

ACC

10000/142/376

LEGAL QUE
PENAL CODE
SEPT. 1943 -

10000/142/376

LEGAL QUERIES RELATING TO ITALIAN COURTS, LAWS, &
PENAL CODE
SEPT. 1943 - DEC. 1945

Legal D.C.

11 April 1945.

The attached letter from Mr. W. S. Distric
is forwarded for your attention.

W.S.
CLO
DCLO
Chief Counsel

W.S. Distric
C.A. Section.

V.P. C.A.S.

①

1- Please see 444 A & suggested answer.

2- As this answer amounts to "NO", it is thought that it should be signed by you or your staff.

1 Campbell
for D.C.L.A.

Legal S.C.; 14 Apr 45.

③

V.P. I suggest that the answer is to dismiss the employee and that that this should be pointed out. On a small scale - in a financial - I have found it effective. I would, therefore, allow para 1.
... by the military authorities (para 1).

add para 2. It is suggested that by far the most effective action which can be taken against this increase would be the instant dismissal of the employee.

15 April

④

Legal V.P. agrees with suggestion in para 3.

15 April

⑤

CAS. Q.E.D. W.D. as D.C.A. 17 Apr. 45.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/LOA/L.

4 December 1945.

SUBJECT : Gaming Houses.

TO : Executive Commissioner, HQ., AC.

1. Reference your 2604/EG of 29 November 1945.
2. The opinion of our Italian Legal Advisor on the question of gaming houses in AMG and AC territory is enclosed herewith.

G.C. HAYNAFORD,
Lt.Col.,
Deputy Chief Legal Advisor.

14041
✓

51A

HEADQUARTERS ALLIED COMMISSION
APC 394
Office of the Executive Commissioner.

Ref: 2604/EC.

29 November 1945.

SUBJECT: Gaming Houses.

TO : Legal Sub-Commission.

Would you advise me as to the existing Italian legisla-
tion on gaming houses. I understand a Fascist Decree closed them
down some years ago (during the war). Does this Decree apply now
(a) in Italian Government territory: (2) in AMG territory.

M.S.L.

MSL/JG.

Brigadier,
Executive Commissioner.

LEGAL SUB COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CL RK3
20 NOV 1945



74

COPY

14041

HEADQUARTERS ALLIED COMMISSION
APO 394
Office of the Executive Commissioner

(50A)

Ref: 2601/NO

29 November 1945

30 NOV 1945

SUBJECT: Casino at CARDONE.

TO : Regional Commissioner,
Allied Military Government,
LOMBARDIA REGION.

A delegation representing the promoters of the Casino at CARDONE called on the Chief Commissioner, presented the attached Prefectural order and complained that the opening of the Casino had been vetoed by the Regional Commissioner, Lombardina Region. If it is true, as would appear, that the Provincial Commissioner or one of his officers approved the order, as a consequence of which funds were raised, it would seem difficult now to forbid the opening. I am having the general legal position on the opening of gaming houses studied. In the meantime I should be glad of your comments.

For the Chief Commissioner:

/s/ M. S. LUSH

Brigadier,
Executive Commissioner.

Copy to Legal s/c

LEG. SUB COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
30 NOV 1945	

73



N.º 32109 Div. II

Brescia li 25 Ottobre 1945

IL PREFETTO DI BRESCIA

Vista la domanda in data 17 Settembre 1945 e successiva lettera del 20 Ottobre c.a. del Comm. Besana Soave - Commissario Straordinario dell'Azienda Autonoma di soggiorno di Gardone Riviera - Salò, con sede in detto Comune.

Vista la necessità di dare mezzi finanziari a detta Azienda, per l'attrezzatura turistico-alberghiera della Riviera del Garda, notevolmente danneggiata a causa della guerra;

Visto le informazioni ed il parere favorevole del Sig. Questore di Brescia e del Comando dell'Arma dei Carabinieri competente per il territorio;

Sentita l'Intendenza di Finanze di Brescia;

Visto il parere favorevole del C.L.N. Provinciale di Brescia;

Visto il parere favorevole del Sindaco e del C.L.N. di Gardone Riviera;

Visto il D.L. 27/4/44 N. 636

D E C R E T O

Art. I) E' autorizzata in Gardone Riviera l'apertura provvisoria di una cascada giuoco nel Casino di proprieta' dell'Azienda Autonoma di soggiorno, di cui e' rappresentante il Commissario Straordinario Comm. Besana Soave di Gardone Riviera.

Art. II) L'Azienda Autonoma di Soggiorno, e per Essa il Comm. Besana Soave, amministrera' in proprio, la casa da giuoco ed evolvera' a proprio beneficio gli utili netti della Gestione.

Art. III) L'Amministratore Comm. Besana Soave e' personalmente tenuto alla osservanza delle norme, cautele, e condizioni stabilite nel presente atto di concessione.

Art. IV) Il Comune di Gardone Riviera e' autorizzato a rilasciare tessere di frequenza ai locali della Casa da Giuoco a persone che siano in possesso di validi documenti di identita' e dietro compilazione di apposita scheda.

Art. V) Compete esclusivamente al Comune suddetto il rilascio delle tessere di frequenza, - Esse devono essere munite del timbro della Azienda ed avranno validita' di giorni 15.

Art. VI - Nessuno puo' essere ammesso a frequentare i locali della Casa da giuoco se non sia provvisto della tessera di frequenza, la quale non puo' essere rilasciata ai minorenni, ne' a persone residenti nel Comune di Gardone Riviera e di Salò, ad eccezione degli stranieri.

Art. VII - Non possono essere ammessi a frequentare la casa da giuoco gli Ufficiali, i sottufficiali ed i soldati appartenenti alle Forze Armate Italiane ne' possano esservi impiegati statali, parastatali ed i salariati dello Stato.

Art. VIII. - A cura dell'Azienda Autonoma di soggiorno sara' istituito nella casa da giuoco uno schedario dei frequentatori.

Art. IX - Il sig. Questore di Brescia e' autorizzato a costituire in Gardone Riviera un Commissario di P.S. e per l'alloggio del personale che vi sara' addetto.

Art. X - Agli effetti della vigilanza da parte degli Agenti della Forza Pubblica i locali adibiti al giuoco sono considerati pubblici.

Art. XII - La violazione alle disposizioni contenute negli articoli precedenti da' luogo alle applicazioni delle sanzioni di cui all' art. 434 e seguenti del Codice Penale.

La condanna importa decadenza di diritto della presente concessione. Ogni contravvenzione al disposto degli articoli 5.6.7.8. e' punita a termine di legge.

Art. XIII - In qualsiasi caso di trasgressione alle disposizioni del presente Decreto e indipendentemente dall'esercizio dell'azione penale puo' essere ordinata

./ p.t.o.

- 2 -

la chiusura della Casa da Gioco e la revoca della concessione. L'ordinanza di chiusura e' eseguita in via amministrativa mediante il diretto impiego della forza pubblica.

La facolta' della chiusura dei locali e della revoca della concessione e' applicabile anche nei casi nei quali, pur non essendosi verificata alcuna trasgressione alle disposizioni del presente decreto, sussistano motivi di ordine pubblico e di pubblica sicurezza che consiglino il provvedimento.

Art. XIV - Il Presente Decreto ha validita' del giorno della sua affissione all'Albo Comunale di Gardone Riviera.

IL PREFETTO
F.to Bulloni

Per copia conforme:

Il Capo del Gabinetto
(col timbro della Prefettura di Brescia)

Visto li 27/10/45

F.to David Goodman

Capt. C.N.P.
Provincial Commissioner.

2nd Ind.

WEB/lc.

11 August 1945.

HQ, AC APO 394 LEGAL S/C.

TO: Hq, LIVORNO Zone, Allied Military Government, Legal Office.

1. I am advised that it is an offence for Italian civilians to acquire foreign currency and my attention is directed to the following laws:

Art.1. of Min.Decree 26 May 34 (G.U. N° 124 of 26 Dec.1934)

Art.9 of Min.Decree 8 Dec.34 (G.U. N° 288 of 8 Dec.1934)

Art.1 of Law N° 1097 of 28 July 1939

Arts 1 and 3 of RDL N° 1942 of 8 Dec. 1934

Art.1 of Min.Decree 14 July 1943 (G.U.N° 68 of 22 July 43)

Law N° 1097 of 28 July 1939

RDL N° 794 of 12 May 1938 = Law N° 380 of 9 Jan. 39

RDL N° 1928 of 5 Dec.1938 = Law N° 739 of 2 June 1939.

2. I am proposing to visit Livorno with my Italian Adviser on 15 August 45. I suggest that you draw the attention of the Procuratore del Regno to these laws and if he still disagrees we can discuss the position on arrival.

3. Para 1 applies without question to the blue Italian seal dollars. It probably also applies to the Gold; it should be borne in mind that the gold is not legal tender in England (although it may be in other parts of the world), but the law speaks of "valute aventi valore legale o commerciale" which clearly covers English gold coins.

By command of Rear Admiral STONE:

21

W.E. BEHRENS,
Colonel,
Chief Legal Advisor.

4041 ✓

HEADQUARTERS PENINSULAR BASE SECTION
Office of the Provost Marshal
Criminal Investigations Division
APO 782

CID BPSMI

4 August 1945

Subject: Disposition of United States Blue Seal Currency

To : Chief Prosecutor, A.C. Tribunale, Leghorn, Italy.

1. On or about 27 June 1945, GROSSO Guido fu Giovanni, Via Locana, #4, Biella (Milano), Italy, was stopped at the Grosseto, Italy Road Block. GROSSO was searched and \$1,000.00 in United States Blue Seal Currency was found on his person.

2. When questioned, GROSSO stated that he had purchased the currency from an unknown person at the Borsa (Stock Exchange) on Piazza Colonna, Rome, Italy.

3. GROSSO was released and the currency is being held by this office.

4. It is requested that this office be advised as to the legality of the purchase and the proper disposition of the currency.

For the Chief Agent:

Frank C. Daquet
FRANK C. DACQUET,
Agent, CID

1st Ind.

AI/EN.

Hq, LIVORNO Zone, Allied Military Government, Legal Office.

4 August 1945.

To : Hq, Allied Commission, APO 394

(Attn: Chief, Legal Sub-Commission).

1. Reference is made to basic communication and to inclosed report of arrest concerning Berlendi, Remo.

2. The Procuratore del Regno of Livorno, the Director of the local branch of the Banca d'Italia, and several members of the local bar have been unanimous in their opinion that there is no Italian law which prohibits the possession, holding, exchanging, bargaining or selling of either American or British Currency in territory under the administration of the Italian Government.

3. Request advice as to the proper disposition to be made in these two cases.

For the Zone Commissioner:

Archer Johnson
ARCHER JOHNSON,
1st Lt., Infantry,
Legal Officer.

AUG 1945

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4041/L.

ES/lc.
2 August 1945.

SUBJECT : Meetings of Limited Liability Companies.

TO : Regional Commissioner (Attn: Regional Legal Officer),
VENEZIE Region.

Enclosed herewith is a copy of the reply of the
Ministry (Prot. No. 12.P.G./188, Uff. 1) to the memorandum
of Avvocati of Padova forwarded with your RXII/PAD/6.1/39.
of 4 June 45

By command of Rear Admiral STONE:

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

Incl.

0712

Roma, 31 luglio 1945

ALTA COMMISSIONE ALLEATA
SOTTOCOMMISSIONE LEGALE

R O M A

Ministero di Giustizia

DIREZIONE GENERALE DEGLI AFFARI CIVILI
E DELLE LIBERE PROFESSIONIRisposta al Teleg. del 9.6.1945
Dir. Soc. V. A. C/4041/L.1°
12.F.G./188OGGETTO Promemoria di alcuni avvocati e procuratori di Padova
relativo alla convocazione delle assemblee delle Società a Responsabilità Limitata.

Nell'unito promemoria di alcuni avvocati e procuratori di Padova si afferma che l'art. 2366 c.c. richiede che l'assemblea delle Società a Responsabilità Limitata dev'essere convocata mediante avviso da pubblicarsi nella Gazzetta Ufficiale del Regno 15 giorni prima del giorno fissato per l'adunanza; e si prospetta la opportunità, a causa delle difficoltà di comunicazioni, di stabilire, con apposito provvedimento legislativo, che le Società a Responsabilità Limitata le quali svolgono la loro attività nella Provincia di Padova possono pubblicare l'avviso di convocazione dell'assemblea nel Corriere Padovano, anzicchè nella Gazzetta Ufficiale.

Al riguardo si osserva che il modo di convocazione dell'assemblea delle Società a Responsabilità Limitata non è regolato dall'art. 2366 ma dall'art. 2484 del cod.civ., il

1°

12.F.G./188

Proposta al Tribunale del 9.6.1945

Qu. Soc. N. 4 C/4041/L.

OGGETTO Promemoria di alcuni avvocati e procuratori di Padova
relativo alla convocazione delle assemblee delle Socie-
tà a Responsabilità Limitata.

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ri di Padova si afferma che l'art. 2366 c.c. richiede che
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Padova possono pubblicare l'avviso di convocazione dell'as-
semblea nel Corriere Padovano, anzicchè nella Gazzetta Uffi-
ciale.

Al riguardo si osserva che il modo di convocazione
dell'assemblea delle Società a Responsabilità Limitata non
è regolato dall'art. 2366 ma dall'art. 2484 del cod.civ., il
quale dispone che l'assemblea delle dette Società, salvo di-
verse disposizioni dell'atto costitutivo, dev'essere convocata
dagli amministratori con raccomandata spedita ai soci almeno
otto giorni prima dell'adunanza nel domicilio risultante dal
libro dei soci.

