

C. L. A.

But in order to expel one must first arrest, and then
should not be done unless 2 a 6 or c on ^{fulfilled} satisfied.

NS/3873

To Executive Commissioner

①

Please see letter at 1A

1. I have already spoken to you about this situation.

Personally I am of opinion that the order could be issued. Whether it will be Provincial or XIII Corps is really immaterial.

2. The rights of the occupants to expel from territory under their control undesirable persons without judgment cannot be questioned.

3. The political advisability of issuing the order at the present stage is, however, opened to question.

J. S. Hammond

Legal Sub Commission

U.S. HAMMARD,

1st Colonel.

Deputy Chief Legal Advisor.

28 March 1946.

②

The criteria in the security of the Allied Forces

I appreciate the special position of Alder is

but unless we are sure that the person

named in the letter to Alder is they should

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J. S. Hammond

Legal Sub Commission

28 March 1946.

G. H. HAMMARFORD,

Lt. Colonel,

Deputy Chief Legal Advisor.

(2)

The criterion is the security of the Allied Forces.

I appreciate the special position of Alder. is

but unless we are sure that the person

named can be taken to Alder, they should

not be ~~arrested~~ arrested.

176/111

Ex Com

There is no question of arrest, but of expulsion
reg.

leg. sub

30 Mar 46.

J. S. Hammond

lt. Col
J.S. 29/3

42

Ex. Com.

The C.L.A. spoke to me about this matter on Saturday.
He stated in Memo 1 AMG has the right to expel persons
from the territory under its control.

It is considered that the manner in which this right
should be exercised, or delegated, is for the Military Governor to
decide. The reasons for this view are set out in the attached
memorandum which is a rough note made by the C.L.A.
as a basis for discussion of the question ^{by him} with the Provincial
Commissioner, Udine, during the next few days.

15/5

Not sent.

No action: the question has been dropped for the present.

With the commencement of hostilities, in the exercise of the "right of control", persons suspected of communicating with the enemy, will be detained and, if deemed advisable, interned on the ground of self preservation. (See Rules of Land Warfare (US) T.M. 27-10, para 20).

The general rule is that every person captured or interned by a belligerent power because of the war is, during the period of such captivity or internment, a prisoner of war, and is entitled to be recognized and treated as such under the rules of war. (See F.M. 27-10 para 70).

Article 9, Geneva convention of 27 July 1929, relative to the treatment of prisoners of war provides:

"Internment - Prisoners of war may be interned in a town, fortress or other place and bound not to go beyond certain fixed limits. They may also be interned in enclosed camps, they may not be confined or locked up except as an indispensable measure of safety or sanitation, and only while the circumstances which necessitate this measure continue to exist."

It will be observed, and it is here stressed, that internment is a detention of a person, and not the arrest of a person. While arrest includes detention, that is, a restraint of the person, it includes more. It is seizure of the person under legal process, with detention being but an incident thereto, for other purposes. Detention on the other hand, is mere restraint. A person doing jury duty or military service suffers detention, but he does not suffer an arrest.

From the beginning, Occupational Government in Italy had recognized the distinction between arrest and detention. District provision for detention, as distinguished from arrest, was provided under old proclamation No. 2, Article VII, which read as follows:

Section 2. Detention. Any person suspected of committing or intending to commit a war offense or to engage in any political or other activity in the interest of the enemy or its armed forces or hostile to the Allied Forces or the Allied Military Government, may be detained pending further investigation, by order of any Senior Civil Affairs officer if in his opinion it would be prejudicial to the safety of the Allied Forces to permit such person to remain at large.

Whenever any person has been so detained the Chief Legal Officer of the Allied Military Government shall be so informed, and he

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From the beginning, Occupational Government in Italy has recognized the distinction between arrest and detention. Distinct provision for detention, as distinguished from arrest, was provided under old proclamation No. 2, Article VII, which read as follows:

Section 2. Detention. Any person suspected of committing or intending to commit a war offense or to engage in any political or other activity in the interest of the enemy of its Armed Forces or hostile to the Allied Forces or the Allied Military Government, may be detained pending further investigation, by order of any Senior Civil Affairs officer if in his opinion it would be prejudicial to the safety of the Allied Forces to permit such person to remain at large.

Whenever any person has been so detained the Chief Legal Officer of the Allied Military Government shall be so informed, and he shall review the circumstances under which the detention was ordered. If the Chief Legal Officer certifies that he agrees with the opinion of the detaining officer, the detention may continue for a period of not longer than three months, subject to renewal for further periods of three months upon like certifications. If the Chief Legal Officer does not agree, then the question may be submitted to higher authority for decision.

