishes to apply for pardon he must do so immediately.

(d) The Procuratore Generale of the Special Section of the Court of Cassation will inform the Ministry and the Procuratore Generale of the appropriate Court of Appeal when an appeal has been dismissed and will forward a copy of the sentence and the documents in the case to the Ministry together with the application for pardon if it has been presented to him. These communications between the Procuratore Generale and the Ministry will be sent through R.L.O. Lombardia, who will notify every confirmed death sentence to the Legal Sub-Commission by signal with copy to the R.L.O. of the Region in which the case was originally tried.

(e) The Procuratore Generale of the Court of Appeal must immediately upon hearing that the appeal has been rejected communicate to the Minister his "parere" on the matter of pardon even if the application for pardon has not been presented to him. This communication must also go through A.C.

(f) If an application for pardon is presented at a later date, the Procuratore Generale of the Court of Appeal must forward it to the Ministry through A.C., and must suspend execution.

(g) The Minister will communicate to A.C. his "parere" on the application for pardon, if such is presented and will advise whether he approves or disapproves the execution of the death sentence.

6. Personnel.

The Italian magistrates then discussed at length the difficulties arising out of the present lack of personnel to cope with the enormous number of pending cases. To assist the functioning of the Special Courts of Assize they made the following proposals :-

(a) To increase the number of grade V magistrates in Northern Italy or permit grade VI magistrates to sit as Presidents of Courts of Assize.

(b) To suspend the retirement of magistrates who have reached the age limit.

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in which the case was originally tried.

peer pressure through A.C.

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of judges from the South.

- 4 -

With regard to the office of Pubblico Ministero at the Special Courts of Assize; it was pointed out that the avvocati are reluctant to act either because the pay was inadequate or because they prefer to appear for the defence. Major Palmieri explained that in France advocates had been compelled to undertake duties in the Prosecuting Office and it was agreed that the possibility of ordering Italian avvocati to undertake this work for say one month at a time would be further explored.

An increase in the personnel for the Cancellerie was demanded.

All the magistrates agreed with the suggestion of the First President of the Court of Appeal of Milan, that holidays should be suspended for the magistracy for this year and Colonel Behrens undertook to discuss this question with the Minister and if necessary to issue a General Order for all Regions.

7. Epurazione.

The First President of the Court of Appeal of Genoa delivered an impassioned protest against the method of epurating the magistracy by local commissions, of which junior magistrates and local avvocati were members. It was his opinion, with which all magistrates agreed, that magistrates should be investigated either by the Corte Disciplinare or by the Commission for Epuration of the Ministry in Rome. He asked that a section of this Commission be constituted to deal with Northern Italy. Action was also requested from the Ministry regarding the personnel of the Republican Ministry of Justice and of the Section of Cassation at Brescia.

8. Salaries.

With reference to the economic situation of judicial personnel, Colonel Behrens stated that the increase in salaries for public servants generally was now under consideration by the Italian Government, that several Decrees granting such increases were in course of publication and that in his opinion the whole financial question would be cleared up by September or even before. In reply to a question raised by the First President of Brescia Court of Appeal on the "indennità di missione" it was stated that adequate increase would shortly be granted to cover the out-of-pocket expenses of magistrates who had to preside

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9. The Meeting adjourned at 13.00 hours and was resumed in the afternoon when the Italian magistrates met in the absence of the Allied Officers. Points of procedure were discussed which are fully dealt with in the report prepared by the President of the Special Section of Cassation, a copy of which has been sent to the Legal Sub-Commission.

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451313
MEETING HELD ON 5 JULY 1945

Present:

Col. BEHRENS,
 Lt. Col. HANNAFORD
 S/Sgt. STEIN

Minister TOGLIATTI,
 Dott. SPALLANZANO
 Dott. BONELLI

MEETING OPENED AT 1215.

1. Extraordinary Courts of Assizes.

Dott. Spallanzani's draft directive on forwarding of petitions for pardon in cases tried by above Courts is discussed and several amendments agreed upon. The Minister stresses the fact that none of the death sentences imposed have been executed as yet; in the case of Bongiovanni the Council of Ministers requested a copy of the sentence before acting on the petition for pardon. The Minister is of the opinion that the procedure under DLL 142 will have to be modified to avoid delay in the execution of sentences; he proposes that the ground of "insufficient motivation of the sentence" for the "ricorso" in Cassation should be eliminated. Lt. Col. Hannaford is not in favour; he suggests that judges holding grade 6 should be eligible for the presidency of the above Courts; furthermore, it should be made compulsory for attorneys to serve as P.M. before these Courts. The Minister doubts that an appeal to lawyers for voluntary service would do; the amendment should also state that a petition of pardon must be filed within a certain time limit after the judgment has become definitive. Lt. Col. Hannaford states that it will be necessary to increase the number of above Courts. There are 21000 detainees in Lombardia, and only 15 Courts each of which can dispose of 3 cases daily at the most: the difficulties lie mostly in the istruttoria. - On CIA's proposal it is agreed that the Ministry will prepare a draft decree embodying the above modifications and also a draft decree setting up the above courts in the Provinces of Lucca and Apuania.

2. Confine for fascists.

Lt. Col. Hannaford reports that he advised local authorities in Northern Italy to make use of the reorganized Commission on "confino" to deal with dangerous fascists who cannot be charged with a specific crime. The Minister agrees. Lt. Col. Hannaford further reports that in Imperia several partisans committed common crimes after the liberation and are now held by CID. The

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-2-

3. Suspension of Court vacations.

The Minister reports that in agreement with the Minister of Treasury the vacations have been provisionally suspended every where; the Primi Presidenti have been authorized to approach individual magistrates whose work is essential with a view to make them give up 30 days of their vacation. As a compensation they will receive an additional month's pay.

4. Retired Magistrates grade 1-4.

Lt. Col. Hannaferd points out that P.P. Sansoni (Brescia) and three Consiglieri of Court of Appeal of Venice have been placed in retirement under the law authorizing the Council of Ministers to do so. The Minister advises that they should file a "ricorso" as they have not been heard before the above measure was applied.

MEETING CLOSED AT 1315.

13

4013/3
r

23 June 1945.

DD/10/422.

SUBJECT : Meeting of First Presidents and Procuratori Generali.

TO : R.L.O. Lombardia.
(Copy to Hq. A.C., AFV 224 for Legal Sub-Commission, attn: Italian Branch).

1. The instructions contained in AC/4013/3/L letter of 18 June re subject have been complied with by this Hq.

2. The First President and Procuratore Generale will attend from Piemonte.

3. Agenda of points intended to be raised is attached. Will you please transmit same to H.S. Michele Giuliano.

4. 1st Lt. Louis A. Sabatino, O i/c Italian Branch, Piemonte, will attend the meeting as deputy for R.L.O. Piemonte.

For the Regional Commissioner.

Edwin J. Mercer
Lt. Col., Ord.
Regional Legal Officer.

EJM/CR

Encl. : 1 copy of "oggetto"
to addressee and to Hq. A.C. Legal Sub-Commission
(attn. O i/c Italian Courts).

Copy to : O i/c Italian Courts, Piemonte.

36

Chief Counsel

GO

Italian Sec

2 JUL 1945

TECNOLOGIA GERMANICA DEL REGNO DI TORINO

N. 48 P.R.

Torino 22 giugno 1945

ONOREMUS - Corti Straordinarie d'Assise

Ai Capri della Sezione Corte Cassazione di

IL G. A. M. O.

o P. C. al Governo Militare Alleato per il Piemonte FOR I. M. O.

STABILIMENTO

Si trascrivono i quesiti da risolvere colle soluzioni proposte:

1° - Se la semplice iscrizione al C. F. S. costituisca reato e quale.

Soluzione proposta:

L'ordine del giorno n. 4 a firma Mussolini dispone:

"Ordino l'immediato ripristino di tutto lo stabilimento del partito con i seguenti compiti:

" 1) di appoggiare ed insegnare e conseguentemente l'esercizio germanico che si batte sul territorio italiano contro il partito del partito era dunque in istruzione. Il servizio di ordine resti contro il governo italiano medesimo. La C. F. S. è un partito costituito un'associazione di delinquere (art. 416 C. P.) ed un partito antinazionale (art. 416 C. P.). Ne discende che chi vi si iscriveva, per il solo fatto di adesione, offriva i suoi servizi al nemico (art. 24 U. S. C. e 416 C. P.). Partecipava ad una associazione o delinquere (art. 416 C. P.) e contemporaneamente ad una associazione antinazionale (art. 271 C. P.).

Competente a conoscere del reato di offerta di servizi al nemico è la Corte Straordinaria d'Assise. - Nel pari competente a conoscere degli altri reato sarebbe la Corte stessa, per essere stati questi reati commessi per fini fascisti od avvalorati dalla attività politica creata dal fascismo (art. 3 U. S. C. e 271 C. P.).

Nella valutazione delle responsabilità dovrà naturalmente tenersi presente l'elemento esteriore del reato ed inoltre la possibilità che il colpevole sia caduto in errore di fatto sulla natura dell'associazione, errore che potrà riguardare sia i fini espressamente enunciati da Mussolini - nel qual caso resterebbe esclusa la possibilità per i reati di cui agli art. 54 C. P. M. G. e 416 C. P. - o per la natura di antinazionale - nel qual caso resterebbe esclusa la responsabilità anche per il reato di cui al l'art. 271 C. P. -

Qualmente dovrà essere preso in considerazione la possibilità che il colpevole abbia agito in stato di necessità (art. 54 C. P.). Nella valutazione dell'esistenza dello stato di necessità non dovrà disconsiderarsi che nell'animo di tutti incombeva un timore che alterava i poteri di giudizio o critica, per cui dovrà ritenersi escludere uno stato di necessità soggettivo anche in quei casi in cui normalmente questo non sarebbe ammissibile a cagione appunto dell'accanto baronismo psichico.