Per tanto la richiesta contenuta nell'unito promemoria

. / .

0714

non sembra giustificata.

pel MINISTRO

Car. del M.

COMMISSIONE
CLO
DCLO
Chief Courts
CLO

0715

RECEIVED
CLO
DCLO
Chief Counsel
CJO
Italian
CL RKS
2 AUG 1961
1961

C O P I A

RX II/ PAD.

PROVINCIA DI PADOVA
REGIONE VENEZIA
GOVERNO MILITARE ALLIATO

ALL'UFFICIALE LEGALE PROVINCIALE - R.A.D.Q.V.A. -

I sotto menzionati membri del Consiglio degli Avvocati e Procuratori del Tribunale di Padova dichiarano che per l'art. 2366 c.c. le assemblee delle Società a Responsabilità Limitata debbano essere convocate a mezzo di un avviso nella Gazz.Uff. pubblicato 15 giorni prima del giorno fissato per l'assemblea.

Questa formalità è impossibile in considerazione dello stato delle comunicazioni con Roma. Ne consegue, perciò, che è quasi impossibile convocare le assemblee.

Nel caso di assemblee ordinarie (che ^{la} legge 2364 c.c. debbono essere convocate almeno una volta all'anno entro 4 mesi della fine dell'anno finanziario della Società) (R.D.L. del 16 marzo 1944. 89, ha sospeso i termini richiesti per la convocazione dell'assemblea cioè fino allo scadere del sesto mese dopo la conclusione della pace.

Ma è ugualmente necessario avere un provvedimento per le assemblee straordinarie (cui art. 2365 e 2357 c.c. e che non possono essere rinviati. Un tale provvedimento sarebbe anche di grande vantaggio per le assemblee ordinarie dato che è consigliabile convocare queste assemblee per regolare l'attività delle

0717

e Procuratori del Tribunale di Padova dichiarano che per l'art. 2366 c.c. le assemblee delle Società a Responsabilità Limitata debbano essere convocate a mezzo di un avviso nella Gazz. Uff. pubblicato 15 giorni prima del giorno fissato per l'assemblea.

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Secondo il nostro parere è perciò assolutamente necessario che ci sia una legge la quale autorizzi un differente modo di pubblicazione dell'avviso di convocazione di assemblea ed a questo fine si propone che la Società a Responsabilità Limitata le quali svolgono le loro attività nella Provincia di Padova, possano pubblicare l'avviso di convocazione di assemblea nel Corriere Padovano.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

47A

ES/1c.
9 June 1945.

AC/A041/L.

SUBJECT : Meetings of Limited Liability Companies.

TO : H. E. The Minister of Pardon and Justice.

1. Your Excellency's attention is invited to the enclosed memorandum submitted by the Committee of Avvocati and Procuratori of the Tribunale of Padua.

2. It is felt that in the present circumstances the solution of the problem lies outside of the scope of the Allied Military Government. Consequently the matter is put before Your Excellency for consideration and advice please.

H. E. BEHRENS,
Colonel,
Chief Legal Advisor.

Incl: copy of memo.

Copy to: Regional Commissioner
(Attn: RLO) Venezia Region
(your RXII/LE/Reg/C/02 of
5 June 45 refers).

C O P Y

PADOVA PROVINCE
VENEZIE REGION
Allied Military Government
APO 394

47B

TO : R.L.O. June.4.45.
SUBJECT: Italian Law- Meetings of Limited
Liability Companies

FILE NO: RXII/BAD/6.I./39

1. Attached is the translation of a memorandum received by me from the Committee of Avvocati.
2. The Prefect states it is beyond his power to issue a decree concerning this matter.
3. The Avvocati wish to obtain authority to publish the required notice in a local newspaper.

By order of the Provincial
Commissioner

C. Stewert, Major
P.L.O.

PADOVA PROVINCE
 VENEZIE REGION
 Allied Military Government
 APO 394

COPY

TO : P.L.O. Padova

SUBJECT:

FILE NO: RXII/PAD/

The undermentioned members of the Committee of Avvocati and Procuratori of the Tribunale of Padua state that by art. 2366 c.c. meetings of Limited Liability Companies must be summoned by means of a notice in the Gazzetta Ufficiale published 15 days before the day fixed for the meeting.

This formality is impossible in view of the state of communication with Rome. It follows therefore that it is almost impossible to convene meetings.

In the case of ordinary Meetings (which under the law 2364 C.C. must be convened at least once a year within four months of the end of the company's financial year) the R.D.L. of 16 March 1944.89. has suspended for six months the terms requiring the calling of the meeting, that is to say until the completion of the sixth month after the conclusion of peace.

But it is equally necessary to have a provision for extraordinary meetings with which Art. 2365 and 2357 C.C. deal and which cannot be postponed. Such a provision will also be of the greatest use for ordinary meetings as it is advisable to have meetings to regulate the working of the company.

SUBJECT:

FILE NO: RXII/PAD/

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But it is equally necessary to have a provision for extraordinary meetings with which Art. 2365 and 2357 C.C. deal and which cannot be postponed. Such a provision will also be of the greatest use for ordinary meetings as it is advisable to have meetings to regulate the working of the company.

In our opinion therefore it is absolutely necessary that there should be a law authorising a different mode of publication of the notice of assembly and to that end it is proposed that the Limited Liability Companies with their place of business in the Province of Padua, such publication should be made by a notice in the Corriere Padovano.

HEADQUARTERS
VENEZIE REGION
 ALLIED MILITARY GOVERNMENT
 APO 394

To : Chief Legal Adviser, Legal S/C, HQ, AC. Date 5 June 1945
 Subject : Meetings of Limited Liability Companies.
 File No: R XII/LE/Reg/C/02.

1. Herewith copy of letter of to-day's date received from P.L.O., Padova Province, together with accompanying memorandum from the local Committee of Avvocati.

2. The point raised is obviously one of General application and involves a change in Italian Legal Procedure. Having regard to the terms of Executive Memorandum NO. 30, therefore, I do not feel that I can advise the Regional Commissioner to deal with the matter by Regional Order.

3. I accordingly forward the documents to you, for such action as you consider advisable, or alternatively for your instructions to me as to what I should do.

W.R. Dater
 major
 Colonel,

for Regional Legal Officer,
 Venezie Region.

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJ	
Italian Section	
C	
8 JUN 1945	

*not for R.L.O. 5016. and include file 63
 present circumstances
 therefore first*

HEADQUARTERS ALLIED COMMISSION
 AND 394
 CIVIL AFFAIRS SECTION

458

AC/4041/L.

/mt.
16 April 1945.

SUBJECT : Discipline - Italian Civilians.
 TO : 3 District.

Ref 176/94 of 9 April 1945.

1. This Commission appreciates the need to take all reasonable steps to improve the standard of driving by Italian civilians employed by the military authorities.

2. So far as Naples Commune is concerned, it is technically possible to issue an AMO order; but all cases thereunder would have to be tried by an AMO court; and the small and decreasing legal staff in Naples will have more useful work to do than to try traffic offences.

As stated in your letter, there is jurisdiction under the existing Prefectural Order to award terms of imprisonment of up to 3 months for exceeding the speed limit. It is thought that this jurisdiction is ample; indeed, few such cases could justify a sentence up to the permitted maximum. It seems therefore that the cause of complaint must be that the courts, in spite of ample powers, are awarding too light sentences. If this is so, will you please communicate with the Senior Legal Officer, AMO, Naples Commune; on receipt of particulars as to the cases of which you complain, he will take up the question with the Italian Authorities.

3. To procure any amendment of the law in territory outside Naples Commune, it would be necessary to take up the question on a Ministerial level. In view of the policy laid down by the Combined Chiefs of Staff it is not thought opportune to take this course at the present time.

4. It is suggested that by far the most effective action which can be taken against this menace would be the instant dismissal of the employee.

For the Chief Commissioner:

[Signature]
 G. R. UPJOHN, Brig..
 VP CA Sec HQ AC.

62

SUBJECT : Discipline - Italian Civilians

HQ Allied Commission

3 District
Baseball 17
176/9A

9 Apr 45

1. The question of Trial and Punishment of Italian drivers of vehicles has been taken up with Regional Legal Officer, HQ Southern Region AC Legal Division who has stated that the penalties which can be imposed under Italian Law are :-

- (a) Dangerous or reckless driving (Codice Stradale Legge 1933 - T.U.) - 3000 lire.
- (b) Exceeding the speed limit, in violation of prefectural order dated 24 March 1944 (Naples only) - 20 lire to 2000 lire fine or 5 days to 3 months in prison.
- (c) Exceeding speed limit outside Naples - 20 lire to 200 lire fine.

In view of the numerous civilian drivers now employed by the Military Authorities and the large number of cases of speeding, reckless, careless and dangerous driving being brought against such drivers, it is requested that steps be taken to increase penalties which are at present of too minor a nature to be a deterrent.

JA/PP

RECEIVED
FILE HRC/10/12
11 APR 1945
SEEN
COPIED
ASSIST.
C.C.

R. Howe
Trans Col 61
DA & QTC

Passed to CAS from HQ. Commandant
for approval/disposal 11/4.

11 APR 1945

3769

43A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

ARC/pe.
9 Mar 45.

AC/400A/1.

SUBJECT : Prosecution of Minors under Italian law.
TO : ARH, G-5 Section.

1. Reference is to your G-5: 000.5 dated 6 Mar 45.
2. The answers to your queries on the prosecution of minors are to be found in the provisions of Articles 97 and 98 of the Italian Penal Code.
3. The "accessory punishments" referred to in the second para of Art. 98 are those which are ordinarily the legal consequences of conviction, such as interdiction from public office or the exercise of a profession or art, the publication of the sentence and the loss of civil and family rights.
4. However, minors who are acquitted by reason of age, or who are not chargeable or being chargeable are in a category requiring special treatment are dealt with under Arts. 222, 223, 224, 225, 226 and 227 of the Penal Code.
5. As requested translations of the above-mentioned Articles are set out in the attached Appendix "A" hereto.

Rel.

A. E. THORPE,
Lt. Colonel,
Italian Branch,
For Chief Legal Advisor.

Encl.: Appendix "A".

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

ART/ps.
9 Mar 45.

AG/4044/1.

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TO : AFHQ, G-5 Section.

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5. As requested translations of the above-mentioned Articles are set out in the attached Appendix "A" hereto.

Def.
A. R. THATCHER,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

Incl.: Appendix "A".

438

(1) APPENDIX "A" TO LETTER REF AG/4641/1 OF 9 MARCH 1945

TRANSLATION OF CERTAIN ARTICLES OF THE ITALIAN PENAL CODE
REFERRING TO THE PROSECUTION AND PUNISHMENT OF MINORS

ARTICLE 97

(Persons under Fourteen Years of Age)

A person who, at the moment he committed an act, had not attained the age of 14 years, shall not be chargeable.

ARTICLE 98

(Person under Eighteen Years of Age)

A person who, at the moment he committed an act, had attained the age of 14 but not that of 18 years, shall be chargeable if he had the capacity of intention and volition; but the punishment shall be reduced.

When the defective punishment inflicted is less than 5 years, or in cases of pecuniary penalty, conviction shall not be followed by accessory punishments. In cases of more serious punishment, conviction shall only entail interdiction from public offices for a period not exceeding 5 years and, in the cases fixed by law, suspension from the exercise of paternal power or marital authority.

ARTICLE 222

(Confinement in an Criminal Lunatic Asylum)

In the event of acquittal owing to mental infirmity or to chronic intoxication with alcohol or stupefying substances, or on account of being deaf and dumb, an order shall always be made for the confinement of the person charged in a criminal lunatic asylum for a period of not less than 2 years, except in cases of contraventions, crimes committed without criminal intent, or other crimes for which the law prescribes a pecuniary penalty or penal servitude for a period not exceeding 2 years as a maximum, in which cases the sentence of acquittal shall be communicated to the public security authorities.

The minimum duration of confinement in a criminal lunatic asylum shall be 10 years if in respect of the act committed the law prescribes the penalty of death or penal servitude for life, or 5 years if for the act committed the law prescribes the punishment of penal servitude for a period of not less than 10 years as a minimum.

In the event of a person confined in a criminal lunatic asylum

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- 2 -

- (, Having to undergo a punishment restrictive of personal liberty, the execution of the latter shall be suspended while confinement in the asylum continues.

The provisions of the present article shall also apply to persons under 14 years of age or over 14 and under 18 who, being in any of the conditions specified in the first paragraph of the same article, are acquitted by reason of age after committing an act deemed by the law to be an offense.

ARTICLE 223

(Confinement of Minors in a Criminal Reformatory)

Confinement in a criminal reformatory is a special police measure for minors and cannot have a duration of less than 1 year.

When this police measure has, wholly or in part, to be applied or carried out after the minor has attained the age of 21 years, liberty under supervision shall be substituted for it unless the judge thinks fit to order relegation to an agricultural settlement or a labour establishment.

ARTICLE 224

(Minor not Chargeable)

When the act committed by a person under the age of 14 years is deemed by the law to be a crime, and that person is dangerous, the judge, having special regard to the gravity of the act and the moral conditions of the family in which the minor has lived, shall order him to be confined in a criminal reformatory or placed at liberty under supervision.