Section 3. Provisions of this article not to apply to civilian internees. Nothing in this article contained shall prevent the internment of public officials or other civilians as civilian internees pursuant to the provisions of international law.

In new Proclamation 1, Article VIII, Section 2, it is provided:

Section II: Detention. Any person suspected of committing or intending to commit any act hostile to the Allied Forces or the Allied Military Government or engaging in any political or other activity in the interest of the enemy or its Armed Forces or hostile to the Allied Forces or the Allied Military Government, may be detained pending further investigation for a period not exceeding three months unless the Regional Commissioner or Senior Civil Affairs Officer orders that the detention may continue for a longer period.

In Executive Memorandum No. 72, para 6, it was provided:

Detainees. The cases of all persons detained under Article VII of old Proclamation No. 2 or Article VIII of new Proclamation No. 1 will be reviewed and if the RC on the advice of the ILO decides to continue to detain any such persons the ILO will make a full report to Hq AOC within 14 days of the restoration date.. Such report will deal with all such detainees separately and will give the place of detention of each detainee and the reasons for his continued detention.

In so far as "detention" is concerned, the provisions above set out are deemed ample without the aid of additional legislation. 2

The question arises, however, under the "right of control" may a person be expelled from occupied territory who may constitute a potential threat to the good order and tranquillity of a province?

The only authority I have been able to find which deals with expulsion under such "right of control" is contained in Rules of Land Warfare, R.M. 27-10, para 311.

Removal of civil officials. - By virtue of his powers of control the occupant is duly empowered to remove officials of every character. He will on principle remove political officials. Any official considered dangerous to the occupant may be removed, made a prisoner of war, or expelled from the occupied territory.

From the text of this statement it becomes apparent that the "right of control" includes the power to remove, to intern, and to expell. As this "right of control" flows from self-preservation as against all persons, dangerous to its existence, and not merely public officials, it follows that expulsion in an occupied territory is an incident of

Detainees. The cases of all persons detained under Article VII of old Proclamation No. 2 or Article VIII of new Proclamation No. 1 will be reviewed and if the IC on the advice of the HLO decides to continue to detain any such persons the HLO will make a full report to Hq AGC within 14 days of the restoration date. Such report will deal with all such detainees verbatim and will give the place of detention of each detainee and the reasons for his continued detention.

In so far as "detention" is concerned, the provisions above set out are deemed ample without the aid of additional legislation. ²

The question arises, however, under the "right of control" may a person be expelled from occupied territory who may constitute a potential threat to the good order and tranquillity of a province?

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The manner in which such power may be exercised is for the Military Governor to decide. In the matter of detention the Military Governor has definitely prescribed the boundary for its exercise. By analogy it would follow that the same procedure should be followed in the matter of expulsion.

While such power may be delegated to a Provincial Commissioner, because it was not done in the matter of detention is justification for assuming it is not impliedly given in the parallel topic of expulsion.

4016/7
HEADQUARTERS
ALLIED MILITARY GOVERNMENT
UDINE PROVINCE

Legal Office
Tel. Int. 16.

TO : V.F. Civil Affairs Section
H.Q., A.C., *Udine* ROME.

SUBJECT : Expulsion from Province of Italian Civilians.

FILE N° : SLO/HQ AE/MAR/16.

20 March 1946.

25/3/46

1. From time to time my attention is drawn to persons residing in this Province who are suspected of undesirable activities and who may constitute a potential threat to the good order and tranquillity of the Province.

2. The desirable course would be to expel such individuals from the Province and I am concerned to know how this may be achieved in cases where there is no evidence upon which:
a) a charge can be laid before an A.M.G. Court (which could of course make an order as to residence),
b) the Provincial Committee under the Testo Unico of the Law of Pubblica Sicurezza and amending Decrees can issue an order of Ammonizione or Confino,
c) expulsion can be justified on the ground that the individuals concerned are a danger to the security of the Allied Forces.

3. So far as I am aware, I have no power in the circumstances indicated to order the expulsion from the Province of the persons concerned, and I am extremely dubious of my right to take such power by the issue of a Provincial Order. Arbitrary expulsion without concrete reasons and in the absence of any kind of judicial hearing would appear to be a serious invasion of the rights and liberty of the individual, savouring strongly of the Fascist Regime, which might have unfortunate and widespread repercussions.

4. I shall be glad to know, however, if I may be empowered to take action by way of expulsion in cases of the kind indicated above and as to the proper method to be adopted for this purpose.

This matter has been raised

W. B. Smith

Legal Sec 1A
HA

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*This one has been raised
with Col. Manfredi on
his recent visit.*

H.N. Bright

H.N. Bright,
Lt. Colonel,
Provincial Commissioner
Udine Province.



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