2° - Se l'appartenenza all'esercito repubblicano costituisca reato e quale.

Soluzione proposta:

re-za 70 semantica iscrizione al T.R.R. costituisca reato e quale.

Soluzioni proposte:

Il catalogo del mondo 0.1 a fianco Bugso'ini dispone:

Continuo a credere che il miglior modo di affrontare il problema è quello di creare un organismo che si occupi di tutto ciò che riguarda la salute pubblica e di coordinare le attività delle varie istituzioni che operano in questo campo.

" 1.) Al compiere all'atto della costituzione del
 unico che si deve nel territorio italiano. Come si
 Comita del partito, che dunque è un servizio al suo
 (art. 2) C.F. (1) prestare che si compiva con la
 resti contro il governo italiano. (2) E
 to che per tal modo avrebbe costituito un'associazione
 (art. 416 C.F.) e un partito unico locale (art. 417).
 Ma dicendo che chi vi si iscriveva, per il solo
 offriva i suoi servizi al medico (art. 418). E
 pava ad una associazione e delinquere (art. 419).
 una associazione sotto forma (art. 271 l. 1).

[illegible]

creata dal fascismo (art. 2, 1. 2085 del 1930).

Nelle voluntarie della responsabilità dovrà naturalmente tener conto della responsabilità del solo ed inoltre la possibilità presente l'elemento essenziale del solo ed inoltre la possibilità che il colpevole sia caduto in errore di fatto sulla natura dell'azione, errore che potrà riguardare sia i fini espressamente enunciati da Mussolini - nel qual caso resterebbe esclusa la possibilità per i reati di cui agli art. 94 C.P.M.C. e 416 C.P. - o per la natura di antinazionale - nel qual caso resterebbe esclusa la responsabilità anche per il reato di cui all'art. 271 C.P. -

anche per il resto di cui al par. 271 c.c. -
 Ugualmente dovrà essere presa in considerazione la possibilità che il
 colpevole abbia agito in aiuto all'accessità (art. 54 c.c.). Nella Value
 l'accessità non dovrà invece ricercarsi
 che nell'anno di fatti incombeva un timore che diventava l'ipotesi di
 giudizio e critica, per cui dovrà ritenersi esistente la necessità di
 necessità soggettiva anche in quei casi in cui nominalmente questo
 non sarebbe ammissibile a ragione appunto dell'«*accusato*» l'abbandono
 psichico.

12°- Se l'appartenenza all'esercito repubblicano costituisce punto a

missioners propose:

Soluzione proposta:
 E' necessario prevenire una coesistenza. - Il governo italiano con una convenzione col governo militare alleato dell'eterna sicurezza ha richiesto ed ottenuto che fossero considerati prigionieri di guerra gli appartenenti alle forze armate non fasciste catturate in combattimento in reparti militarmente organizzati.

La convenzione del Governo Italiano importa riconoscimento da parte dello stesso governo della qualita di legittimi belligeranti alle forze militeri neo-fasciste ai sensi dell'art. 20 legge 6 Luglio 1938 n. 1415, limitatamente però al caso di appartenenza a reparto organizzato ed ai soli fini della ^{loro} cordinazione, se catturati.

Se invece si volesse estendere l'attribuzione di legittima belligeranza a tutti gli effetti, i ferri compiuti dalle formazioni militari neo-fasciste non sarebbero mai punibili, perchè si tratterebbe di atti di guerra. L'esercito repubblicano rientrerebbe perciò nel concetto di *status armatus* di cui all'art. 308 G.C. costituita al fine di portare aiuto al nemico e di intervenire nei suoi interessi politici nel territorio invaso.

La sola appartenenza all'esercito repubblicano costituirebbe l'unico diritto di portare aiuto militare o politico al nemico (art. 91 U.L.M.C.) per la ricinazione a banda armata (art. 305 C.C.) o favoreggiamento.

David David Gustafson, MD, PhD

a) i militari si lava - per questo ricorre lo stato di necessità - prima et de iure e non si dovrebbe procedere;

(M) Protocol for the investigation of

più se di arma combattente - l'esperienza ad arma combattente collaudarebbe fatto diretto e portare aiuto al nemico (art. 27-7-1944) e a bande armate per fini fascisti (art. 306 C.C. in relazione all'art. 3).

D. L. MORSE, 27-7-1944).

62° - se di arma non combattente - si verserebbe nelle ipotesi di fatto discusse in precedenza.

30- assimilati ai militari - Per la compilata vi sono 20 esemplari 3
d'appellati militari.

a) l'arruolamento nelle ausiliarie costituirà parte delle unità e formerà i cappelletti militari.

nella valutazione della responsabilità dovrà però sempre esser tenuto in considerazione del solo e tenace presente la possibilità che la colpevole sia caduta in errore. Il fatto della estenuazione della colpa non si assumeva nel fatto dell'arruolamento.

col fatto dell'attribuzione.
 Agnamente dovrà essere presa in considerazione la possibilità che la col-

Nella valutazione sull'esistenza dello stato di necessità non dovrà essere dimenticato che sull'animo di tutti incombe un dovere che attorna i poteri di giudizio e di ordine, per cui potrà essere ritenuto esistente uno stato di necessità soggettivo anche in quei casi in cui normalmente questo non sarebbe ammissibile, a ragione appunto dell'oscillare, turbamento psichico.

b) cappellani militari. - Si evviscerebbe che la loro appartenenza all'esercito repubblicano sia stata conseguenza di un ordine legittimo e cioè che essi abbiano agito in conseguenza di un dovere imposto dall'ordine dei superiori ai quali non potevano sottrarsi (art. 51 C.C.).

superiori al quell non potevano essere (e)

L'esercito repubblicano rievocerebbe perciò nel concetto di banda armata di cui all'art. 306 C.C. costituita al fine di portare aiuto al nemico e scista non sarebbero mai punibili, perchè si tratterebbe di atti di guerra.

La sola appartenenza all'esercito repubblicano costituirebbe tutto diritto a portare aiuto militare o politico al nemico (art. 31 D.L. 15.5.73) per cui non potrebbe essere ammessa la concessione di un'arma da fuoco, per la trasmissione a banda anversa (art. 306 C.P.) o l'acquisto di un fucile.

jevami poroč določene izjave :

D. Laog, 27-7-1944) 2

- b29. se di arma non combattente - si verserebbe nella bottega di fatto di
retto a favorire i disegni politici del recluso sul fronte dello scoppio
(art. 56 C.P.N.O.) e la partecipazione a bande armate in vari fascisti.

- 3°- Assimilati ai militari - fra gli assimilati vi sono in assoluto 9
i cappellani militari.

- a) l'arruolamento nelle guerriglie continuavano a farsi attraverso i favorevoli i disegni politici del nemico sul territorio occupato (art. 59 C.R. di G.C.) e partecipazione a bande armate (art. 100 C.R.) per motivi fascisti.

Nella valutazione della responsabilità dovrà però sempre essere considerata la questione del dolo e tenersi presente la possibilità che la colpevole sia caduta in errore di fatto sulla avvenzione degli obblighi che si assumeva col fatto dell'arruolamento.

Agualmente dovrà essere presa in considerazione la possibilità che la col-
pive abbia agito in stato di necessità (art. 54 C.P.).

Nella valutazione sull'esistenza dello stato di necessità non potrà essere dimenticato che quell'anno di tutti incombeva un timore che alterava i poteri di giudizio e di critica, per cui potrà essere ritenuto esistente uno stato di necessità soggettivo anche in quei casi in cui moralmente questo non sarebbe ammissibile, a cagione appunto dell'accecamento turbamento psichico.

- b) cappellani militari. — Mi avvisoerebbe che la loro appartenenza all'esercito repubblicano sia stata conseguenza di un ordine legittimo e cioè che essi abbiano agito in conseguenza di un dovere imposto dall'ordine dei superiori ai quali non potevano sottrarsi (art. 51 C.P.).

Per cui fino a quando essi si sono limitati ad esercitare il loro ministerio sacerdotale nell'ambito della loro missione religiosa, non sarebbero puniti. — Sarebbero invece punibili se avessero ecceduto con fatti specifici e concreti e verrebbe allora in applicazione l'art. 5. U.S.A.A.

13. Pretestatore d'ordine a favore del realeco.-

se i lavoratori volentieri in Germania sono punibili e quando.

Soluzione proposta:

La prestazione d'opera a favore del nemico sarebbe fatta oggetto a portarsi aiuto al nemico (art. 51 C.P.M.G.) sia che la prestazione riguardasse

" chiunque " e cioè militari e non militari, era attribuita al giudice ordinario e che si derogava al principio solo nei casi previsti dall'art. 5 stesso decreto.

L'art. 1 del D.Lgt. 22 aprile 1945 ha modificato tutta la materia prevista dall'art. 5 del D.Lgt. 27 luglio 1944, aggiungendo delle ipotesi, ivi non previste, e perciò ha abrogato l'art. 5 stesso. Poiché nell'art. 1° del D.Lgt. 22 aprile 1945 non vi è più la disposizione regolatrice di competenza, disposizione che, come si è visto, era eccezionale, co, segue che la deroga alle norme comuni di competenza regolanti i reati previsti dal D.Lgt. 27 luglio 1944 è stata abrogata e riprende vigore la norma comune per cui le Corti Straordinarie d'Assise sono competenti a giudicare " chiunque " e cioè i militari e i non militari.