If the law prescribes the penalty of death or penal servitude for life, or penal servitude ~~for~~ not less than 3 years as a minimum, in respect of the crime, and the latter is not a crime committed without criminal intent, an order shall be made in every case for the confinement of the minor in a reformatory for a period of not less than 3 years.

The foregoing provisions shall also apply to a minor who, at the time when he committed the act deemed by the law to be a crime, had attained the age of 14 but not 18 years, if he is found to be not chargeable in accordance with Article 98.3

ARTICLE 225

(Minor Chargeable)

When a minor who has attained the age of 14 but not 18 years is found to be chargeable, the judge may order that, after the execution of the punishment, he be confined in a criminal reformatory or placed at liberty under supervision, account having been

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taken of the circumstances indicated in the first paragraph of the preceding Article.

One of the aforesaid police measures shall always be applied to the minor who is convicted of a crime during the execution of a police measure previously applied owing to his not being chargeable.

ARTICLE 226

(Minor who is an Habitual or Professional Delinquent, or a Delinquent by Tendency)

Confinement in a criminal reformatory shall always be ordered in the case of a person under the age of 18 years who is an habitual or professional delinquent by tendency; it may not have a duration of less than 3 years. When he has attained the age of 21 years, the judge shall order his transfer to an agricultural settlement or a labour establishment.

The law shall determine the other cases in which an order has to be made for the confinement of a minor in a criminal reformatory.

ARTICLE 227

(Special Reformatories)

When the law prescribes that confinement in a criminal reformatory shall be ordered without its being necessary to establish that the minor is dangerous to society, he shall be assigned to a special institution or to a special division of the ordinary institutions.

A minor who, during his confinement in an ordinary institution, has shown himself to be particularly dangerous, may likewise be assigned to a special institution or to a special division of the ordinary institutions.

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

AMB/WSW

G-5: 000.5

6 March 1945

SUBJECT: Prosecution of minors under Italian Law.

TO : Headquarters, Allied Commission, APO 394.
(Attention: Legal Sub-Commission)

1. A question has been raised at this Headquarters concerning the Italian law respecting the prosecution of minors, and the view has been expressed that under Italian law persons under the age of 18 are not subject to criminal prosecution.

2. It would be appreciated if you could furnish this Section with a copy of any Italian law, or a statement of the practice in Italian courts respecting the criminal responsibility of minors. The information is required in connection with pilferage of WD property.

For the Asst. Chief of Staff, G-5:

A. M. Bullowa
A. M. BULLOWA,
1st Lt., AUS.



LEG	SUB-COMMISSION
CIO	
DCLO	
Chief Counsel	
CIO	
Italian Section	
CLERKS	
9 MAR 1945	

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PAGES MISSING OR
PAGINATION INCORRECT -
FILMED AS FOUND

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

IGRC/pa.
9 Feb 45.

AC/4001/L.

SUBJECT : Penalties - Italian Law Violations.

TO : Regional Commissioner, TOSCANI Region.
(Attn: Regional Legal Officer)

1. Reference RVIII/19/2006 of 5 February 45.

2. This Sub-Commission agrees with paras 1 (a) and (b). It does NOT agree with 1 (c). It is true that failure to comply with olive oil amassing laws constitutes an offence under Proc. 1 (44). But RR.CC. and CC.FF. in default of express authority, have no right of search for the purpose of enforcing the Allied Proclamations and Orders. The difficulty can be overcome because it would be legal and proper for the Allied Military Government to order or authorize laws enforcing agencies to search premises in which there is reasonable ground for belief that an offence against the olive oil amassing law is being committed. It is considered that any such order should take the form of a written instruction to the head of the RR. CC. or CC. FF. : and there would be no legal objection to such order being given on a provincial basis. However, before any directive to the above effect is issued by R.L.O. to PLO's it should be confirmed that Regional HQ do not desire that such orders, if any, be issued on a regional level.

3. Charges under Proc. 1 (44) are not strictly charges under Italian law : the charge is under the Proclamation and the particulars show what Proc. Order or law is alleged to have been broken. It is, however, essential that charges which are in substance based on Italian law be kept to the minimum : officers in the field have not the experience or the works of reference to enable them properly to handle such cases. As to review of such cases see AC/4002/L. dated 7 Dec 44.

By command of Rear Admiral STONE :

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

Copy to :: AC/4002/L.

4041 *4041* HEADQUARTERS
TOSCANA REGION
ALLIED MILITARY GOVERNMENT

40A

Date: 5 Feb. 45

File Ref:

SUBJECT: Penalties - Italian Law Violations.

TO: LEGAL SUB-COMMISSION, Headquarters, AC.

1. The attached letter presents certain questions on which we would like to have the benefit of your advise.

a) Proclamation I, Article 7, covers a violation of any provision of Italian Law. Proclamation I, Article 5, Section 44 makes provision for trial of a limited number of Italian offenses. It is quite clear that if a violation of Italian Law is charged under Proclamation I, Article 7, the provisions of the Italian Law control not only the ingredients of the offense but the boundaries of the punishment.

No such limitation ~~as to punishment~~ seems to exist as to the punishment of cases properly brought under Proclamation I, Article V, Section 44; quite to the contrary the boundaries of the punishment seem to be those prescribed in the last part of Proclamation I, section V, Article 46. Is this correct?

b) If the answer to the above question is in the affirmative, then this further question arises: is not a proceeding under Proclamation I, Article V, Section 44, at all times and in all of its elements a proclamation offense? While the section may adopt the ingredients of the offense from the Italian Law, yet the exercise of jurisdiction is exclusive of and without regard to concurrent Italian Law.

c) If the answer to the above question is in the affirmative, does it not follow that the acts of the CC/RR in enforcing the offenses under Proclamation I, Article V, Section 44, are solely the acts of an authorized member of the Allied Forces within the meaning of Proclamation I, Article VIII, committed as authorized agents of Allied Military Government, and not in their capacity of CC/RR or Guardia di Finanza?

d) If the answer to (b) is in the affirmative, would offenses properly chargeable under Proclamation I, Article V, Section 44 ever be considered as coming within the provisions of Article 14, Paragraphs 1, 2 and 3, "Consolidated Instructions"?

2. May we have the benefit of your advise on the question asked, keeping in mind the problem which is reflected by the basic letter.

LEGAL SUB-COMMISSION

CLO

DCLO

Chief Counsel

CJO

Italian Section

CL RKS

John K. Weber
JOHN K. WEBER,
Colonel, Infantry
Regional Legal Officer.

HEADQUARTERS

7 FEB 45

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8 FEB 1945

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HEADQUARTERS
FLORENCE PROVINCE
ALLIED MILITARY GOVERNMENT

40B

FM/7 - 30

2 February 1945

SUBJECT: Power of search in cases involving
Olive Oil offences

TO : R.L.G. HQ., AMG., Toscana Region

1. The head of the Guardia di Finanza here in charge of the enforcement of the Italian law covering the olive oil amassing program advises me that under the Italian law his men have no power of search of houses of suspected violators of such olive oil laws and that such powers exist only in cases of possession of arms and tobacco; and that the requirement of going to a court to obtain a search warrant hampers seriously the enforcement of the law in view of the fact that the Guardia di Finanza in various parts of the Province, no matter where they be, must, for such purpose, go to the nearest Pretore to obtain a search warrant which may be very distant and that they have no transportation for such purposes and further that before they can get back with the search warrant the olive oil is removed from the home intended to be searched.

2. The Provincial Commissioner is very much interested in this amassing program as it has not been progressing satisfactorily. For that reason I have made arrangements for the temporary trial of all olive oil offences in our Allied Military Courts (see letter copy of which is annexed). I, therefore, think we should take such action as is necessary to authorize the Guardia di Finanza to make search of houses of persons suspected of violation of olive oil laws without a special warrant. The only question is how it should be done. It could be done by an amendment (which would take too long) or by an authorization of the Allied Military Government. However, I do not think this should be done on a Provincial or Regional level in view of the fact that Section 1 of Art. VIII of 83 Proclamation No.1 provides that only "authorized members of the Allied forces" may search.

3. The matter is extremely urgent and it is for that reason that I desired to call Col. Hanaford, the officer in charge of Italian law in Rome, to see if such limited authority could not be given to the Guardia di Finanza. Before doing so, however, I wanted to advise you that I was taking such action

- 2 -

and, therefore, called your office on the 'phone this afternoon. Pursuant to your instructions, I am putting this in writing but would appreciate it if you could telephone me tomorrow morning and authorize me to telephone Col. Mansford.

Henry L. Glerum
HENRY L. GLERUM, Major, JAGD.,
Legal Officer for the Province
and City of Florence

LLG/FV

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HEADQUARTERS
FLORENCE PROVINCE
ALLIED MILITARY GOVERNMENT

400

FL/7 - 30

27 January 1945

SUBJECT: Trials for Infractions of Olive Oil
Amassing Program

TO : All Provincial Officers

1. It is reported that the olive oil amassing program is not progressing satisfactorily, and that there are numerous violations of the Italian law governing the production and utilization of olive oil for the 1944-45 season (D.M. 7 September 1944 contained in Gazzette Ufficiale No. 54, Anno 85). Normally it is deemed that all violations of Italian law, and particularly those relating to any Italian law regulating the distribution and rationing of products because of the complicated nature of such laws should be tried by the Italian courts, notwithstanding the fact that such violations also constitute a violation of Par. 44 of our Proclamation No. 1. However, leaving such matters to the Italian courts has the drawback that for one reason or another they are somewhat dilatory. This is particularly undesirable as to olive oil offences since the season will be over before the deterrent effect of conviction and sentence by the Italian Courts would be felt.

2. It is for that reason that the Provincial Commissioner is desirous that olive oil offences be immediately tried by Allied Military Courts. Please therefore advise all Public Safety Officers and the Guardia Finanze that charges of olive oil offences will be tried by an Allied Military Court until it is no longer practicable to do so or until further notice. A Legal Officer, Lt. Col. Troxell, is prepared to sit as Summary or Superior Court for such purpose. He will come to the place in the field where the witnesses are located in contested cases; when more convenient the trial may be held in Florence. The prosecution will be conducted initially by Capt. Fielding, also a Legal Officer, with the assistance of the Guardia di Finanza and Public Safety Officers. The Guardia di Finanza should be instructed to deliver a copy

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of the verbale to the nearest Provincial or Public Safety Officer, who in turn, should transmit the same to Provincial HQ., Legal Division.

BY ORDER OF THE PROVINCIAL COMMISSIONER.

HENRY L. GLENN,
Major, JAGD.,
Legal Officer for the
Province and City of
Florence

HLG/FV

C.C. to Major Clinkscale
Major Shove
Major Bateman
Lt. Col. Fox (through L.O. ANG XIII Corps.)

80

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

39A

ACC/4042/L.

ART/ap.
5 October 1944.

SUBJECT : Limitation of arrest
under D. L. 194.

TO : H. E. The Minister of Justice.

1. This Sub-Commission's Legal Officer in Bari has reported that the Procuratore Generale is interpreting Article 2 of D.L. No. 194 in the sense that no delinquent caught in flagrante delicto can be arrested unless the offence be one punishable by not less than a maximum of 5 year's reclusion. Whereas it would appear that freedom from arrest is intended to apply only to persons guilty of minor offences and that the object of the decree is to reduce the multiplicity of arrests for petty crimes in order to avoid congestion of the jails.

2. As the taking of a decision on this point would appear to be urgent, Your Excellency will no doubt make known the correct interpretation by circular to all judicial officials with the customary advice to this Sub-Commission.

A. R. THACKRAH,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

(38A)

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/1041/L. 1004/18

ART/mt.
5 Oct 44.

SUBJECT: Limitation of arrest under D.L. 194.

TO : Provincial Legal Officer (thru P.C.) Bari.

1. Further to yesterday's telephone conversation (Lt. Col. Thackrah - Capt. German) reporting that the Procuratore Generale of Bari is interpreting Art. 2 of L.D. No. 194 in the sense that no offender caught in flagrante delicto can be arrested unless the offense be one punishable by not less than a maximum of 5 years reclusion, this Sub-Commission is inclined to the contrary opinion.

2. For example, on reference to C.C. articles 624, 625 and 626 it may be deduced that most petty thefts committed by first offenders would escape arrest under 624 and 626, whereas perpetration of serious offences and habitual criminals would be subject to arrest under 625.

It will be remembered that the object of the law is to reduce the multiplicity of arrests for minor offences and thus avoid congestion of jails.

3. In view of the doubt which has arisen, the matter has been referred to the Minister of Justice for urgent interpretation with the suggestion that judicial officials should be promptly circularised thereon. You will be advised of the outcome in due course.

A.R. THACKRAH, 48
Lt. Col.,
Italian Branch
for Chief Legal Advisor

Copy: to R.L.O. (thru R.C.)
Southern Region, for
information.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
4 October 1944.

ACC/4041/L.

SUBJECT : Penalties under Italian law.

TO : Regional Legal Officer, SICILIA, SOUTHERN, LAZIO, ABRUZZI-MARCHE,
SARDEGNA, TOSCANA, EMILIA, LIGURIA, PIEMONTE, LOMBARDIA and VENEZIA.

1. Art. 14, par. 3 of Consolidated Instructions for Allied Military Courts deals with trials in Allied Military courts in which the charge is laid under Italian law and provides that in such cases the offence is punishable only as provided by Italian law."

2. In this connection your attention is drawn to the Penal Code, Art. 71 et seq and particularly to the following points:

- a. Concurrent sentences do not exist under Italian law;
- b. Where an accused is convicted of more than one offence and each of such offences carries a detentive punishment of the same kind, the Court must impose one term covering all charges on which he has been found guilty (see Art. 73);
- c. Clearly, such term must be not less than the aggregate of the minimum penalties, and not greater than the aggregate of maximum penalties, provided for such offences; nor must it exceed the limits laid down in Art. 78;
- d. Where an accused is similarly convicted, but the offences carry detentive punishments of a different kind (e.g., reclusioni, reclusioni militari, arresto and ergastolo), the Court must impose penalties of the different kinds separately and in full (see Art. 74).

3. Sufficient copies hereof are forwarded for distribution to HQs.

for *1 (Amptk) 1109*
RICHARD H. WILMER,
Colonel, SAC,
Chief Legal Advisor.

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394
ADMINISTRATIVE SECTION

22 Sep 44

SUBJECT : Law Revision.

TO : Legal Sub-Commission.

Will you please inform me after consultation with the appropriate Italian Authorities what is the position with regard to the review of the various laws of public security.

Ext. 525
GRU/at

Copy to: Public Safety Sub-Comm.

LEGAL SUB-COMMISSION	
CLO	☒
OCLO	☐
Chief Counsel	☐
CLO	☐
Legal Section	☐
CL RKS	☐
	☐
	☐

G. R. Hyatt
G.R. UPJOHN, Brig.
V.P. Admin Section

46

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HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4041/L.

/rlp.
19 August 1944.

SUBJECT : Ammonizioni.

TO : Regional Legal Officer (THRU Regional Commissioner),
Region III.

1. Reference your L-2071/14 of 11 August 1944.
2. The question of ammonizioni has been taken up with the Minister of Justice who is considering a modification of the Italian law.

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

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HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

11 August 1944

L-2071/14.

SUBJECT: Ammonizione.

TO : CLO, Legal Sub-Commission, ACC.

1. Herewith is sent a copy of an application, dated 31 July 44, which has been received from the President of the Ammonizione Commission set up under Regional Order No. 20, dated 10 March 44. A translation of the application is enclosed.

2. The position is that outside the Commune of NAPLES Ammonizione is governed by the original text of the Testo Unico delle leggi di Pubblica Sicurezza and the Commission is appointed by the prefect under Article 166 of the Testo Unico, while within the Commune of NAPLES Ammonizione is governed by the Regional Order which made certain modifications in the Testo Unico and provided that the Commission should consist of three magistrates not below the grade of judge. The Regional Order also gives a right of appeal against ammonizione which does not exist under the Testo Unico.

3. It is considered that the proposal contained in letter of 31 July 44 that there should be only one Ammonizione Commission for the whole of the Province of NAPLES (including the Commune of NAPLES), is a sound one. It is however, felt that the amendments made by the Regional Order are much more consonant with justice and accordingly that the Italian law should be modified by bringing into line with the Regional Order.

4. If you consider the modification of the Italian law

is desirable perhaps you would take the matter up with the appropriate Italian authorities.

For the Regional Commissioner:

CAB/no

G.A. Banlet

G.A. BANLET
Major, G.L.,
Actg Reg Legal Officer.

Encl-

1. application d/d 31 July 44 (in English and in Italian) from the President of the Ammonizione Commission.

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
→ Italian Section	
CL RKS	

44

N. 241 prot.

File 441 2. ~~Segret~~(Ammonizione
(amendment of art 166 of the
Public
Safety
(law))

PRO-MEMORIA PER LA COMMISSIONE ALLEATA DI CONTROLLO (UFFICIO LEGALE)

NAPOLI

Con ordinanza in data 14 Marzo 1944 del Commissario Regionale della 3 Regione, venne modificata la costituzione della Commissione Provinciale per le ammonizioni, di cui all'Art 166 del T.U. Legge P.S. 18 Giugno 1931 N.773, disponendosi che la stessa dovesse essere composta da tre Magistrati, di grado non inferiore a quello di Giudice, nominati dal Presidente della Corte di Appello.

Procedutosi a tale nomina, la Commissione, da me presieduta, ha iniziato il suo funzionamento fin dall'Aprile u.s., con giurisdizione su tutto il territorio della Provincia di Napoli.

Senonchè con provvedimento della Commissione Alleata di Controllo, in data 20 Luglio 1944, il territorio della Provincia di Napoli-Escluso il solo comune di Napoli- è stato restituito all'Amministrazione Italiana, a decorrere da detta data.

Ora, a seguito di tale provvedimento, sembra evidente che la giurisdizione della Commissione, costituita ai sensi dell'ordinanza Commissariale sopra indicata, debba ritenersi limitata al territorio del solo Comune di Napoli, in quanto per il territorio della Provincia, restituito all'amministrazione del Governo Italiano, riprendono de jure vigore tutte le leggi del Regno, ivi compreso il T.U. della legge di P.S. 18 Giugno 1931 N.773, che prevede una diversa composizione delle Commissioni provinciali per le ammonizioni. Dette Commissioni, presiedute dal Prefetto- e costituite ai sensi dell'art 166 del citato T.U- con la sola esclusione del rappresentante della soppressa milizia fascista- continuano difatti a funzionare in tutte le province non sottoposte all'Amministrazione del Governo Militare Alleato.

Ciò per quanto riguarda la situazione di diritto attuale.

Si ritiene peraltro opportuno aggiungere che, per una evidente ragione di opportunità pratica, e per evitare che nella stessa provincia funzionino due Commissioni per le Ammonizioni- una con giurisdizione sul Comune di Napoli, e l'altra sul restante territorio della Provincia, Commissioni che per la diversità stessa della loro costituzione potrebbero portare nel loro giudizio diversità di criteri, si renderebbe necessaria la unificazione delle Commissioni stesse. Ciò potrebbe effettuarsi o con un provvedimento di carattere generale del Governo Italiano modificativo del T.U. della legge di P.S. che ne modificasse la composizione, costituendole con magistrati dell'ordine giudiziario, a simiglianza di quanto disposto dal Commissario della 3 Regione, con la sua ordinanza in data 14 Marzo 1944, oppure con un provvedimento che revocasse tale ordinanza di

detto Commissario, in modo che anche nel territorio del Comune di Napoli riprendesse vigore il T.U. della legge di P.S. innanzi citata.

Napoli " 31 Luglio 1944

IL PRESIDENTE DELLA COMMISSIONE PROV. PER
LE AMMONIZIONI
(CONSIGLIERE Guglielmo de Luise)

TRANSLATION

hul 45/61

The constitution of the Provincial Commission for the Ammonizione, under Art 166 T.U. law P.S. 18th June 1931 N°773 was modified by Order of the Regional Commissioner on the 14 March 1944 and the order was given that it should be composed of three magistrates of rank not inferior to that of Judge, named by the President of the Court of Appeal. Following such appointment, the Commission, presided over by myself, started to function since April 1944 with jurisdiction of all Naples Province. By order of the A.C.C on the 20th July 1944 the Neapolitan Province excluding Naples Commune was handed over to the Italian Administration.

There after following this measure it seems evident that the jurisdiction of the Commission appointed by the above mentioned Commissioner's order it is limited to Naples Commune only as, that of the Province, handed over to the Italian Government, will enforce all laws of the Kingdom including the T.U. law 18th June 1931 N° 773 which foresees different members for the Provincial Commission of the Ammonizione.

Said Commission supervised by the Prefetto and appointed under Art 166 of the cited T.U. excluding only the representative of the dissolved fascist militia still continues to function in all Province not under the A.M.G. administration.

That is for what refers to the right of present situation.

We think it opportune to add, for evident reasons of practical opportunity, and to avoid that in the same Province should function two Commission for the AMMONIZIONE, one for the jurisdiction of Naples Commune and another for the remaining Province- Commission which on account of the difference in their constitution would have a different opinion in their ideas; it would be therefore necessary to unite these Commission. This would be effected with a measure of general character, by the Italian Government modifying the T.U. of the P.S law which would modify the composition of the Commission substituting them with magistrates of judicial orders, as disposed by the Commissioner of the 3 Region with his order of 14 March 1944 or with a measure by the Commissioner so that also Naples Commune would be reestablished the T.U. of P.S law above cited.

signed DE LUISE

Naples 31 July 1944

0748

SUBJECT: - Italian Penal Code.

File

Legal

HQ, AMEMB

ATTN: LEGAL

(33A)

4041 ~~4129~~

SECRET

AAI/5081/A(PB)

2 Aug 44

Legal Sub Commission
Rear HQ AGC - AGC 524

726

Ref this HQ AAI/5081/A(PB) dated 15 Jul 44.

Are you now in a position to reply to queries raised?

AGC/131.

Answered

1 Aug 44

Richard M. ...
D.A.G.

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0749
file
Tel. No. 563

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

(324)

RHW/ap

1 Aug 44

ACC/4041/L

SUBJECT : Italian law relating to homicide and offences for which the death penalty can be imposed.

TO : D.A.G., HQ. AAI.

1. Ref. your AAI/5081/A/PS) dated 15 July 1944.

2. I enclose herewith a short summary of the existing Italian law relating to homicide.

3. As regards your second question, when can the death penalty be awarded by an Italian Court? The Italian Government is at the moment considering a decree to abolish the death penalty and thus revert to the position as it was in pre-fascist days. It was therefore thought advisable to await the publication of this decree before sending you an answer to your second question. It is reasonable to suppose that such a decree which abolishing the death penalty in regard to offences under the Penal Code will not affect those under the Military Penal Code or Anti-fascist legislation.

29
R. H. WILMER,
COL, CAC,
Acting Chief Legal Officer.

MEMORANDUM on (A) Italian law of homicide and (B) offenses punishable by death.
REF: Penal Code, Arts. 575 et seq. 61, 416, 61, 63, 62, Royal Decree-Law 30
for 1942 N. 1365 Military Penal Code of Peace, Arts. 186 and 187.

A. The Italian law relating to homicide and the various degrees of murder is contained in Arts. 575 et seq of the Penal Code.

1. Murder.

a. "Any person causing the death of a human being shall be punished by imprisonment for not less than twenty years" (Art. 575). This offense is somewhat similar to the Anglo-saxon legal conception of murder. Although it is not specifically so stated in the articles, to constitute such an offense there must be present the intention (voluntà) of the offender to cause the death and the death must be the natural consequence of the action of the offender.

b. Aggravating circumstances (Art. 576).

When the offense as described in sub-para 1 above is committed with any of the following circumstances, the penalty is death:

- (1) When any of the circumstances described in Art. 61 sub-para 2 are present:
Art. 61 is the general aggravating circumstances article of the Penal Code and under sub-para 2 lists as such "committing the offense in order to carry out or conceal another offense or secure for oneself or for another the result, or profit or gain of another offense."
- (2) When the offense is committed against an ascendant or descendant relation when there are also present any one of the circumstances enumerated in sub-para 1 and 4 of Art. 61 or when the method employed is poison or other insidious means or when the offense is premeditated.
 - (a) The particular aggravating circumstances referred to are:
 - (i) Sub-para (1) acting for base or futile motives.
 - (ii) Sub-para (4) having used inhuman methods or having acted cruelly towards the person killed.

Premeditation.

No definition is given in the Code, but it may perhaps best be defined as a criminal design planned over a period of time, more or less extensive, without any intervention in its continuity and of a kind irrevocable and determined, in searching or waiting for the chance to bring it

When the offence as described in sub-para 2 above is committed with any of the following circumstances, the penalty is death:

- (1) When any of the circumstances described in Art. 61 sub-para 2 are present:
Art. 61 is the general aggravating circumstances article of the Penal Code and under sub-para 2 lists as such "committing the offence in order to carry out or conceal another offence or secure for oneself or for another the result, or profit or gain of another offence."
- (2) When the offence is committed against an ascendant or descendant relation when there are also present any one of the circumstances enumerated in sub-para 1 and 4 of Art. 61 or when the method employed is poison or other inhuman means or when the offence is premeditated.

(a) The particular aggravating circumstances referred to are:

- (1) Sub-para (1) acting for base or futile motives.
Sub-para (4), having used inhuman methods or having acted cruelly towards the person killed.
- (11) Premeditation.
No definition is given in the Code, but it may perhaps best be defined as a criminal design planned over a period of time, more or less extensive, without any interruption in its continuity and of a kind irrevocable and determined, in searching or waiting for the chance to bring it to full realization.

It must be distinguished from ordinary intent in that after the first decision (i.e., intent (dolus)), the will is exerted towards the fulfillment of the design discarding any contrary suggestion.

- (3) When the offence is committed by any person hiding from justice (latitante) in order to escape arrest, capture or imprisonment or to obtain means of sustenance during concealment.
For the purpose of the penal law, any person being guilty of an offence during the period in which he was wilfully evading the execution of a warrant or order of arrest or imprisonment for a preceding offence is to be considered as hiding from justice (Art. 61, sub-para b).

(4) When the offence is committed by a member of an association to commit offences (associato) in order to escape arrest, capture or imprisonment. By Art. 416 Penal Code a member of an association to commit offences to be criminally liable as such, must be one of at least three members. Hence, the "associato" referred to above must be a member of such a body.

(5) When the offence is committed in the act of committing any one of the offences described in Arts. 515, 520 and 521. Arts. 519, 520 and 521 of the Penal Code deal with rape and other kindred offences against the person.

c. Aggravating circumstances of a less serious nature (Art. 571).