Esecuzione:

Sono competenti le Procure del Regno del luogo ove ha sede la Corte Straordinaria d'Assise e ciò per ragioni di convenienza, essendovi ancora, come è noto, difficoltà di comunicazioni fra i circondari.

Misure di sicurezza:

A tutte le condanne previste negli art. 3 D.Lgt. 27 luglio 1944 e 1 D.Lgt. 22 aprile 1945, dovrebbe seguire la confisca dei beni del condannato ai sensi dell'art. 9 D.Lgt. 27 luglio 1944 in quanto la facoltatività della confisca stessa è solo richiesta nel caso in cui il fatto non costituisca reato.

IL PRIMO PRESIDENTE

(Peretti Griva)

Peretti Griva

IL PROCURATORE GENERALE

(Bozza)

Bozza

opere strettamente militari, sia che attenesse ad altre opere. Quando il legislatore parla di nemico si riferisce all'insieme del popolo intero come esercito e come popolazione civile, in quanto alla popolazione cres la possibilità di maggiore resistenza intorno a maggiore possibilità di prosecuzione delle ostilità. Perciò i lasciatari civili volontari in Germania, per il solo fatto di avere volontariamente aderito a prestare la loro opera a favore del nemico avrebbero commesso, come si ritiene, il fatto preveduto come reato dall'art. 51 C.F.M.C.

Al fine equitativo sarebbe però opportuna qualche distinzione. a) se trattasi di personale dirigente o tecnico si riterrebbe applicabile l'art. 51 C.F.M.C.;

b) se trattasi di personale di mera esecuzione si riterrebbe applicabile l'art. 246 C.F., reato commesso al fine di favorire lo strano- ro in tempo di guerra.

Competenze

Per materia:

La Corte Straordinaria d'Assise è competente a giudicare di tutti i reati connessi, secondo il disposto dell'art. 10 del D.Lgt. 27 luglio 1944. Ne vale obiettare che l'art. 2 del decreto legislativo 22 aprile 1945 attribuisce alle Corti Straordinarie d'Assise la competenza a giudicare, per connessione, del solo reato di cui all'art. 3 D.Lgt. 27 luglio 1945, implicitamente escludendo la possibilità di connessione per altri reati non espressamente richiamati. Infatti il richiamo dell'art. 3 citato reato era non esatto perché il D.Lgt. dice ordinario era competente a giudicare dei reati di cui all'art. 3 del D.Lgt. 27 luglio 1945, ai sensi dell'art. 4 dello stesso decreto che gli attribuiva una competenza specifica alternativa, vale a dire non si poteva cercare se non per espresse disposizione di legge.

Inoltre l'art. 1 del D.Lgt. 27 luglio 1944 n. 14, per la espressamente esclusa l'applicabilità delle norme del C.F.M.C. o perché, ai sensi del ricordato articolo 10 C.F.M.C. 27-7-1944 doveva essere applicata in questa materia la norma comune. Del resto per nella maggior parte dei casi, tratterebbero di una disposizione priva di pratica applicazione, perché chi ha commesso l'atto preveduto come reato dell'art. 51 C.F.M.C. o di un servizio fascista, li ha commessi o per motivi fascisti o avvalendosi delle situazioni politiche create dal fascismo, e si rientrerebbe sempre e nelle ipotesi previste dall'art. 3 D.Lgt. 27 luglio 1944.

Ratione personae.

La Corte straordinaria d'Assise è competente a giudicare "ordinario" e cioè i militari e i non militari.

Infatti l'art. 5 del D.Lgt. 27-7-1944 disponeva che i reati commessi dai militari erano di competenza dei giudici militari e gli altri del giudice ordinario.

La espressa disposizione della legge dimostrava che trattavasi di

4/27/73

f l c SDA

MINISTER OF JUSTICE, MILAN, 28 JUNE 1945.

Request:

Col. BRESCHI
5/8/45 97111Minister FORLATTI
Dott. B. VALLI

MEETING OF THE MINISTERS OF JUSTICE, 28 JUNE 1945.

Extraordinary Courts of Justice. Meeting on 20 June. Personnel.

Chief Legal Adviser informs the Minister of the purpose of the meeting to be held in Milan on 30 June: it will deal with above courts and with personnel questions in general. The Minister requests that P.P. Turin (PROVINCIAL) be sent to Rome for two days to discuss personnel matters, if it should appear that Sig. SPALLANUTTI's attendance at the meeting is not sufficient to give the Ministry a true picture of the personnel question. The Minister stresses that although a uniformity in sentences of Extraordinary Courts of Justice is desirable and necessary the judges cannot be told what sentences they are to impose; they should merely be advised of the "spirit" of the law 139 and 142 and of the criteria contemplated by the legislator. The Minister is opposed to any change in the substantive part of the law on sentences against Fascism; the proposed part might perhaps be revised, but the Minister does not favor any revision. The Minister is also contrary to having the Court of Cassation Section from Milan to Rome; to do this it would be necessary to cut down the grounds for "violenza in cassazione" by eliminating the ground of "insufficient motivation of the sentence"; by eliminating this ground the number of "ricorsi" would be decreased and the difficulty of communication between the Court of Cassation in Rome and the North would not be as serious an obstacle as it would be if the grounds for "violenza" would remain as they are now. C.A. points to recent demonstrations against the Courts in Milan in connection with the BILIB case; it would seem advisable for the Minister to take a statement in support of the Extraordinary Courts. The Minister states that he will publicly condemn the recent cases of lynching in a message to Manifesto and will give an interview to the press rejecting any form of pressure on the Courts.

On request of the C.A. the Minister promises to designate a substitute for Sig. LANGE, Procuratore Generale of the Special Cassation Section within a week and to fill the vacancies of the Procuratore Generale in Brescia and Bologna as soon as he becomes sufficiently familiar with the situation.

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MEETING CLOSED AT 1900.

Chief Legal Adviser informs the Minister of the purpose of the meeting to be held in Milan on 30 June: it will deal with above courts and with personnel questions in general. The Minister requests that P. P. Turin (MAGGIORANI) be sent to Rome for two days to discuss personnel matters, if it should appear that Sig. MAGGIORANI's attendance at the meeting is not sufficient to give the Ministry a true picture of the personnel question. The Minister stresses that although a uniformity in sentences of Extraordinary Courts of Justice is desirable and necessary the judges cannot be told what sentences they are to impose: they should merely be advised of the "spirit" of the law 159 and 142 and of the criteria contemplated by the legislature. The Minister is opposed to any change in the substantive part of the laws on Extraordinary Courts of Justice: the procedural part might perhaps be revised/changed on principles, but the Minister is also contrary to moving the Court of Cassation Section from Milan to Rome; to do this it would be necessary to cut down the grounds for "ricorso in cassazione" by eliminating the ground of "insufficient motivation of the sentence"; by eliminating this ground the number of ricorsi would be decreased and the difficulty of communication between the Court of Cassation in Rome and the North would not be as serious an obstacle as it would be if the grounds for "ricorso" would remain as they are now. CIA points to recent demonstrations against the Courts in Milan in connection with the RINALDI case; it would seem advisable for the Minister to make a statement in support of the Extraordinary Courts. The Minister states that he will publicly condemn the recent cases of lynching in a message to magistrates and will give an interview to the press rejecting any form of pressure on the Courts.

On request of the CIA the Minister promises to designate a substitute for Sig. LEONE, Procuratore Generale of the Special Cassation Section within a week and to fill the vacancies of the Procureure Generale in Brescia and Bologna as soon as he becomes sufficiently familiar with the situation.

MEETING CLOSED AT 1900.

4013/3

File records of meeting with lawyers 79A

MEMORIA SULL'INCONTRO DEL 22.6.1945 TRA IL MINISTRO DELLA
GIUSTIZIA Togliatti E IL COL. HANNAFORD DELLA SOFIOCOMMISSIONE
ALEXIE

= 1 =

Corti straordinarie di Assise del Nord = Sezione della Corte di
Cassazione di Milano.

Il Col. HANNAFORD illustra brevemente il funzionamento pratico delle Corti straordinarie di Assise del Nord. Queste (in numero di circa cinquanta) hanno dato finora ottima prova; sono tuttora ancora insufficienti in considerazione della massa imponente degli arrestati (nella sola Lombardia ammontano a oltre 21.000). Da ogni Corte di Assise vengono trattati in media non più di tre processi giornalmente.

Il Ministro rileva dal canto suo che si verifica una notevole divergenza di criteri tra le varie Corti di Assise sulla misura delle pene inflitte; cosa che produce parziale malcontento (es. processo Basile). Tuttavia sottolinea che per il principio fondamentale dell'indipendenza dei giudici tali divergenze saranno difficilmente superabili. Riconosce che la situazione politica del nord è ancora abbastanza tesa e lamenta i numerosi episodi di violenza verificatisi anche contro persone già assicurate alla giustizia. Ritiene che la Sezione di Cassazione che si è trasferita a Milano per giudicare sui ricorsi contro le sentenze delle Corti Straordinarie d'Assise dovrebbe agire con maggiore celerità ed evitare dannose cavillazioni. Ritiene che gli atti di violenza potranno cessare solo con maggiore rigore e rapidità nel funzionamento della giustizia.

Il Col. HANNAFORD a tale proposito riferisce che appunto per appianare divergenze e malintesi, la Commissione Alleata ha indetto una riunione a Milano il 30.6.1945 dei Presidenti delle Corti straordinarie d'Assise e dei membri della Corte di Cassazione per discutere sull'argomento e aggiunge che sarebbe gradito che anche un autorevole rappresentante del Ministero intervenisse a detta riunione. Il Ministro prende atto della proposta che approva di massima riservandosi di comunicare una decisione a suo tempo.