The offence of homicide (Art. 575) while not being considered as so serious as to merit the death penalty (as in para b above) is punished by penal servitude for life (ergastolo) when the offence is committed in the following circumstances:

- (1) When the offence is committed against an ascendant or descendant relation;
- (2) When poisonous or other insidious means are used;
- (3) When there is premeditation (See b (2) supra);
- (4) When the offence is committed together with any of the circumstances enumerated in Arts. 61 sub-para. 1 and 4 (see b (2) 1 supra).

When the offence is committed against a spouse, brother or sister, adopted father or mother, or adopted son or against any relation by marriage in the direct line the penalty is imprisonment for from twenty four to thirty years.

d. Further special aggravating circumstances - Extension of the death penalty.

Royal Decree-law 30 November 1942, No. 1365 has extended the death penalty for murder (Art. 575 P.C.) committed during the state of war with any of the circumstances envisaged in Art. 61 sub-para 5. Sub-para 5 makes an aggravating circumstance "having taken advantage of circumstances of time, place or person such as to hinder public or private defence," e.g., the black-out makes it more difficult for a person to defend himself from attack after dark.

Furthermore, it extends this penalty to all offences normally

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- (1) When the offence is committed against an ascendant or descendant relation;
- (2) When poisonous or other insidious means are used;
- (3) When there is premeditation (see p (2) supra);
- (4) When the offence is committed together with any of the circumstances enumerated in Arts. 61 sub-para. 1 and 4 (see p (2) 1 supra).

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Furthermore, it extends this penalty to all offences normally punished by penal servitude for life. Hence, while a state of war exists and if the special circumstances of Art. 61, sub-para 5 are present when the offence is committed, any offence described in c above will be punishable by death.

e. Infanticide for the sake of a person's honor (Art. 578).

Causing the death of an infant immediately after its birth or during birth, if done to save one's own honor or that of a near relation is punishable by imprisonment for from three to ten years. Any person assisting with the intention of helping the person whose honor is threatened is liable to the same penalty. Any other person assisting for any other reasons are punishable by imprisonment for not less than ten years. The aggravating circumstances in Art. 61 do not apply to this class of offence.

f. Murder of a consenting party (Art. 579).

Any person causing the death of a human being with his consent shall be punished by imprisonment for from six to fifteen years. The aggravating circumstances, Art 61, do not apply to this class of offence.

This type of offence is to be considered as murder coming within the provision of Art. 575 if it is committed:

- (1) against a child of less than eighteen years of age;
- (2) against a person of infirm mind or a person physically incapacitated through another infirmity or through abuse of alcohol, stupefying substances, tobacco, etc.
- (3) against a person whose consent has been extorted by violence, menace or suggestion or obtained by a trick;

g. Instigating or helping another to commit suicide (Art. 580).

Any person helping or encouraging another to commit suicide punishable by a imprisonment from five to twelve years if the suicide is accomplished. If it is not accomplished and the victim sustains any serious personnel harm, the penalty is imprisonment for from one to five years. If the victim comes within categories (1) and (2) Art. 579 (see ? (1) and (2) supra) the penalty is increased. If the victim is a child of less than fourteen years of age, the offence is treated as murder and the provisions as in Art. 575 (see (c) supra) apply.

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2. MANSLAUGHTER.a. Preterintentional homicide (Art. 584).

"Any person who by actions directed to commit one of the crimes described in Arts. 581 and 582 causes the death of a human being shall be punished by imprisonment for from ten to eighteen years."

Art. 581 deals with the offense of striking and 582 with that of causing personal injury to another, offenses which are embraced within Anglo-Saxon legal conception of assault and battery. The Italian law considers that if death is caused through such an assault and battery, such a result is beyond the intention (i.e., preterintenzione) of the assailant, or, in other words, that at the time of striking, the assailant meant to hit or hurt his victim but not to kill him. Hence, preterintentional homicide may be defined as the act of causing the death of another by action intended to inflict a personal injury only.

b. Aggravating circumstances.

The penalty for the offense described above is increased:

- (1) by from one-third to a half if any of the circumstances described in Art. 576 are present (vide 1 (b) supra);
- (2) by no more than one-third if any of the circumstances described in Art. 577 are present (vide 1 (c) supra) or if the offense is committed with arms or any corrosive substance.

c. Culpable Homicide.

"Whoever by culpable negligence (per colpa) causes the death of a human being shall be punished by imprisonment for from six months to five years. In the case of the death of more than one person or of the death of only one and the injuring of others, the provisions in the first paragraph of Art. 81 shall apply but the total punishment may not exceed 12 years."

- (1) "Per colpa" has been translated by "culpable negligence" as the nearest English equivalent, but it is not quite exact. The offense of "omicidio colposo" may best be defined as the killing of a human being which is not intended by the offender, but which is the result of some omission on his part, or of his negligence or of his imprudence or of his lack of skill or furthermore through his failing to observe any law, regulation, order, etc.

(a). The distinction between this offense and "omicidio" (1 (a) supra) and "omicidio preterintenzionale" (2 (a) supra) may be summed up as follows:

- (1) "A" desires to kill "B" and kills him; that is murder or "omicidio." (Art. 576)

(2) "A" attacks "B" intending to inflict personal injuries or

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- (i) "A" desires to kill "B" and kills him; that is murder or "omicidio." (Art. 575)

- (ii) "A" attacks "B" intending to inflict personal injuries on him though not intending to kill him. "B" dies; that is "omicidio ~~colposo~~ preterintenzionale."

- (iii) "A", through his carelessness, or his lack of skill, e.g., an unskilled driver of a car, kills "B" though having no intention at the time to hurt him in any way; that is "omicidio colposo."

- (2) Art. 81 deals with cases of more than one violation of the same legal provision, or of more than one provision by one or more actions, and offences of a continuing nature. Briefly, the first paragraph of the article provides that "one act or omission violating various provisions or various violations of the same provision by various acts shall be punished in accordance with the rules laid down in Arts. 71 et seq. of the Penal Code," i.e., the normal rules for concurrent offences.

d. Death occasioned through the commission of another offense (Art. 586).

Whenever the death of a person results from any action which constitutes a crime, which consequence is not intended by the guilty person, the provision of Art. 53 shall apply, but the penalties shall be as established in Art. 537."

Art. 53 states that if through an error in the means of carrying out the offense or for other cause a result different from that which was intended is caused, the guilty person is responsible as for culpably negligent offense. Whenever such result is considered by law as a culpably negligent offense. If the guilty person has also intended the result to occur the rules of concurrence of offenses apply.

The offense is similar to premeditated homicide, but it is in regard to homicide resulting from the commission of some offense other than those contained in Arts. 521 and 522.

e. Homicide on the ground of honor (Art. 527).

Any person causing the death of a spouse, sister or daughter when finding them, "flagrante delicto," in illicit sexual relationship and being engaged by the offense caused to his own or his family's honor shall be punished by imprisonment for from three to seven years--the same penalty applies to any person killing another having illicit relations with a spouse, sister or daughter.

f. Death resulting from fighting (Art. 536).

If any person participates in a fight (riosa) and a death is thereby caused, the penalty, simply for taking part in the fight, is imprisonment for from three months to five years. This penalty applies also when the death occurs immediately after the fight and as a consequence thereof.

g. Homicide under Italian Military Law.

Generally speaking, the killing of military personnel by a civilian or vice versa, or the killing of one member of the Armed Forces by another is considered as an offense under the ordinary Penal Code and the above rules apply. However, there are special cases that come within the Military Penal Code under the headings of "insubordination" and "abuse of authority" and are tried before a Military Tribunal; these are:

- a. using violence against a superior officer resulting in death, penalty-- death (Art. 185 M.P.C.P.).
- b. using violence against an inferior resulting in death, penalty as established by the Penal Code (Art. 195 M.P.C.P.).

h. Extenuating circumstances.

Any person causing the death of a spouse, sister or daughter when finding them, "flagrant felony," in illicit sexual relationship and being engaged by the offense caused to his own or his family's honor shall be punished by imprisonment for from three to seven years--the same penalty applies to any person killing another having illicit relations with a spouse, sister or daughter.

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- a. using violence against a superior officer resulting in death, penalty-- death (Art. 186 M.P.C.P.).
- b. using violence against an inferior resulting in death, penalty as established by the Penal Code (Art. 195 M.P.C.P.).

4. Extenuating circumstances.

2. In any case of homicide under the Penal Code, the existence of certain extenuating circumstances will reduce the penalty. The general "extenuating circumstances" article of the code is No. 62 which lists as such:

- (1) being moved by motives of particular moral or social valor;
- (2) having reacted in rage caused by the unjust action of another;
- (3) having acted through the suggestion of a mob when it is not a case of a meeting forbidden by the law or by authority and the guilty party is not an habitual or professional offender, or an offender by tendency.
- (4) having caused, when the offense is one against property, especially small damage to the property;
- (5) when an act committed with guilty intent by the injured party has been jointly with the act or omission of the guilty party the cause of the event.

- (6) having before the case comes to trial compensated for the injury and when possible made restitution or, apart from the case considered in Art. 56 last paragraph (i.e., "attempted crime" when the attempt is not carried through to fulfillment because the guilty party voluntarily preventing it), when the guilty party before trial voluntarily and of himself takes steps to avoid or to lessen the danger or loss consequent on his act (Art. 63).

When any of the above circumstances are present and no special provisions are made for lessening the penalty, the following rules apply:

- (a) Imprisonment for from twenty-four to thirty years is substituted for the death penalty;
- (b) Imprisonment for from twenty to twenty-four years is substituted for penal servitude for life (ergastolo);
- (c) Any other penalty is to be decreased by a period not to exceed one-third (Art. 65).

b. No person can be punished for an act that he has committed by force of the necessity of protecting his own right or that of another against an existing danger of an unjust attack always providing that the measures adopted for such offense were proportionate to the attack (Art. 52).

c. Any person who has committed any action through the necessity of saving himself or any other person from an actual peril of serious personal injury, a peril not created voluntarily by him nor otherwise avoidable, is not to be punished, providing always that the act is proportionate to the peril.
This provision does not apply to any person who is under a special legal obligation to expose himself to danger.
This provision will also apply if the state of necessity is the result of threats of another; in which case the person threatening is held responsible for the offense committed by the person threatened (Art. 54).

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- This provision will also apply if the state of necessity is the result of threats of another; in which case the person threatening is held responsible for the offense committed by the person threatened (Art. 54).

File
SUBJECT:- Italian P. L. Code.

LEGAL S.C.
CONFIDENTIAL.
HQ ALLIED ARMY IN ITALY.

AAI/5081/A(Pe).

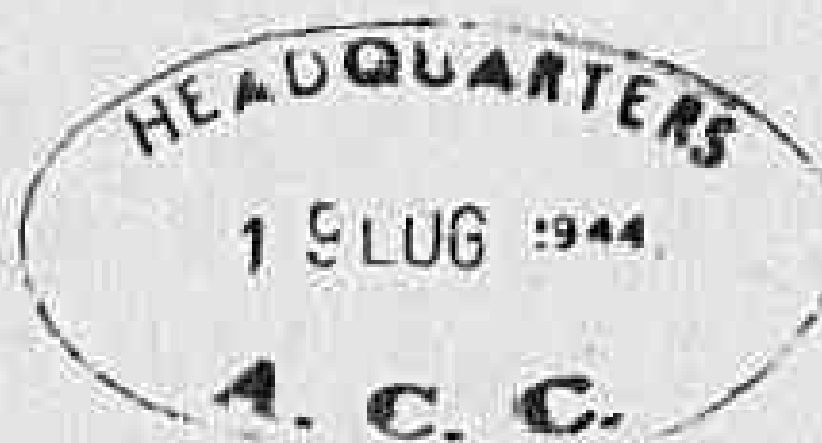
15 Jul 44.

4041
Legal Sub Commission,
Rear HQ, ACC - APO 394.

Ref your ACC/4129/1 dated 6 Jul 44. Please inform this HQ of the following:-

1. What is the Italian law in respect of killing and the various degrees of murder.
2. When can the death sentence be awarded by an Italian Court.

120/11.



Stephen L. Case
Sgt. Major, Staff
D.A.G.

File

304

HEAD QUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GCH/gaf

ACC/4041/1.

14 Jul 44

SUBJECT: Fascist Legislation.

TO : HQ (thru NC) Region 5.

Ref your R5/511/18 dated 7 Jul 44.

1. Your ruling in the above connection is approved.
2. The Italian Government is preparing the necessary legislation to meet the situation created by the promulgation of Fascist Republican decrees after 8 Sept. 43. It is hoped that it will be published shortly.

G. G. HANFORD, Lt. Col.
Officer i/c Italian Branch
for Acting Chief Legal Officer.

TO

CLO REAR HQ ACC

FROM

HQ REGION 5 AMG

SUBJECT

Fascist Legislation

REF

R5/511/18

7 July 1944

1. This HQ has been informed that a Fascist law dated 7 Jan 1944 was passed in Fascist-controlled Italy to deal with rationing offences. This law doubled the former penalties, established a special court consisting of two magistrates and one civilian, and provided that there should be no appeal from the judgment of the court.
2. Pending contrary instructions from you this HQ has directed that this law shall be disregarded and that any action necessary shall be taken either under Proc. 2 (IS) Arts 8 to 11, or under RDL 245 of 22 April 1943. It would be appreciated if you would confirm this ruling or give such other direction as you wish put into effect.

For the Regional Commissioner.

W.E. Peirns
W.E. PEIRNS
Colonel
R.I.C.

DCLO

Chief Counsel

9639

4041
 HEAD HEADQUARTERS
 ALLIED CONTROL COMMISSION
 JPO 394
 ADMINISTRATIVE SECTION

4/5.1/AS.

6 MAY 44.

Action Points : reference meeting on Prison Accommodation held at
 near HQ JPO 394 at 11.30 hrs 5 May 44.

Proposals for immediate improvement of prison accommodation situation.

1 Removal of Allied Troops from Italian Civil Prisons.

ACTION (by JPO 394)

- a. Troops not to remove their troops from prisons and houses when instead in camps in so far as is possible - emphasizing that short sentence personnel particularly should serve in camps.
- b. Contact should be made with U.S. Army to facilitate above.

2 Removal of Italian military from Italian Civil Prisons.

ACTION (by Army Sub Comm)

- a. Take steps with Italian Government to remove Italian military prisoners from civilian jails and prisons and place them in camps. (prison or penal battalions).

3 Clearance of Prisons used for other purposes.

ACTION (by JPO 394 and JPO 394)

- a. Take representations to R.A. (through Naval Sub Comm) for clearance of these prisons - ALBANY Prison in particular and any others that may be in this category.

4 Repair of damaged prisons.

ACTION (by JPO 394 and JPO 394)

- a. Site will be sent to Regional Commissioners and orders issued by JPO 394 that jail repairs will be given high priority. This will be cleared first with War and Finance Sub Comm.

5 Hastening of Trials.

ACTION (by Legal)

- a. Legal will take steps to investigate with Minister of Justice possibility of forming courts of non-professional judges for critical areas as a temporary emergency measure. (will make representations to Ministry of Justice on same). Will submit representations for the over all problem.

6 Forming of Labour Battalions.

ACTION (by JPO 394)

- a. Colonel Young was instructed to contact Lt Col Poletti and try this plan out

in cages in as far as is possible - emphasizing that short sentence personnel particularly should serve in cages.

- b. Contact should be made with U.S. Army to facilitate above.

2 Removal of Italian military from Italian Civil Prisons.

ACTION (by Army Sub Comm.)

- a. Take steps with Italian Government to remove Italian military prisoners from civilian jails and prisons and place them in camps. (prison or penal battalions).

3 Clearance of Prisons used for other purposes.

ACTION (by Admin Sec and RA Sub Comm.)

- a. Take representations to P.M. (through Naval Sub Comm.) for clearance of these prisons - Alghero Prison in particular and any others that may be in this category.

4 Repair of damaged prisons.

ACTION (by EC & MI Section)

- a. Note will be sent to Regional Commissioners and orders issued by EC & MI that jail repairs will be given high priority. This will be cleared first with Works and Finance Sub Comm.

5 Limiting of Trials.

ACTION (by Legal)

- a. Legal will take steps to investigate with Minister of Justice possibility of forgoing courts of non-professional judges for critical areas as a temporary emergency measure. (Will make representations to Ministry of Justice on same). Will submit representation for the over all problem.

6 Normaling of Labour Battalions.

ACTION (by RA Sub Comm.)

- a. Colonel Young was instructed to contact Lt Col Poletti and try this plan out in Region III. (Persons with a three months sentence or less will be attached to Labour battalions, will be fed, but not paid) and will thus work out their sentences.)

7 Possibility of using MANTOVANO Prison.

ACTION (by RA Sub Comm.)

- a. Matter to be taken up with ALI with a view to using as a military prison.

8 General Conclusion.

ACTION.

- a. Col Young must take from the meeting specific recommendations and contact proper Italian authorities.
- b. Future meeting will be held.
- c. A meeting with proper Italian authority will be held.

HEAR HEADQUARTERS
JAILED CONTROL COMMISSION
APO 334
ADMINISTRATIVE SECTION

6 May 44.

Minutes of Meeting on Prison Accommodation held at Hear HQ 1003 - 14.30 hrs 5 May 44.

Present : Brigadier Lush (Executive Commissioner)
Lord Stanagate (VP Adm Section)
Col A. B. Young (Public Safety)
Lt Col R. E. Orledge (Adm Sec)
Lt Col J. A. Phillips (Asst)
Lt Col G. W. Gwin Smith (Army)
Lt Col R. G. B. Spicer (Interior)
Major H. A. Verrell (Adm Sec)
Major A. B. Hughes (Legal)
Major J. A. **Reakes** (VP & AD)
Major L. E. Wilson (Public Safety)
Capt A. J. Stewart (P.A. to Exec Comm)
Capt H. Young (Public Safety)

The meeting was called to order at 14.30 hrs.

1. Lord Stanagate discussed the reason for holding the meeting which was to arrive at a course of action to reduce the present overcrowding of Italian prisons. He stated that there were seven proposals for immediate improvement which he would have discussed immediately. He then asked Col Young (Deputy Director of Public Safety) to present the situation.

2. Col Young presented numerous figures which indicated that the condition is becoming serious, among them were these :

Prisons	93	
	Acc Territory	Adm Territory
Number of prisons (Penal & Judicial)	60	15
Maximum Accommodation	14,804	2,666
Present Population	15,840	4,093
Extent of overcrowding	1,036	1,427
Italian Military Prisoners (included above)	1,720	64
		1,784

3. PRISONERS REQUISITIONED.

In Acc territory.

Major A.P. Wilson (Public Safety)
 Capt J.J. Stewart (P.A. to Exec Comm)
 Capt H. Young (Public Safety)

The meeting was called to order at 14.30 hrs.

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2. Col. Young presented numerous figures which indicated that the condition is becoming serious, among them were these:

	ACC Territory	ACC Territory	Total
Number of prisons (Penal & Judicial)	60	15	75
Maximum Accommodation	14,804	2,666	17,470
Present Population	15,840	4,093	19,933
Extent of overcrowding	1,036	1,427	2,463
Italian Military Prisoners (included above)	1,720	64	1,784

b. PRISON REQUISITIONED.

IN ACC TERRITORY.

REGION	LOCATION	CAPACITY
I	ALBUQUERQUE	400
I	ALBUQUERQUE	125
II	ALBUQUERQUE	85
		610

RESOURCES

Occupied by ISI (Needs repair)
 Occupied by British Army
 Occupied by Br & Polish Armed,

IN AND TERRITORY.

REGION 3: BULMONTA	50
REGION 4: ALBUQUERQUE	400
REGION 5: ALBUQUERQUE	200
REGION 6: ALBUQUERQUE	50
REGION 7: ALBUQUERQUE	100
REGION 8: ALBUQUERQUE	350
REGION 9: ALBUQUERQUE	100
TOTAL ACC & AND TERRITORY	1,860

Requisitioned,
 Court Martial & Holding Centre
 P.P.C.

American M.P.
 British Detention Camp
 British
 Unknown

...../2

2 (contin.)

- 2 -

2. DAMAGED AND UNUSED PRISONS

PRISON	LOCATION	POSSIBLE CAPACITY
I	CATTANEO	126
VII	PAULI	115
I	PAVIGLIA	550
	(Closed as unsanitary 150 pieces damaged)	
III	MAZES	300
I	COLONIA	700
	(Repairs in progress to make 300 places available by June & remainder in 4 months)	

1,591

3. SUMMARY BY C.A. TOWNS

- i. Civilian accommodation for Italian military prisoners should be forbidden.
- ii. Use of Italian prisons for Allied Military prisoners should be reduced to the minimum, and their use for billets, for storage and billeting should be forbidden.
- iii. Damaged prisons and those in disrepair should be surveyed without delay and steps taken to make them habitable.
- iv. The Italian prison administration has failed to grasp the problem and to energetically pursue a definite plan. There is poor liaison between prison directors and the Ministry of Justice. Records kept are poor and there is apathy. Transport is lacking for making transfers.

ACTION: 600 to indicate a plan for the Ministry of Justice and assist in seeing that it is followed. This will include recruiting and training staff and provision of equipment where possible.

3. Lord Stanegate offered the first proposal; the removal of Allied Troops from Italian Civil Prisons.

- a. Lt Col Philipp (A.I.) feared that nothing could be done about that, although he thought that there would be no further requisitioning of prisons by the army.
- b. Brig Lush asked if it was not providential that prison buildings existed at all. He suggested that the military must have made plans which provided for prisoner exclusive of jail and building use.
- c. Lt Col Philipp (A.I.) did not know what these plans were but emphasized the necessity of using jails etc to provide the proper prison atmosphere which could not be obtained in field punishment camps, especially when long time prisoners were concerned.
- d. Lt Col Quin Smith suggested that prisoners with short sentences (under 12 months) be placed in camps.
- e. Lt Col Spicer stated that camps of 3,000 operated smoothly in Palestine and use of labour was performed as well by the inmates.

the minimum, and their use for billeting, for storage and billeting should be foreseen.

iii. Large prisons and those in disrepair should be surveyed without delay and steps taken to make them habitable.

iv. The Italian prison administration has failed to grasp the problem and to energetically pursue a definite plan. There is poor liaison between prison directors and the Ministry of Justice. Records kept are poor and there is apathy. Transport is lacking for making transfers.

27
v. Lord Stansgate's plan for the Ministry of Justice and assist in seeing that it is followed. This will include recruiting and training staff and provision of equipment where possible.

3. Lord Stansgate offered the first proposal; the removal of Allied troops from Italian Civil Prisons.

a. Lt Col Philipp (A.I.) feared that nothing could be done about that, although he thought that there would be no further requisitioning of prisons by the army.

b. Brig Lush asked if it was not providential that prison buildings existed at all. He suggested that the military must have made plans which provided for premises exclusive of jail and building use.

c. Lt Col Philipp (A.I.) did not know what these plans were but emphasized the necessity of using jails etc to provide the proper prison atmosphere which could not be obtained in field punishment camps, especially when long time prisoners were concerned.

d. Lt Col Quin Smith suggested that prisoners with short sentences (under 12 months) be placed in camps.

e. Lt Col Spicer stated that camps of 3,000 operated smoothly in Palestine and useful labour was performed as well by the inmates.

f. Brig Lush stated that perhaps civilian as well as military prisoners could be disposed of as suggested in g above.

g. Lord Stansgate summarized by suggesting two steps -

i. We must take steps with A.I. to see if they will remove their troops from prisons and houses them in camps (those with short sentences of under 1 year).

ii. We must communicate with U.S. Army to see if they can assist.

4. Lord Stansgate then offered the second proposal - Removal of Italian military from Italian Civil Prisons.

a. Lt Col Quin Smith suggested the construction of large camps on an island.

b. Lt Col Philipp did not concur.

c. The LIPARI islands were next suggested. However Col Young stated that two (2) penal battalions were being formed this month the details of which will be available later.

d. Lord Stansgate stated that there were hundreds of the Italian military in Sardinian jails.

e. Major Theobald stated that the legal sub-committee have been trying to push trials over to military courts with no noticeable effect as yet.

f. Brig Lush agreed that the utmost should be done to clear out the Italians from the jails. stated

g. Lord Stansgate stated that we must exploit -

i. the use of prison camps

ii. Take steps with the Italian Government to facilitate above

- 3 -

- 5 The next proposal - clearance of prisons used for other purposes - was presented by Lord Stansgate. This was agreed to in principle but will require further representations to AAI, with a list of prisons so used and in what manner.
- 6 Lord Stansgate then offered for discussion the fourth proposal.
Repair of damaged prisons -
Col Young will make an additional report on progress.
Col Young's first figures were discussed.
Lord Stansgate summarized by stating that -
i. Jail repairs will take a high priority.
ii. Note will be sent to HLG orders will be issued by PO & MG Section and will be cleared with Works and Finance Sub Commissions.
- 7 The Fifth proposal - hastening of trials was discussed -
a. Major Theobald stated that legal is working very hard on this. Requires close cooperation between MGs and OCMs initially - and they should patrol together which will increase speed of handling prisoners. He also stated that lack of transport hinders rapid trials.
b. Col Young stated that those awaiting trial outnumbered those tried and something must be done about it.
c. Major Theobald stated that particularly in Cardinia we are short of legal officers. The Italians are aware of this but the difficulty is finding officials who will go to Cardinia. He added that courts must sit longer.
d. Lord Stansgate said that this was an Italian problem.
e. Brig Lush asked about the advisability of special courts, which were agreed to in principle. Prefects' Courts were discussed, composed of non-professional judges.
f. It was decided that legal would make recommendations for the over all problem.
g. (Legal has made plans with respect to Cardinia which are attached herewith as Appendix)
- 8 The farming of Labour Battalions was the next proposal offered for discussion by Lord Stansgate.
a. Lt Col Spicer stated that both civil and military can learn from each other with real benefit to all. He advised that the 3 months to 10 year men should serve therein. They can be made self supporting and can accomplish instructive work (on roads etc)
b. Lt Col Quin Smith advised that the military have used these battalions.
c. Brig Lush questioned we should try this scheme out first in a territory to see how it works out.
d. It was decided that Col Young and Lt Col Polatti would try this out in Region III. (anyone with up to a three month sentence would labour without pay, but would be fed and attached to a labour battalion.
- 9 The next proposal discussed was - The possibility of using MONTEBELLINO Prison.
a. Lt Col Phillip (AAI) stated that this was being used for Italians but that it was ruined except for a small part.

transporting rapid trials.

Col Young stated that those awaiting trial outnumbered those tried and something must be done about it.

Major Macbrat stated that particularly in Sardinia we are short of legal officers. The Italians are aware of this but the difficulty is finding officials who will go to Sardinia. He added that courts must sit longer.