= 2 =

Posizione degli appartenenti alle organizzazioni militari della ex
repubblica fascista.

Il Col. HANNAFORD fa presente che è necessario porre un cri-

//.

= 2 =

terio pratico di discriminazione per coloro che senza avere commesso reati politici particolari furono inquadrati nelle organizzazioni militari della repubblica fascista (oltre 300.000 persone). Sembra che il governo italiano abbia a suo tempo aderito alla richiesta degli alleati di concedere ai medesimi lo "status" di prigionieri di guerra; e cio' per evitene ragioni di reciproca' di trattamento. Il Ministro ritiene in proposito che la sola appartenenza alle forze armate fasciste non debba considerarsi motivo sufficiente per un procedimento penale, e cio' non solo per opera di pacificazione sociale e per il presunto accordo accennato sopra, ma anche per la considerazione che sovente le pressioni minacciose hanno impedito ai piu' di disertare dalla milizia fascista. Ritiene che tale argomento dovra' essere esaurientemente esaminato prima che sia possibile.

4013/3.

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HEADQUARTERS EMILIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

78A

REF : RIX/LE/704.1/146

WHL/glg.
18 June 1945.

SUBJECT : Meeting at Milan.

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

WHL/glg.

1. Reference your AC/4013/3/L, 15 June 45, the Primo Presidente and the Procuratore Generale of the Bologna Court of Appeal, accompanied by RLO Emilia, will attend the Milan meeting, arriving the afternoon of 29 June 45 and departing the morning of 1 July 45.

2. Reference para 4 of your letter, the proposed agenda will be forwarded tomorrow, 19 June.

For the Regional Commissioner.

HEADQUARTERS
19 JUN 1945

WHL/glg.
WILLIAM H. LEVIT.
Lt. Col. J.A.G.D.
Regional Legal Officer.

Copy to :

R.C. Lombardia
Region (for RLO).

LEGAL SUB-COMMISSION	
CIO	/
DOLO	/
Chief Counsel	/
CIO	/
Italian Section	A
CL RKS	/
19 JUN 1945	/

28

77A

HEADQUARTERS ALLIED COMMISSION
APO 374
LEGAL SUB-COMMISSION

G/4013/2/L.

/rlp.
15 June 1945.

SUBJECT : Meeting of First Presidents and Procuratori Generali of the Northern Courts of Appeal with the President of the Court of Cassation.

TO : Regional Commissioners (Attn: Regional Legal Officers),
EMILIA, LIGURIA, PIEMONTE, LOMBARDIA and VENETIA Regions.

1. Confirming recent correspondence it is proposed to hold a meeting of First Presidents and Procuratori Generali of Northern Italy in Milan on Saturday, 30 June.

2. The meeting will be presided by H.M. Michele Giuliano, President of the Section of Court of Cassation of Milan.

3. The main purpose of the meeting is to coordinate throughout the regions the procedure and jurisdiction of the Extraordinary Courts of Appeal, the form of appeals to the Court of Cassation, time limits, etc and to discuss any other questions pertaining to the activities of these courts in particular and Italian Courts in general.

4. First Presidents and Procuratori Generali should prepare an agenda of the points they intend to raise at the meeting and forward it as soon as possible to:

H.M., Michele Giuliano,
President of the Section of the Court of Cassation,
C/o Regional Legal Officer,
LOMBARDY Region.

(Copy to this H4)

5. It is hoped that RLOs of the five regions concerned will be able to come. First Presidents and Procuratori Generali of Milan, Brescia, Turin, Genoa, Bologna and Venice will attend.

6. Chief Legal Advisor will probably be present. Lt Col Humeford will arrive in Milan a few days beforehand in order to assist in the material organization of the meeting.

7. The meeting will take place at the Palace of Justice of Milan at 1000 hours.

8. RLO, Lombardy Region is requested to approach the civil authorities of Milan as soon as possible in order that food and lodgings be arranged

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for four officials (PP and PG, Bologna and Venice) for two nights and two days (E.T.A. Friday, 29 June afternoon - M.T.B. Sunday 1 July morning).

9. First Presidents and Procuratori Generali who are within short distance of Milan (Turin, Genoa, Brescia) are expected to arrive Saturday morning and leave Milan the same evening. Should they require to spend one or two nights in Milan, RLO Lombardy should be informed accordingly.

10. Please notify all concerned, and report agreement and any observations you may wish to make to this HQ with copy to RLO Lombardy.

By command of Rear Admiral STONE

G. C. Hamford
G. C. HAMFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

76A

HEADQUARTERS ALLIED COMMISSION
AFC 394
LEGAL SUB-COMMISSION

/rlp.
12 June 1945.

AC/4013/3/L.

SUBJECT : Italian political Courts - Personnel - Court of Cassation, etc.
TO : Regional Commissioner (Attn: Regional Legal Officer),
LOMBARDIA Region.

A conference with the Minister of Justice took place this morning. A number of points were discussed and the following decisions reached in common agreement,

1. Will you please issue an administrative order appointing Consiglieri Umberto Guidi and Bruno Medici to the Cassation Section. They are being duly promoted by the Ministry.
2. Lepore will not, repeat not, return to Milan. Forardi will also remain in Rome. It is hoped to appoint in the near future other Consiglieri to the Milan Section in order to constitute a second section if and when this becomes necessary.
3. The Minister is writing an official letter to the P.G. (copy to you) forbidding him to accept any document or letter signed by or on behalf of the "Commissario per la Giustizia", whom he considers, rightly I think, as juridically and otherwise non-existent.
4. A number of grade V will be promoted or transferred to the Court of Appeal of Milan before the end of the month.
5. It is C.I.A.'s opinion and the Minister's that ~~the~~ members of the Republican Army nor P.O.S. should not be tried by the Court of Cassation or the Tribunale Militare for the sole reason that they have been wearing a fascist uniform. Definite charges must be preferred against them and specific facts stated.
6. Personnel available from the south will proceed to Lombardy as soon as your "nulla osta" is received.
7. Singale has left today for Milan and will report to you on his latest activities in Cremona.

8. Sansoni will go. This is definite and unavoidable. He has been found guilty by the Control Operation Commission and suspended. His activities after he left his post in Rome, went to Ancona, and then proceeded North are questionable. Kindly inform Helt. Sansoni should be replaced by the next senior councillor on the rolls.
9. The Minister is of opinion that the Court of Appeal of Brescia will not be very active for some time to come and can manage very well with fewer councillors.
10. The Minister approves the formation of the Separation Commission for the Magistracy under D.C. 35. Brischetti should sit as President until replacement is provided. The cases of PP Bianetti and P. Daviani should not repeat not be investigated by the present Commission. They are in "congedo" and should remain in that happy state until further instructions from the Minister. Please inform Carassagne accordingly.
11. Minutes of the meeting which took place on Monday between me and MG of Milan and Torino will be welcomed.
12. The Minister is writing to Carassagne confirming the latter's decision to suppress all holidays for judicial officials during the present emergency.
13. The appointment of a Commission to separate avvocati and notari is approved. It should be done by Provincial Order. A new D.C. (35 B) covering similar bodies is in preparation.
14. Until further notice the Section of Cassation should remain in Milan.
15. Finance Sub-Commission expects to be able to authorize shortly the implementation of legislation increasing the salaries of state officials in the North.
16. Decisions of the Section of Cassation in Milan should be notified to you and forwarded to this Sub-Commission as soon as possible.

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

401313/PL DCVA

75A

MINUTES OF MEETING HELD ON 1 JUNE 1945.

Present:

Col. B. M. L. S., DLA
4/Sgt S. M. L.H. E. T. M. L.
H. E. B. S. M. L.
H. E. B. M. L.
Doct. B. M. L.

MEETING OPEN AT 1755

1. Jurisdiction of Extraordinary Courts of Assizes over military personnel.

Letter LX/5027 dated 28 May 1945 of PLO LOMBARDY is read.

PCM claims that the jurisdiction of military tribunals is a special jurisdiction which can be limited by an express provision only.

Such express exclusion was contained in the draft of DIL 142 but was dropped in its final text; therefore, the legislator must have intended to preserve the jurisdiction over military personnel for offences of collaboration. H. E. B. M. L. vehemently disagrees and states that whatever the theoretical position may be the practical reasons call for an exclusive jurisdiction of Courts of Assizes because

- (a) Extraordinary Courts of Assizes are already in operation.
- (b) Military Tribunals in the North are irregularly constituted at the present time.
- (c) dual jurisdiction would cause delay and doubts;

Agreed that

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- (i) the Extraordinary Courts of Assizes will have exclusive jurisdiction over civilians and military personnel for offences contemplated by DIL 142; military tribunals will adjudicate all other offences committed by persons normally within their jurisdiction;
- (ii) no further legislative act is necessary to effect this interpretation;
- (iii) additional sections of Extraordinary Courts of Assizes shall be constituted if required; in this connection H. E. B. M. L. submits the suggestion of P. E. L. M. L. that if an amendment to DIL 142 is contemplated it should include a provision authorizing the President of Court of appeal to appoint magistrates of lower grade than that of consigliere di Corte d'Appello to preside over the Extraordinary Court of Assize.
- (iv) H. E. B. M. L. to inform Procuratore Generale Lepore at the Court of Cassation Section of this agreement by a letter to be transmitted by legal Sub-Commission; legal Sub-Commission to inform all officers concerned in the North;

At this point Procuratore Generale Militare and H. E. B. M. L. Boeri withdrew.

1. Jurisdiction of Extraordinary Courts of Assizes over

military personnel.

Letter IMG/5027 dated 26 May 1945 of DLO IOMBANDI is read. PQM claims that the jurisdiction of military tribunals is a special jurisdiction which can be limited by an express provision only.

Such express exclusion was contained in the draft of DIL 142 but was dropped in its final text; therefore, the legislator must have intended to preserve the jurisdiction over military personnel for offences of collaboration. H. E. BOERI vehemently disagrees and states that whatever the theoretical position may be the practical reasons call for an exclusive jurisdiction of Courts of Assizes because

- (a) Extraordinary Courts of Assizes are already in operation.
- (b) Military Tribunals in the North are irregularly constituted at the present time.
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Agreed that

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- (ii) no further legislative act is necessary to effect this interpretation;
- (iii) additional sections of Extraordinary Courts of Assizes shall be constituted if required; in this connection H. E. Boeri submits the suggestion of P. E. Turin that if an amendment to DIL 142 is contemplated it should include a provision authorizing the President of Court of appeal to appoint magistrates of lower grade than that of consigliere di Corte d'Appello to preside over the Extraordinary Court of Assize.
- (iv) H. E. Boeri to inform Procuratore Generale Lepore at the Court of Cassation Section of this agreement by a letter to be transmitted by legal Sub-Commission; legal Sub-Commission to inform all officers concerned in the North;

At this point Procuratore Generale Militare and R.E. Boeri withdrew.

2. President of the Epuration Commission for Magistrates, Milan.

Col. BARNES suggests that Sig. Vogliotti, retired, Councillor of grade 2 in Turin, proposed for the Court of Cassation, could be used for the above office. Minister agrees and promises to supply a grade 3 magistrate should Sig. Vogliotti not accept.

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5. Travel of officials of the Ministry to Brescia to bring
archives to Rome.

Col. REICHS states that Sig. Parenti obtained a permit from C
as a driver with the understanding that he will transport archives of
the Fascist Ministry from Brescia to Rome; upon arrival at Milan
Parenti disappeared. The Minister expresses his regrets.

MEETING CLOSED AT 1840.

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2013/3 file
 MINUTES OF MEETING HELD ON 26 MAY 1945

74-A

Present:

Col. BERNARDI, DCIA
 Lt. Col. THOMPSON,
 S/Sgt STEIN

H. S. TUPIN
 Dott. BONELLI

MEETING OPENED AT 1115.

1. Extraordinary Courts of Assizes.

Agreed that the Ministry will take immediate steps to effect the appointment of Dott. Bricchetti and Levi to the Special Section of Cassation as Consiglieri; DCIA will communicate to Ministry names of 2 retired judges submitted by First President Turin as candidates for appointment to the Special Section of Cassation.

Minister requests Allied assistance in solving the difficulties at Genova where a young judge issued warrants of arrest against Proc. Re and Procuratore Generale. DCIA states that Lt Col HANFORD is on his way to Genova.

2. Military Tribunals.

Deputy Chief Legal Advisor states that contrary to any expectation "denuncie" for Extraordinary Courts of Assize are coming in slowly this and the fact that the present Military Tribunals at Milan and Turin are irregularly constituted and do not satisfy the requirements of a fair trial would make it advisable to revert to the original idea of giving the Extraordinary Courts of Assizes exclusive jurisdiction over offences under DL 159; Boeri and Epe of Milan and Turin concur in this view. Agreed that the Minister will discuss the matter with HM and Boeri and after Col Berutti's return from Milan next week will arrange a meeting of all concerned with DCIA and a decision will be taken fitting the practical requirements.

3. Amnesty draft decree.

Minister reports that he ordered the cancellation from the draft of the article pertaining to amnesty for offence by non-delivery to "ambasci". DCIA states that he is confident that the new amnesty will be extended to AMG territory.

4. Personnel for the North.

To be discussed with Dott. Bonelli in the office of the Sub-Commission.

5. EC and IP Bologna.

Minister reports that he designated Sig. CANATA to be IP and Sig. SIRACUSA (Procuratore del Re Naples) to be Procuratore Generale; he promises to send to Naples a first class magistrate to substitute

0063

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Minister requests Allied assistance in solving the difficulties at Genova where a young judge issued warrants of arrest against Provo. Re and Procuratore Generale. DOLA states that Lt Col HUMPHREY is on his way to Genova.

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4. Personnel for the North.

To be discussed with Dott. Bonelli in the office of the Sub-Commission.

5. PG and PP Bologna.

Minister reports that he designated Sig. CHATA to be PP and Sig. SIRACUSA (Procuratore del Re Naples) to be Procuratore Generale; he promises to send to Naples a first class magistrate to substitute Sig. SIRACUSA.

6. Appointments by CIN.

DOLA raises the question whether the appointments of judicial personnel by CIN should not be confirmed either by ME or the Minister particularly because the newly appointed Presidents of Courts of Appeal nominate personnel for extraordinary Courts of Assize. The

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Minister replies in the negative pointing out that such appointments, although of provisional character, have received advance authorization by the Italian Government.

6. Pietro Nenni.

Minister states that itinerary is nearly completed and trial will take place June 4.

7. Minister's travel North.

DIA will support Minister's request for permission to travel North for non-political purposes in about 10-14 days.

MEETING CEASED AT 1230.

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(73A)

AGENDA FOR MEETING TO BE HELD ON 16 MAY 1945

1. Substitute for Procuratore Generale Bologna.
2. The Minister may now send the mission to the North.
3. 6 or more grade 5 judges are urgently needed to preside over the Extraordinary Courts of Assize and their Sections.
4. Consiglieri De Carli Giulio and Carlini Ovidio of Venice are proposed for the Special Section of Cassation; they have been promoted by Fascist Republic Government. Can these promotions be ratified?
5. Are the members of the Special Section of Cassation allowed to continue their jobs in Courts of Appeal when the Section is not in session?

6. *Amnesty.*

12A

60313

MINUTES OF MEETING HELD WITH MINISTRY ON 12 MAY 1945

Present:

Col. BARRIS, DCLA
S/Sgt STEIN

M. E. TUPINI
Dott. BONELLI

MEETING OPENED AT 1145.

1. Travel of two officials of the Ministry to Northern Italy.

DCLA assures the Minister that in about 10 days arrangements may be made for the travel but there is no hope for obtaining a means of transport to move the archives of the fascist Ministry and Court of Cassation to Rome. However, the legal officers have already been instructed to safeguard the archives until further instructions.

2. Special CIN Laws.

The Minister expresses the desire of the Government that only legitimate Italian laws be applied in Northern Italy and the unreasonable CIN laws. DCLA states that the Italian laws are being implemented in North Italy and that according to reports of legal officers people are satisfied with the Decree on Extraordinary Courts of Assizes which has already become effective in most Provinces.

3. Special Court of Cassation Section, Milan.

DCLA presents Lt. Col. HANNAFORD's list of candidates (all Consiglieri of Court of Appeal Milan) for appointment to the above Section. The Minister submits a decree appointing 8 Consiglieri of Cassation from Rome to this Section.

Agreed that:

- (a) in view of CIN's request Consiglieri from N. Italy will be selected with approval of CIN and appointed by the Minister.
- (b) it is not advisable to select Consiglieri from Milan exclusively but Consiglieri from Turin, Genova etc should be included; -the Legal Sub-Commission to present further candidates.
- (c) several Consiglieri in Col. HANNAFORD's list have been promoted to Cons. Cassazione by the Fascist Republicans; the Minister to examine the possibility of ratifying the promotions provided that the Consiglieri can be promoted under Italian laws. The Minister to advise the Sub-Commission before Monday night.
- (d) Legal Sub-Commission to enquire whether Minister's Roman candidates set out in his decree mentioned above would not be acceptable to CIN.

4. Decree constituting Special Courts of Assizes at Bologna, Ravenna, Forli'.

Decided by the Sub-Commission to be referred to the Minister for approval.

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- (d) Legal Sub-Commission to enquire whether Minister's Roman candidates set out in his decree mentioned above would not be acceptable to CIN.

4. Decree constituting Special Courts of Assizes at Bologna, Ravenna, Forli'.

The Minister promises to press for the approval and publication of this decree.

MEETING CLOSED AT 1300.

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71A

AGENDA FOR MEETING TO BE HELD ON
12 MAY 1945

1. Establishment of Special Court of Cassation Section
at MILANO.
2. New ~~amnesty~~ draft
3. Travel of Minister's representative to Cremona and
Brescia.

MINUTES OF MEETING HELD ON 30 MARCH 1945

Present :

Col. BEHRENS, DCIA
Lt Col HANNAWARD
Lt Col THACKERAY
S/Sgt STEIN

H.E. THE MINISTER OF JUSTICE
Dott. BONELLI

MEETING OPENED AT 1110.

1. Temporary inclusion of the Tribunale of Ravenna and Forli in the Court of Appeal district, Ancona.

The Minister recommends that if such measure is needed it should be effected by an AMG order; he believes that the establishment of a Section of Court of Appeal at Ravenna ^{and} Forli would be more convenient. Agreed that the matter will be postponed for one month and if by that time Bologna is still in German hands an AMG order will be issued attaching Ravenna and Forli to Ancona; the Minister will then issue a circular advising the judges that the order has his approval.

2. Offences committed by patriots.

Deputy Chief Legal Advisor explains that the patriots are disturbed by the fact that the Government has not taken any steps to ensure that they will not be prosecuted for acts connected with their patriotic activities during German occupation. The Minister exhibits a draft decree prepared by the Ministry for Occupied Italy which would serve the above purpose; he points out that the draft must be modified so as to leave it with the judge to declare in which case the exemption from liability should apply. Otherwise there would be a danger that offences committed for other than patriotic motives remain unpunished.