Lord Stansgate said that this was an Italian problem.

Brig Lush asked about the advisability of special courts, which were agreed to in principle. Trafletti Courts were discussed, composed of non-professional judges.

It was decided that legal would make recommendations for the over all problem.

M.E.

(Legal has made plans with respect to Sardinia which are attached herewith as an Appendix)

The forming of Labour Battalions was the next proposal offered for discussion by Lord Stansgate.

1. Lt Col Spicer stated that both civil and military can form them with real benefit to all. He advised that the 3 month to 15 year man should serve therein. They can be made self supporting and can accomplish instructive work (on roads etc)

2. Lt Col Quinn Smith advised that the military have used these battalions.

3. Brig Lush questioned we should try this scheme out first in ADJ territory to see how it works out.

4. It was decided that Col Young and Lt Col Rolatti would try this out in Region III. (Anyone with up to a three month sentence would labour without pay, but would be fed and attached to a labour battalion.

The next proposal discussed was - the possibility of using MONTECASSINO Prison.

1. Lt Col Phillip (ADJ) stated that this was being used for Indians but that it was ruined except for a small part.

2. Col Young agreed, stating that it is in fact an Italian Military Prison Bldg. added that it is being repaired for use by military prisoners.

3. Lord Stansgate remarked that this is a matter which must be taken up with ADJ also.

10. Lord Stansgate closed the conference by stating that -

1. Col Young must take from this meeting specific recommendations and contact the proper Italian persons concerned.

2. That a future meeting will be held.

3. That a meeting with the proper Italian authority should be held.

11. Meeting adjourned at 16.30hrs.

R. J. FRYMELL,
Major Infantry,
Acting Secretary.

0773

APPENDIX TO - Minutes of meeting on Prison Accommodation held at Rear Headquarters
AOC - 14.30 hrs 5 May 44.

Reference para 7. (M)

Reference Hastening of Trials, the following is an excerpt from Minutes of meeting with the Ministry of Pardon and Justice held on 3 May 44.

After an extensive discussion it is agreed that the following steps shall be taken:

a The Ministry will submit to the Legal Sub Commission a list of judicial personnel held in PAs with as many particulars as to their present location etc as is possible. The list will also include avvocati and procuratori who served with military courts at the time of their capture. Their re-patriation will facilitate the release of civil judges at present serving on military courts for military service. The Minister will apply any possible pressure upon the Ministry of War to give priority to this personnel on their lists of PAs proposed for release.

b 11 or 12 uditori of Cagliari will be granted judicial powers by decree which will be signed next Monday. A list of these officials will be communicated to this Sub Commission which will advise the Sardinian authorities by wire.

c The Ministry shall by tomorrow communicate to the Legal Sub Commission four names of judges ~~mentioned above~~ serving at Naples who will be promoted and sent by air to Sardinia.

d The Ministry shall propose four names of uditori who will be given judicial status and take place of the four judges mentioned above under c.

e The Ministry will issue a Circular to Prime Presidenti of Cagliari authorizing him to appoint avvocati and procuratori legal to judicial offices as a temporary measure.

6/6/48

notes on Prison Situation

(23)

1. Removal of Allied Troops from Italian Prisons. AM. Info.
2. ditto Italian military
3. Clearance of Prisons used for other purposes eg Augusta in use as warehouse by Naval Authorities.
4. Repair of damaged prisons.
5. Hastening of trials - immediate delivery of charges. Co. operation of allied military Police with R.C. (eg Bari)
6. Formation of Italian Bns. (Army).
7. Possibility of using Mauthausen as detention camp.
8. Possibility of constructing other Italian detention camps ie stockaded camps under canvas ? canvas available!
9. Ex-displaced persons. Camp at Tutinacua

Ustica

See File 4090/L

0375
Duedive 1 May 1944 on Duties of Legal
Liaison Officers. Ref. AGO/4135/L

08
Paras. Prisons. The responsibility of
prisons is that of Public Safety and NOT
Legal but in view of the overcrowding of
prisons in some areas (e.g. Apulia) the
L.O. may have to give some time in
an endeavour to assist in solving this
problem.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

24

IC/jpl
4 May 44

ACC/4041/L

Subject : Repeal of Discriminatory Laws.

To : Senior Legal Officer, AMG, Rear, 8th Army.

In reply to Major Welsford's letter CH/Legal/123 of 24 Apr. 44
forwarded by indorsement by you on 29 Apr. 44

The answer to the specific question put to Major Welsford is contained
in Proclamation 6, Article IV (1) which abrogates all laws etc which block or
discriminate against property, including obligations of debtors, owned (inter
Alias) by any member of the United States

GERALD R. UPJOHN
Colonel
Chief Legal Officer

22

SUBJECT: Repeal of Italian laws
 TO: HQ AMG
 Rear 8th Army
 For attention of SLP.

Legal SC.
 CH/Legal/123

I have been approached to-day by avv. ROCCHIO Enrico (via S. Maria 30, Vasto) to ascertain whether R. D-L. of 17 June 1941 XIX n. 494 (in Gazz. Uff. 17 n. 140) is still in force. This law restricts payment of debts to USA citizens.

Proc: 7 Art IV states that the CCAO will make orders annulling, amending or rendering inoperant obnoxious laws, and I presume the above enactment is cancelled, but I have no positive information. Is there any consolidated list of cancelled laws, and if so could I have a copy, or can you give me positive information about the above decree?

J. M. Lockford

MAJOR PSLO CHIEF

24 Ap. 44

1st Ind. 29/4/44.

TO:- C.L.O. H.Q. A.C.C. (Rear) for attn Officer i/c Italian Branch.

1. Forwarded for reply through this office please.

Edwin J. Mercer
 EDWIN J. MERCER, Maj. Ord.
 Senior Legal Officer, AMG 8th Army.

Yes - under

LEGAL FILE
 HEADQUARTERS
 ALLIED CONTROL COMMISSION
 Legal Subcommittee
 APO 394

GRU/AM

19

30 March 1944.

ACC/4041/L

SUBJECT: Prisons in Region 2.

TO : Executive Commissioner.

1. At our last meeting with the Minister of Justice I was shown a letter in Italian signed by PC Region 2 and addressed to the Minister of Justice direct. I enclose copy of this letter and the reply of the Minister.

2. It appears improper for Region 2 to address the Minister of Justice direct on any matter and all the more so in the present case where broad questions of overall policy are concerned.

It is also contrary to practice for ACC to use Italian in their communications to the Italian Government.

3. As the policy question is one for the Public Safety Subcommittee they will no doubt consider whether any and what further approach to the Italian Government relating to this matter is desirable.

G. R. UFFIN, Colonel
 Chief Legal Officer.

Copy to: Public Safety Subcommittee (G.R.)
 V.P. Admin. Section.

QUARTIER GENERALE
COMMISSIONE ALLEATA DI CONTROLLO
REGIONE 2

Ref: A/PS/38

27 febbraio 1944

Oggetto: Impiego di Carcerati Civili

AL MINISTERO DI GRAZIA E GIUSTIZIA

SALERNO

18
Il sottoscritto si interessa del fatto che carcerati civili non sono impiegati in lavori.

Il sistema delle Prigioni americane ed inglesi é di impiegare i carcerati civili in lavori che non sono concernenti con industrie private.

E' opinione delle Commissioni Carcerarie americane ed inglesi che tali lavori sono salutarì per i carcerati, sia moralmente che fisicamente.

Tra i lavori che possono essere effettuati vi sono:

riparazione e fabbricazione di scarpe ed uniformi per impieghi dello stato; fabbricazione di cordoni; lavori riguardanti munizioni. Molte altre forme di lavoro potrebbero essere suggerite.

Lavori di questo genere non possono essere eseguiti al momento, per via della mancanza di materiali, ma noi supponiamo che la Marina e l'Esercito italiani abbiano talune provviste e che abbiano il desiderio di poter disporre della mano d'opera delle Carceri.

La mancanza di locali adatti, può essere ovviata usando i corridoi e gli altri spazi liberi, e, con buon tempo, l'aria aperta.

E' in uso, col sistema italiano- nelle poche prigioni in cui si lavorava- fare contratti con ditte private. Questo sistema potrebbe essere continuato, e potrebbe tornare utile al commercio.

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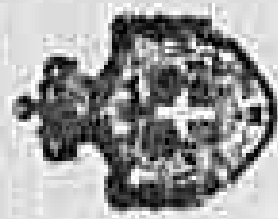
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E' in uso, col sistema italiano- nelle poche prigioni in cui si lavorava- fare contratti con ditte private. Questo sistema potrebbe essere continuato, e potrebbe tornare utile al commercio.

Gradiremo il vostro punto di vista in proposito.

G.H.Mc.Caffrey, Lt.Col.Inf.
Regional Commissioner
Regione 2



MINISTERO DI GRAZIA E GIUSTIZIA

DIREZIONE GENERALE PER GLI ISTITUTI DI PREVENZIONE E PENA
Ufficio VIII.

Protoc. N.

Risp. al foglio N.

del

Salerno 14 25 marzo 1944. =

OGGETTO: Impiego condannati civili.

AL SIGNOR G. H. McCaffrey, Lt. Col., Inf.
Regional Commissioner - Region 2.

presso la Commissione Allentata di Controllo

DALL'ALTO

Il Ministero ringrazia il Ten. Col. McCaffrey per l'interesse col quale segue lo svolgimento della vita dei detenuti nelle carceri italiane e per i suggerimenti offerti tenuti ad intensificare il ritmo del lavoro carcerario, salutare sia moralmente che fisicamente.

Nella legislazione italiana è stato pienamente accettato il principio che il lavoro è il cardine su cui si basa l'escutiva delle pene, sia per i beneficii subitativi che il condannato ne trae, sia per le ripercussioni benefiche che si riverberano sull'ordine e sulla disciplina interna degli stabilimenti carcerari. Per questo la materia è stata regolata in tutta la sua ampiezza nel regolamento per gli istituti di prevenzione di Pena, approvato il 13 giugno 1931, con gli art. 114 e segg.

La direzione generale degli istituti di prevenzione e di Pena, in applicazione dei principi sanciti nel regolamento, ha organizzato il lavoro carcerario razionalmente, attrezzando in tutte le case penali lavorazioni a carattere industriale, di diverso tipo

ALSIGAR G.H. McCaffrey, Lt.Col., Inf.
Regional Commissioner - Region 2.

presso la Commissione Alleata di Controllo

PARLAMENTO

Il Ministero ringrazia il Ten. Col. Caffrey per l'interesse col quale segue lo svolgimento della vita dei detenuti nelle carceri italiane e per i suggerimenti offerti tenuti ad intensificare il ritmo del lavoro carcerario, salutare sia moralmente che fisicamente.

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La direzione generale degli Istituti di prevenzione e di pena, in applicazione dei principi sanciti nel regolamento, ha organizzato il lavoro carcerario razionalmente, attrezzando in tutto le case penali lavorazioni a carattere industriale, di diverso tipo compatibilmente alle disponibilità ed alla idoneità dei locali, e nelle colonie penali al lavoro all'aperto per il dissodamento e la bonifica dei terreni incolti e per la creazione e lo sviluppo di aziende agricole. Nelle carceri giudiziarie, ove la deficienza dei locali adatti ha impedito la sistemazione di officine e dove non si è potuto disporre di mano d'opera idonea, per il continuo flusso e rafflusso di detenuti soggetti a provvedimenti di carattere giudiziario, ha organizzato un tipo di lavoro che non richiede l'uso di macchinari e di mano d'opera specializzata, come quello per la confezione di calze, di scatole, di sacchetti di carta, ecc. Ha altresì stabilito che nelle lavorazioni industriali carcerarie venissero eseguiti lavori tanto per conto delle amministrazioni statali, e particolar-

1/1/1/1



MINISTERO DI GRAZIA E GIUSTIZIA

Protoc. N.

Risp. al foglio N.

del

pag. 2

OGGETTO:

mente di quelle carceraria e dello P.S.A., che per conto di privati comitenti; ed ha consentito infine ad alcune ditte private di utilizzare la mano d'opera detenuta, al fine di mantenere il maggior numero possibile di condannati al lavoro.

E' opportuno mettere in evidenza che per effetto di tale organizzazione il lavoro carcerario aveva assunto uno sviluppo ed un ritmo tali da assorbire una mano d'opera detenuta ragguagliata al 70% della popolazione rinchiusa nelle carceri e nelle case penali.

Ma con l'inizio della guerra molte lavorazioni carcerarie hanno risentito sempre più sensibilmente delle difficoltà degli approvvigionamenti delle materie prime da lavorare, ed hanno dovuto a meno a meno limitare la loro attività, che è cessata poi quasi del tutto nel periodo tarduino dello sbarco delle forze armate alleate.

Allo stato il lavoro nelle carceri si svolge a ritmo molto ridotto, perchè è costretto a subire le gravi ripercussioni dello stato di depauperamento generale delle materie prime e di quelle economiche, ed, alcuni stabilimenti penali che per attrezzatura tecnico-industriale e per capacità di maestranze potrebbero reggere in pieno la loro attività, hanno dovuto limitare o del tutto fermare ogni manifestazione produttiva. Infatti le case penali di Lucca, di Porto, di Avellino e di Frosinone tuttora una attività lavorativa che è limitata alle disponibilità delle materie da lavoro, mentre quelle di Anagni e di Procida, benchè industriali molto bene attrezzate, sono completamente inattive. Sono però inefficace quasi normale le case di lavoro della Sardegna che continuano a conficcare ed a coltivare i loro tenimenti agricoli, impiegando largo numero di condannati.