3. Special Courts for Northern Italy.

Lt Col HANNAWARD points to the possible conflict of jurisdiction between the special Courts of Assizes and Military Tribunals. The Minister states that the jurisdiction of Military Tribunals over soldiers will be safeguarded.

4. Establishment of a Section of Tribunale at Rimini proposed by sindaco of Rimini.

The Minister is opposed. Agreed that it will not be approved.

5. Delay in correspondence.

Lt Col. HANNAWARD cites an instance where it took 10 days for a letter of the Ministry to reach the Sub-Commission. The Minister promises remedy.

MEETING ORDERED AT 1110.

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Lt Col. HANNAFORD cites an instance where it took 10 days for a letter of the Ministry to reach the Sub-Commission. The Minister promises remedy.

6. Petitions for pardon and conditional liberty. (Hague (punts))

The Minister requests that Italian authorities be given exclusive jurisdiction in respect of the above petitions concerning cases tried in what is now Italian Government Territory including the cases of offences against Allied interests. Deputy Chief Legal Advisor agrees provided that the Ministry must be at any time ready to justify their action on any petition in case the Army should make an enquiry.

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7. Appointments of magistrates recently proposed for AMG territory.

It Col HARRARD states that the proposals have been referred to Regional Legal Officers concerned.

8. Amnesty.

The Minister proposes to extend the decree No. 96 of 5 April 1944 so as to cover offences committed for patriotic reasons during the period after 5 April up to the present date. The Minister would appreciate it if such extension could be made applicable to TOSCOM. Agreed that the Ministry will so extend the decree (art. 1 and 2) excluding the offences committed against Allied interests (art. 7 of decree No. 96). The implementation of this new decree will then be considered.

9. Detainees held by order of Allied authorities.

Agreed that Legal Sub-Commission will communicate names of four persons held at Viterbo against whom no evidence can be found so that they can be released.

MEETING CLOSED AT 1145.

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6013/3
MINUTES OF MEETING HELD ON 22 FEBRUARY 1945

Present : Col. Behrens
Lt. Col. Hannaford
S/Sgt Stein

H.E. The Minister
Det. Bonelli

Meeting opened at 1410.

1. Decree transferring Tribunale of Livorno from San Miniato to Livorno.

The Minister apologizes for the failure of his cabinet to inform the Sub-Commission of the publication.

2. Assignment of Sig. BERNI, President of the Pesaro Tribunale, to Military Tribunal.

The Minister states that Sig. Berni was asked by the Ministry to agree to his transfer from Pesaro; he will probably be made subject to expatriation. The Minister does not object that Sig. Berni be used in Military Tribunals.

3. Notice on wire cutting. to write to Procureur General to request that the number of members of the judicial college of the Military Tribunal be reduced to three to meet the shortage of military judges as provided by the law of 1938.

The Minister agrees to pass a draft of a notice submitted by Col. Hannaford to Ministry of Interior with a view to obtaining a final draft.

4. Replacement of Primo Pretore Apicella, BARI.

Sig. Apicella's consent to his transfer from Bari has been requested some time ago and a wire dispatched today soliciting the answer.

5. Transfer of Presidente di Tribunale LANERI.

The Minister confirms that Sig. LANERI will be transferred to Naples.

6. War crimes and War criminals.

The Minister has considered our AC/4119/L of 31 January 45 and will submit a definite answer.

7. New Amnesty.

(a) The Minister presents a draft decree for a new amnesty which the Government would like to promulgate at Easter time and requests that it be considered.

(b) The Minister feels that for political reasons the amnesty should cover also some offences tried by AMG Courts. DCIA states that in his view such extension will not be possible as a matter of principle.

The Minister also points out that the Italian concept of pardon has not been accepted by the Allies which fact tends to underline the disparity between Italian and Allied sentences. He reads a letter received from a party complaining of the excessive penalties imposed for trifling offences by AMG Courts.

8. Searches of homes effected by Allied police.

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The Minister apologizes for the failure of his cabinet to inform the Sub-Commission of the publication.

2. Assignment of Sig. BERNI, President of the Pesaro Tribunale, to Military Tribunal.

The Minister states that Sig. Berni was asked by the Ministry to agree to his transfer from Pesaro; he will probably be made subject to expunction, the Minister does not object that Sig. Berni be used in Military Tribunals.

The Minister also points out that the number of judges in the Tribunale of Pesaro is 12, while in the Tribunale of Livorno it is 14. He proposes to request the Ministry to transfer the President of the Tribunale of Pesaro to Livorno.

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4. Replacement of Primo Pretore Apicella, Bari.

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The Minister also points out that the Italian concept of pardon has not been accepted by the Allies which fact tends to underline the disparity between Italian and Allied sentences. He reads a letter received from a party complaining of the excessive penalties imposed for trifling offences by AMG Courts.

8. Searches of homes effected by Allied police.

The Minister presents two memoranda concerning cases of searches at Bitonto. DCLA promises consideration.

9. Dott. Vincenzo FERRARA, Pretore of VALQUARNERA.

Minister's request for revocation of this AMG appointment has already been granted by our letter of 19 Feb 45.

10. Conditional Pardon of a fine imposed for listening radio London -
(Case of PABLO GILERO)

The Minister stated that he already instructed the competent department to prepare a non recommendation to the effect that an absolute and not conditional pardon be granted; he apologized for the oversight.

68A
 44 4013/3
AGENDA FOR THE MEETING TO BE HELD ON 22 FEB 45.

1. Decree transferring the Tribunale of Livorno from San Miniato to Livorno.
2. Could Sig. BERNI, Presidente of Tribunale Pesaro who is about to leave Pesaro be made available for the Military Tribunal in the North.
3. Order on wire cutting.
4. Replacement of Primo Pretore APICELLA, Bari.
5. Transfer of Presidente di Tribunale, LANERI.
6. War crimes and War criminals (our letter AC/4119/L of 31 Jan. 45)

MINISTER'S AGENDA

1. Advisability to grant a new amnesty including also offences tried by Allied Courts.
2. Status of members of Armed Forces demobilised without regular discharge.
3. Searches of homes effected by Allied soldiers; it is advisable that they should be carried out within the limits set up by DL No. 45 of 20 January 1944.
4. Dott. Vincenzo FERRARA appointed by AMG to the office of pretor of Valguarnera (see letter Min. Pers. 27/00862 of 14 Feb 45) this letter has already been answered by this sub-commission 4039 of 19 Feb 45 concurring with Minister's proposal.
5. Grant of pardon to PACCHIELLI Gisleno (letter AC/4030/L of 15 Feb 45). Conditional pardon of sentence imposed for listening Radio London.

HEADQUARTERS UNITED COMMISSION
 AFV 304
 ITALIAN SUB-COMMISSION

67A

EE/ps.
 5 Feb 45.

10/10/45
 SUBJECT : Judicial personnel (GUARINONCO, BELINZI, LANGEI, VIVARI,
 BIANCHI, CHITTI).

TO : Officers i/c Italian Courts, TOSCAN Region.

Following your conversation with Lt. Col. Hannaford please
 find enclosed a copy of the minutes of a meeting held with the Minister
 of Justice.

Incl.

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

Copy to : Regional Commissioner (attn: R.L.O.)
 TOSCAN Region.

Copy to file 4013/3

-11

MINUTES OF THE MEETING HELD ON 5 FEBRUARY 1945

CONFIDENTIAL

66A

Present : Col. Behrens
Lt. Col. Hannaford
Lt. Col. Thackrah
S/Sgt Stein

H. E. The Minister
Dott. Dondona.

Meeting opened at 1050.

1. Pool of magistrates for Northern Italy.

The Minister reports that he is sending a circular to all Courts requesting information on all judges originally assigned to Northern Italy and temporarily attached to the Courts in liberated Italy. As the replies come in the Minister will examine the possibility of returning the attached judges to Northern Italy. Lt. Col. Hannaford informs the Minister of the scheme for the Italian Military Tribunal for Northern Italy and the Minister promises to expedite the designation of judges by the Ministry of War and Marine.

2. Replacement of Cav. Apicella, Primo Pretore, Bari.

The Minister states that the First President has been requested to obtain Apicella's consent for his transfer under the threat of bringing him before the Consiglio di Amministrazione. The Minister is considering a replacement for Bari.

3. Election for Association of Avvocati and procuratori legali at Grosseto.

DOLA agrees to Minister's recommendation to postpone the election until March 5 in conformity with the Italian decree.

4. Notarial Council at Forli'.

The Minister presents a memorandum in reply to our letter 4064 of 11 Jan 45.

5. Fines imposed by AMG Courts sitting in restored territory.

The Minister submits a copy of the Circular to Italian Courts instructing them to follow the Italian procedure in enforcing such fines.

6. Appointment of COLAGROSSO as Procuratore Generale at FLORENCE.

Lt. Col. Hannaford relays some objections of political nature advanced by Maj. Holt in respect of this appointment. The Minister points out that it would be extremely difficult to find a substitute. Agreed that the appointment will be made but COLAGROSSO's departure for Florence delayed.

7. Procuratore del Regno SOLAFANI, Lucca.

Agreed that arrangements will be made for his release from the internment camp whereupon the Minister will effect the transfer.

8. Transfer of LANERI, President of Tribunal of GROSSETO.

Agreed that arrangements will be made for his release from the internment camp whereupon the Minister will effect the transfer.

The Minister reports that he is sending a circular to all Courts requesting information on all judges originally assigned to Northern Italy and temporarily attached to the Courts in liberated Italy. As the replies come in the Minister will examine the possibility of returning the attached judges to Northern Italy. Lt. Col. Hannaford informs the Minister of the scheme for the Italian Military Tribunal for Northern Italy and the Minister promises to expedite the designation of judges by the Ministry of War and Marine.

2. Replacement of Cav. Apicella, Primo Pretore, RPT.

The Minister states that the First President has been requested to obtain Apicella's consent for his transfer under the threat of bringing him before the Consiglio di Amministrazione. The Minister is considering a replacement for Bari.

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7. Procuratore del Regno SOLAPANI, Lucca.

Agreed that arrangements will be made for his release from the internment camp whereupon the Minister will effect the transfer.

8. Transfer of LANERI, President of Tribunal of GROSSETO.

The Minister suggests that as Laneri will reach the age limits within a few months he should remain at Grosseto. Agreed.

instead of being transferred to Rome

9. Judges for Tribunale of Vasto.

The Minister reports that according to a wire received today from the Primo Presidente of L'Aquila the personnel situation at Vasto has been solved and the Court will open on Feb 15.

10. Status of members of the Army released without proper discharge. Can they be considered as civilians and tried in ordinary courts.

The Minister reports that his legislative office answers in the affirmative

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excepting trials for offences of purely military nature whereas the penal office of the Ministry answers in the negative chiefly because a positive answer would entail further burden for the ordinary penal courts. The Minister promises to obtain the view of Procuratore Generale Militare and consider the question in the light of the specific situation at Florence where there is no Military Tribunal.

11. Approval by the Ministry of the list of Assessors for Florence Assizes.

The Minister states that such approval is a mere formality but no list has been received from Florence as yet.

12. Tribunale of Montepulciano.

The Minister feels that he could not abolish this Tribunale even temporarily. He signaled for information on Presidente VIVOLI and will designate a substitute if the report of VIVOLI's death is confirmed. Procuratore del Re RAMANELINI is being ordered to report at once at Sulmona where he has been already transferred.

13. GUIDONI Ettore Angelo, Presidente, Tribunale di Lucca.

The Minister agrees to the request of Col. Hannaford that this excellent magistrate should be kept in office beyond the age limit. However, he will be formally placed in retirement and then recalled into service; he should make the necessary application.

14. Deposition of Italian POW held in South Africa for use in an Italian court.

The Minister states that such deposition should be taken in accordance with S. Africa law and properly certified by the consular authority of the Protecting Power in S. Africa. (Art. 27 of the Preliminary Provisions, Civ. Code).

15. Returns on Defascism.

The request of the Civil Affairs Section in respect of the above is explained to the Minister.

16. Court of Cassation for Sicily.

The Minister explains that the Court of Cassation at Rome will reserve certain periods of each session to deal with Sicilian appeals exclusively and the Government will provide transportation for lawyers from Sicily to Rome. It Col Hannaford assures the Minister that this Sub-Commission would not favour a separate Section of Cassation for Sicily.

AGENDA FOR THE MEETING OF THE HIGH COMMISSIONERS, JAN. 3, 1951.

1. Pool of magistrates for Northern Italy.
2. Replacement of Prime Pretore of Bari, Cav. APPELLA.
3. Association of lawyers and prosecutors at Grosseto. Our letter 4106 of 16 Jan 49.
4. Notarial Council at Peril'. Our letter 4064 of 14 Jan 49.
5. Mines imposed by ASL Courts sitting in restored territory.
6. Ministry's proposal to appoint ~~MASSARANI~~ as Proc.Gen. Florence is not considered favorably.
7. Procuratore del Regno ~~SCIALOJA~~, Lazio. He has been interested and is most unpopular; it is suggested that he be transferred to Siena to replace Proc. del Regno ~~ARMANDO~~ who is scheduled for retirement.
8. Presidente di Tribunale of Grosseto ~~LAZZI~~ requested transfer (our letter AC/4039/1 of 29 Dec 44). It is suggested that ~~LAZZI~~ ~~ARMANDO~~ of the same Tribunale be appointed in his place.
9. Judges for Tribunale of Viterbo.
10. Status of members of the army released without proper discharge. Can they be considered as civilians and tried in ordinary courts.
11. List of assessors for Florence unless sent to Ministry some time ago. Could it be approved at once or ~~wait~~ ^{pushed} to vet the list.
12. Tribunale di Montepulciano. The Procuratore del Regno ~~RAMBALDI~~ is useless. His transfer to Sulmona has been agreed between Ministry (2806/0022 of 3 Jan) and Legal Sub-Commission (4059 of 11 Jan 49). When will it be effected? Presidente ~~VITOLI~~ has not reported and is allegedly dead. His last residence was ~~Mieti~~. Local officers suggest temporary merger of this Tribunale with that of Siena. Tribunale of Montepulciano is not too busy.
13. ~~Storace~~ Angelo ~~CHIRCHI~~, Presidente, Tribunale di L'Aquila, a good magistrate, is reaching the age limits for retirement. Could he be kept in office?
14. Proceeding to take deposition of an Italian POW held in the territory of the S.African Union for use in an Italian Court. Should the deposition be made in accordance with the law of the S.African Union or must the detaining power be requested to take the deposition.
15. Returns on ~~Pravasi~~.

File

MINUTES OF MEETING HELD ON 9 JANUARY 1945

AC/4013/3/L.

ES/ap.
10 January 1945.

PRESENT : Col. Behrens
Lt. Col. Hanneford
Lt. Col. Thackrah
S/Sgt. Stein

H. E. The Minister
Dett. Bonelli

Meeting opened at 1120.

1. Epuration proceedings against judicial officials in AMG territory.
In Minister's view the laws 159 and 257, even though made effective in AMG territory, do not contemplate the above proceedings before the territory is restored to the Italian Government; if, however, the Legal Sub-Commission so desires, the Epuration Commission will be instructed to proceed against officials in AMG territory; the Legal Sub-Commission should write to this effect to the Prime Minister copy to Minister of Justice.
In the case of Primo Presidente CALABRO there will be no need for completion of the epuration proceeding in view of his application for retirement. The decree for his retirement is pending before the Court of Accounts.

2. Personnel.- Scarcity and recruitment.
Minister complains of the behaviour of Primo Presidente LIBONATTI. Agreed that he will be promoted and removed from Naples. Minister submits a memorandum on LIBONATTI, VOLPE, RILZO and LEPURE and requests approval in writing. Answering DCLA's question the Minister states that he has not been asked to supply additional magistrates for the High Court of Justice and that in his view the request of Count SPURZA for two additional judges should be ignored both because it is unjustified and because of Sig. SPURZA's resignation. The Minister also submits a memorandum answering this Sub-Commission's letter AC/4039/L of 29 December on scarcity of judicial personnel. The Minister adds that all judges retired pursuant to Ministry's general policy will be called back into service provided they are fit and politically acceptable. Furthermore, a "concorso" of uditori will be made and more stranded judges will be ordered to fill the vacancies.

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3. Bari Courts.

The Minister states that pursuant to this Sub-Commission's request he has asked the Primo Presidente of Bari to submit a report on the Primo Pretore APICELLA with a view of effecting his substitution at soonest. The decrees appointing the First President and Procuratore Generale for Bari are at the Court of Account for registration. Consigliere CHIAPPÀ of the Bari Court of Appeal went to Lucera and instructions have been issued to recall into service the retired Presidente of the Tribunale of Lucera to sit on the Appeal Bench of Lucera. The Minister stresses that as the Lucera Court is a mere detached section of Bari

its personnel must necessarily be supplied by the Bari Court of Appeal.

4. Prostitution and Offences against Allied interests.
The Minister agrees with the conclusion of Prof. VASSALLI's memorandum submitted by this Sub-Commission in respect of the 2 proposed circulars, one of which will deal with the use of the optional power of arrest, the other with granting of provisional liberty to prostitutes on condition of establishing their residence outside of certain places.

5. Tribunale of Vasto.
The Minister apologizes for the oversight of his cabinet officials to submit to this Sub-Commission the decree establishing the above court. In Minister's opinion the complaint of the sindaco of Lanciano in respect of the establishment of this court are not justified. The Minister exhibits petitions of lawyers and mayors of all 5 communes for which the court was established. The jurisdiction of the Lanciano Tribunale has not been unduly curtailed as the largest of the "doubtful" mandamenti was left under its jurisdiction. No new judicial personnel will be required as the Lanciano Tribunale will be simply split in two.

6. Executions of Italian citizens by Allies.
The Minister requests that he be given the name of each person executed and the reasons for the execution. DCLA promises to contact the military authorities on this subject but points out that the great majority of death penalties was imposed for espionage and the names of the executed spies are not released for publication for security reasons. Minister presents two letters citing two instances of the above.

7. "Avventizi di cancelleria" hired by AMG in Naples and denied salaries.
6
The Minister presents a memorandum on this subject and points out that the Court of Accounts has refused to authorize the salaries as there are no proper decrees appointing such "avventizi". The Ministry has ordered them dismissed and the question is who will pay the arrears for the past months. Agreed that this Sub-Commission will take it up with the Finance Sub-Commission.

8. Case of Del Fante.
The Minister states that only new evidence would warrant

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8. Case of Del Fante.
The Minister states that only new evidence would warrant reopening of the case. DCLA enquires whether the mere fact that 12 witnesses named in the denunciation have not been heard would not suffice for ordering a revision. The Minister answers that some party would have to ask for the reopening. He also points out that not a single paper has criticized the acquittal.

9. Examination for Procuratori Legali in AMG territory.
Lt. Col. Hannaford states that the examinations have been authorized in Florence; no answer received as yet from Ancona.
10. Circuit Sections for Court of Appeal Ancona.
The Minister states that there is no law which would expressly forbid the "flying sections" sitting in various places outside of the seat of the Court of Appeal. If Primo Presidente agrees the Minister has no objection.
11. Electricity for magistrates.
Lt. Col. Hannaford states that a new and detailed request has been made in this respect.

Meeting closed at 1200.

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MINUTE MEETING HELD ON 21 DECEMBER 4

E3/pa.
22 Dec 44.

AG/4013/3/L.

PRESENT : Col. Behrens
Lt. Col. Hannaford
S/Sgt Stein

H.E. The Minister
Dott. Bonelli.

Meeting opened at 1115.

1. Revocation of AMG appointments.
Lt. Col. Hannaford presents a letter of the First President of Catania on damage caused to the Court building during the recent riots at Catania. At this occasion he stresses that further interference with AMG appointments in Sicily will only contribute to the general tension and cannot be permitted until further advise from highest authority. The Minister states that Sig. LACEDLA and CAPILLANO, the AMG appointees recently removed, with the approval of AG, will be promoted in the next future despite the fact that Sig. LACEDLA was involved in a theft of furniture twenty years ago. The Minister urgently requests support in the case of Libonatti, the AMG appointed First President of Naples who simply advised the Minister that on the request of AMG he will stay in his office despite Minister's decree appointing CEDRANGOLO in his place. Lt. Col. Hannaford points out that the Sub-Commission has always been willing to support the prestige of the Minister; the Ministry, however, has in every single instance refused to deviate from the conventional criteria and confirm the AMG promotions and appointments; Sig. Libonatti did an excellent job in cooperation with the AMG and deserves consideration. It is agreed that Sig. Libonatti will be promoted and sent to Ancona as President for 6 months; if he does well his appointment may be extended.
2. Examinations of Procuratori Legali in AMG territory.
It is agreed that the decree ordering the examinations will be made effective in AMG territory so as to make it possible to hold the examinations therein. The permission of the Army will be requested in respect of Florence.
3. Procedure to be followed in case of arrest by PR CC of Italian civilians employed by the Allies.
The Minister refers to a letter of Admiral STONE requesting that a consent of the Allied Authority concerned be obtained before an Italian technician in Allied service is "expurated or arrested". It is agreed that the Minister will forward a copy of this letter to the Sub-Commission which will take the matter up with the Chief Commissioner.
4. Increase of electricity allotment to magistrates.
The Minister presents a memorandum on the above subject.
5. The case of DEL PATE.
At this own initiative the Minister brings up this case saying he was greatly dissatisfied with the manner it was handled. He ordered the substitution of the Chief of the investigation Section of the Court of Appeal. He reprimanded the Procuratore Generale for violating an order forbidding the subordinate officials, entrusted with a case, to obtain an approval of their conclusion by the Superior official. That was an old fascist habit originating in the fear to take responsibility. In the DEL PATE case the Sostituto Procuratore Generale secured an approval of his decision by the Procuratore Generale.

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The Minister emphasizes that in his opinion the Procuratore Generale RUBIANI is absolutely honest but showed himself weak and disregarded an order as stated above; The decision of the case is now final and cannot be attacked except if new elements are brought up showing that the judge was deliberately lead into error or constituting a new evidence. Lt.Col. Hahnaford remarks that allegedly 12 witnesses were proposed but not called by the investigating judge.

6. Case of Guadagno Enrico. Disciplinary proceeding against Proc. of S. Maria C.V.
The Minister presents a written answer to the enquiry as to the progress in this matter.

7. Prostitution cases in Bari and DIL 194.
DCLA complains that suspended sentences and releases from prison are granted in pursuance to DIL 194. The Minister promises to draft a circular on this subject and forward a copy to the Sub-Commission.

8. Lucera Court of Appeal.
It would seem that the Ministry has not yet acted upon recommendations contained in the last letter of DCLA on this subject. The Minister promises immediate action.

Meeting closed at 1240.

MINUTES OF MEETING HELD ON 16 NOVEMBER 1944/pa.
17 Nov 44.

AC/4013/3/L.

Present :

Col. Rehrens
Lt.Col. Thackrah
S/Sgt SteinH.E. The Minister
Dott. Bonelli.

Meeting opened at 1115.

1. Recruitment of new magistrates. Retirement.

Answering DCLA's inquiry the Minister states that no competitive examination at the present time is possible as any such examination must be done on national basis to avoid unjust discrimination; recruitment of attorneys with 15 years practice for judicial positions would be possible but no one would answer the call because of the low salaries offered; the recruitment is closely connected with the salary problem which will have to be faced in its entirety upon liberation of Northern Italy. DCLA stresses the serious scarcity of magistrates continuously on the increase because of epuration and retirements. The Minister thinks that the scarcity is not all too serious nor will it create any problem when North is liberated because an overwhelming majority of magistrates did not cooperate with the enemy; he promises to apply the Salerno decree on recalling retired magistrates; in fact circulars have already been sent to Presidents of Court of Appeal asking for recommendations as to which magistrates should be called back into active service; there is no lack of young judges; the Minister presents a list of proposed promotions from grade 5 to grade 4 and says gradual movement up will solve all difficulties; he requests speedy approval. DCLA expresses some doubt on this subject. The Minister states he will consider the possibility of a competitive examination at the right moment.

2. Disciplinary steps against Procuratore del Re of S. Maria Capua Vetere.

The Minister reports that on first examination the behaviour of the Procuratore appears to be irregular; Procuratore Generale Naples was instructed to forward his opinion; the Minister believes that the case will lead to a disciplinary proceeding which will be a deterrent to prevent repetition of such cases; however, nothing can be done to overthrow the sentence of acquittal as the case became res judicata; only if it would appear from the disciplinary proceeding that there was "dolus" (criminal intent) on the part of the judge the sentence could be quashed. As the case stands now the confiscated money would have to be returned to the acquitted defendant.

3. Establishment of Allied Military Courts at Bari.

The Minister points out that at Bari out of 19 Consiglieri allotted to Court of Appeal 18 are present, out of 26 giudici 24 are present at the Tribunale. The Procuratore Generale and Primo Presidente are being replaced. DCLA states that the decision has been taken to set up Allied Military Courts at Bari but if the Italian Courts show improvement in cooperation speed and in the type of sentences imposed the Allied authorities will be only glad to withdraw the Allied Courts. The DCLA states that in recent month 300 tons of ammunition were damaged and out of 500 cases brought before Italian Courts in connection with such offences in only about 20 a penalty of a more serious character was imposed; as there is no intent on the part of the delinquents to hamper the war effort the Italian Courts were reluctant to impose sentences corresponding to the actual damage to

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The DCLA states that in recent month 300 tons of ammunition were damaged and out of 500 cases brought before Italian Courts in connection with such offences in only about 20 a penalty of a more serious character was imposed; as there is no intent on the part of the delinquents to hamper the war effort the Italian Courts were reluctant to impose sentences corresponding to the actual damage to military operations.

The Minister fully agrees that such approach of the Italian Courts was mistaken.

4. Recently published reforms of Civil and Penal Codes.

The Minister emphasizes the temporary character of such partial reforms. Answering Lt.Col. Thackrah's inquiry as to the reasons why references to corporate law in certain articles have been expressly repeated whereas in others they were left the Minister states that in his opinion the general repeal of the entire

field covered by "carta del lavoro" repealed by implication any reference to corporate law. The Minister is about to appoint two Commissions to propose a complete revision of the Codes but any final action can be taken only after the Constituyente convened.

5. Readmission of reserve officers and NCOs dismissed for racial or political reasons.

Lt.Col.Thackrah points out that neither in Law No.301 on revision of careers nor in any previous law provision was made on the above subject. The Minister promises to bring this to the attention of the Minister of Interior.

6. Syndicates for magistrates.

DCLA requests Minister's opinion on the proposal of Comm.Zeuli of Naples to organize Syndicates for magistrates.
The Minister is entirely opposed to it.

7. Suspension of Law No.159 on sanctions against fascism in Macerata Province.

The Minister states that according to Prefect's report Allied authorities at Macerata have suspended the above law. DCLA promises investigation.

8. Interpretation of General Order No. 28.

The Minister states that Allied authorities at Ascoli are said to interpret Art.6 para (d) as abolishing the jurisdiction of ordinary courts in labour matters and referring all such matters to the Provincial Labour Office.

DCLA promises to consult the Labour Sub-Commission.

9. Blocking by AMG Naples of monthly extraordinary allowances due to judicial functionaries.

The Minister reports that the functionaries struck for $\frac{1}{2}$ hour at Naples and requests speedy investigation of the above. Lt.Col.Thackrah replies that Finance Sub-Commission was already contacted.

10. Appointment of lay judges to Court of Assizes Perugia.

The Minister relates that Allied authorities at Perugia insist that no person who at any time held membership card should be selected to act as lay judge; that renders the compilation of lists most difficult if not impossible and is contrary to D.L.L. 170.

DCLA promises investigation.

Meeting closed at 1230.

File 401313

AGENDA FOR MEETING TO BE HELD ON THE 16 NOVEMBER 1944

1. Recruitment of magistrates.
2. Disciplinary steps taken in connection with the proceeding at Pretura Santa Maria Capua Vetere.
3. Establishment of Military Courts at Bari.
4. Recently published reforms to civil and Penal Codes.

MINISTER'S AGENDA

1. Promotions and transfers of high magistrates.
2. Allied Command of Assesta suspended application of of Law No. 159 on sanctions against fascist.
3. General Order No. 28. Allied authorities at Ascoli interpret Art. 6, para d, as abolishing the jurisdiction of ordinary courts in labour matters and referring the labour disputes to "arbitri".
4. Blocking by AMG Naples of monthly extraordinary allowances due to judicial functionaries (janitors etc).
5. Appointment of lay judges on the Court of Assizes Perugia. Allied authorities insist that no person who at any time had a fascist membership card be appointed. That makes it impossible to compile the lists.

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