Ma è intendimento di questo Ministero di rinviare l'el-

mente di quelle carceraria e delle P.M., che per conto di privati comitanti; ed ha consentito infine ad alcune ditte private di utilizzare la mano d'opera detenuta, al fine di mantenere il maggior numero possibile di condannati al lavoro.

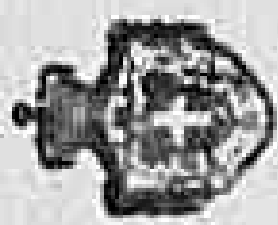
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Allo stato il lavoro nelle carceri si svolge a ritmo solito ridotto, perchè è costretto a subire le gravi ripercussioni dello stato di depauperamento generale delle materie prime e di quelle economiche, ed alcuni stabilimenti penali che per attrezzature tecnico-industriali e per capacità di manodopera potrebbero ripigliare in pieno la loro attività, hanno dovuto limitare o del tutto fermare ogni manifestazione produttiva. Infatti le case penali di Lecce, di Porto, di Avellino e di Trani epilogano tuttora una attività lavorativa che è limitata alle disponibilità delle materie da lavoro, mentre quelle di Augusta e di Procida, benché industrialmente molto bene attrezzate, sono completamente inattive. Sono però in efficienza quasi normale la casa di lavoro della Sardegna che continua a bonificare ed a coltivare i loro terreni agricoli, impiegando largo numero di condannati.

Ma è intendimento di questo Ministero di rimettere in efficienza le industrie negli stabilimenti carcerari, per distogliere dall'ozio i condannati e per ridurre quei manufatti che allo stato mancano e di cui si sente un assoluto bisogno: ma non si riesce a risolvere il grave problema dell'approvvigionamento delle materie prime e di quelle necessarie indispensabili, le quali mancanza del tutto qui merosti. Né d'altra parte i Ministeri delle P.M., Italiane hanno disponibilità di materie prime da far lavorare, poiché anche essi si trovano al confronto alle stesse difficoltà, come è provato dal fatto che la consegna di lavoro affidate per passato alle industrie carcerarie, veramente rilevanti, sono ora diventate molto esigue e discontinue, sono sempre di più. Né infine è a pensarsi che il problema del lavoro carcerario possa essere risolto in pieno dalla consegna di mano

1.1.1.1.



MINISTERO DI GRAZIA E GIUSTIZIA

Protoc. N. _____

Risp. al foglio N. _____

del _____

pag. 3

OGGETTO:

d'opera detenuta a ditte private.

Questo Ministero infatti non ha mancato finora d'incoraggiare la concessione della mano d'opera detenuta a ditte od industrie private, ed a tal fine ha formato anche dei contratti tipo onde rendere più rapido il procedimento di concessione. (Presso alcuni stabilimenti carcerari della Sardegna e della Sicilia già molti detenuti lavorano per conto di ditte private). - Ma poche sono le ditte che richiedono la mano d'opera di detenuti, ma benché in Italia esiste la mano d'opera in genere è stata ed è sempre abbondante ed a buon mercato, sia perchè esiste fra gli industriali uno stato di prevenzione per il quale preferiscono non avere rapporti con chi è stato allontanato dalla società per aver commesso dei delitti.

Il Ministero pensa che le ~~esigenze~~^{lavorazioni} carcerarie, particolarmente quelle a carattere industriale, potrebbero ricevere un risolutivo impulso dal concorso della Commissione Allentata di Controllo, sia con l'apporto di commesse di lavori per conto delle M. A. A. A. te, sia con l'approvvigionamento delle materie prime da trasformare. Resterebbe infatti avere a disposizione una quantità di lana, di filati, di cuoio ecc. - materie che attualmente mancano del tutto sui mercati - per migliorare in pieno i servizi carcerari e per dare possibilità ai detenuti di dedicarsi ad un lavoro materialmente proficuo e fecondo di incalcolabili risultati morali. Giacchè tutta l'organizzazione carceraria italiana è oggi strettamente legata allo stato di deperimento delle materie prime e della mancanza di generi di approvvigionamento, ed ogni miglioramento di essa è pertanto in rapporto alla possibilità di disporre di tali beni.

d'opera detenuta a ditte private.

Questo Ministero infatti non ha mancato finora d'incoraggiare la concessione della mano d'opera detenuta a ditte ed industrie private, ed a tal fine ha forzato anche dei contratti tipo onde rendere più rapido il procedimento di concessione. (Presso alcuni stabilimenti carcerari della Sardegna e della Sicilia già molti detenuti lavorano per conto di ditte private). Ma poche sono le ditte che richiedono la mano d'opera di detenuti, sia perchè in Italia esiste la mano d'opera in genere è stata ed è sempre abbondante ed a buon mercato, sia perchè esiste fra gli industriali uno stato di prevenzione per il quale preferiscono non avere rapporti con chi è stato allontanato dalla società per aver commesso dei delitti.

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IL MINISTRO
(Casati)

HEADQUARTERS
ARMED MILITARY COMMISSION
A.P.O. 512
ITALY SUB-COMMISSION

AM/ML/3

Subject: Italian laws permitting entrance of
occupied premises for inspection.

To: 1- Director, Civil Works and
Utilities Sub-Commission.

10 December 1943

1. Reference your AM/ML/3 dated 3 Dec 43, your letter of 23 Nov
addressed to the Economic Director was not forwarded to this office.

2. There are in existence provisions under Italian law enabling
public officials to enter occupied premises for inspection purposes.

They originate:-

- (a) From regulations promulgated by the commune or the province
when the water is supplied by them to the inhabitants;
- (b) From the terms of the contract passed between the water company
and the subscribers, when water is supplied directly by a company;
- (c) From various statutes enacted by the Italian Government from
time to time.

3. As it is not known at this time whether you are referring to a specific
area or the whole of Italy, no definite opinion can be given though it may be
stated that in Spanish and neighboring provinces the consumption of water was
regulated by decrees as early as 1913 (R.D. 24 June 1913 - No. 250; R.D. 13 June
1917 - No. 544). For the whole of Italy general directions were issued
in the Decree of 18 Aug 1922 - No. 1766, and 4 Sep 1925 - No. 4793.

4. It is suggested that you request the Minister of Public Works to
supply you with particulars as to the system adopted in the various regions
in which you are interested.

(NOTE: "D.L." = Decree Law. "R.D." = Royal Decree.)

G. C. HUMPHREY.

Major,
For, Chief Legal Officer.

As far as Palermo is concerned if the manager of the
local Water Co. does not know his rights who does?

320
HEADQUARTERS
ALLIED MILITARY GOVERNMENT
Public Works and Utilities Sub-Commission
APO 512

4041 LAG/cw

AC/142/PWS

2 Dec 1943

Subject: Italian Laws permitting entrance of occupied premises for inspection.

To : Director Legal Sub-Commission. ✓

1. On 18 November 1943, we addressed a communication to the Economic Director on the subject of laws to be put into effect by the Italian Government and it is my understanding that this communication was forwarded to you. In it we asked that there be legal provision authorizing those engaged in public utility services, military or civilian, to enter not only vacant but also occupied premises for the purpose of inspection in an effort to stop waste and promote conservation. We were trying to get the local water company men to enter such premises for the purpose of stopping water wastage which is very serious and they told us they had no authority to enter occupied premises for such a purpose.

2. While at Brindisi I discussed this matter with the Italian Minister of Public Works (a lawyer) who advised me that such companies did have legal authority to make such examinations.

3. There is apparently a difference of legal opinion and I would like to have you advise me what the law is and what it covers so that we may be governed accordingly.

14

L.A. JENNY.
Lt. Col., C.E.R.
Acting Director.

Copy To. Economic Director.

*Extract from this file
Instructions issued on 6/27/48
Obtain copy*

607/48

ADOT IN SICILY

10 September 48

Subject: Expropriation of Properties by Italian Government.

To: Legal Division.

Numerous cases have been called to our attention in which Italian Government expropriated property of Italian subjects for various purposes, as well as alien owned.

At time of expropriation a fractional part of actual value was tendered in payment and deposited.

The owner was permitted under the law to except to price and appeal to court. It was apparently part of policy to prevent or delay these cases being brought on for hearing. In some cases 6 or 8 years have elapsed.

Legal Division may consider it advisable in furtherance of occupational goodwill to direct the Italian courts immediately to proceed with hearings in cases where the delay has exceeded a reasonable period.

C. S. Harris

Lieut-Colonel,
Controller of Property.

*I concur. Major
Hammagood will advise
instructions*

*W.C.
S.C.*

13.7

*a copy of this has
been furnished to
of Italian Committee.
It is noted that a list
of names of specific
cases on the subject of
the Talmadge case. This
is the name of an exhibit
copy. Furthermore, there
is a copy of the report.*

the 1000 cases pending case

Abrogation of Fascist Laws.

AMCOT/4043/L.

S.L.O. Catania. (Through S.C.A.O.)

21st Sept. 3.

1. Reference your letter (without reference No.) of 16th September on above subject, the matter of the marriage of British Soldiers is purely a matter for 'A' Branch of the British Army, who should seek the advice of J.A.G's Department.
2. The matter is governed by Army Council Instructions and General Routine Orders.
3. If J.A.G's Department wish to consult us on the effect of a Proclamation, they should write to this Headquarters.

H. M. ROWE,
Lieut Col.,
D. C. L. O.

12

4041
TO:-- Chief Legal Officer,

P alermo.
=====



Subject:-- Abrogation of Racial Laws.

1. A request has been made by a local British Unit for advice on the question of whether it is permissible under Italian Law for an English Officer to marry an Italian girl.
2. The answer to this question seems to this office to depend upon the effect of Section 5 of Proclamation I, on Arts. 91 of Title I of book No. I of Italian Civil Code as promulgated March 16, 1942, (copy enclosed) and the special laws to which reference is their race.
3. It is the opinion of this office that the various laws prohibiting marriage between Italians and foreigners, apparently designed to build a pure Italian Race were abrogated by the Proclamation I and advising along this line has accordingly been given.

Ceteris, 16th. Sept. 1943.

head for
Major
S.I.C. AMOT.

11

ARTICOLO 91.

Diversità razza e di nazionalità).

I matrimoni tra persone appartenenti a razze diverse sono soggette alle limitazioni poste dalle leggi speciali.

Le leggi speciali determinano anche le condizioni che devono osservarsi per i matrimoni dei cittadini Italiani con persone di nazionalità straniera.

ALBERT H. H. STOLM

1641. Sept. 1945

- W. H. H. /
Lt. Col.

Part

A M G O T .
Catania.

CAT/30

SUBJECT:- Legal Matters.

REPORT TO:- Legal Section, AMGOT H.Q., Palermo.

1. The delay in the appointment and arrival of legal officers in the Province of Catania resulted in considerable confusion and disparity of practice in the Province. Other records than those already provided to Catania do not exist from which accurate statistics can be prepared. The attached table will show, however, the cases heard throughout the Province in which records were kept and will indicate the total number of acquittals and convictions in military tribunals.

2. The early practice of having military courts sit on cases arising under the Italian Penal Code has been terminated. Orders have been issued, consistent with the direction from Palermo dated 19 August 1943 requiring Italian courts to open for the determination of all criminal cases and for the decision of urgent civil cases. It is believed that during the next ten days all Italian courts exercising criminal jurisdiction will have re-opened throughout the Province. They are to be guided by the basic rule of disposing first of those cases in which defendants are held in prison pending trial

3. The question of what disposition shall be made of the reatiannonari occurring before occupation has been disposed of by instructing the judges that they are in due course to proceed with all charges except that they are to suspend action on cases against buyers. The legal officer is satisfied that this solution is manageable and that if difficulties arise in the enforcement of the general rule this will be made apparent in the weekly report which all courts are required to submit to the Procuratore del Re through the legal section. It might be added that our own C.A.P.O's and Summary Courts have been directed, with the approval of the Supply Officer, to carry out a similar policy in their enforcement of all price, rationing, and black market offenses which have occurred since the time of occupation. It is the present policy to enforce all such laws in Military Courts.

4. Constant relationship with the Italian Courts is to be maintained, not only through their weekly reports, but by means of a weekly conference with the Procuratore Presidente of the Corte d'Appello, the Presidente of the Tribunale, the Procuratore del Re

0793

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4. Constant relationship with the Italian Courts is to be maintained, not only through their weekly reports, but by means of a weekly conference with the ~~President~~ Presidente of the Corte d'Appello, the Presidente of the Tribunale, the Procuratore del Re and the Procuratore Generale, in Catania. Through the difficulties of keeping in close touch with the judges and procuratore of Caltagirone, Syracuse, Ragusa, and Modica are obviously great it is planned to meet as regularly as possible with them. In any case by establishing very close relationships with the Presidente of the Corte d'Appello and Procuratore Generale in Catania it is believed that control of policy throughout the whole judicial district will be reasonably effective.

5. In so far as the bar is concerned, conferences have been held with a number of the principal anti-fascist attorneys of Catania. The fascist syndicate of lawyers has been dissolved, and a provisional committee has been formed, with AMGOT approval, for the formulation of plans of the re-organization of the Pre-fascist associations of lawyers. An Italian translation of our Rules of Procedure is being printed and copies will be distributed among the lawyers of the district. Basic proclamations are being posted in the courthouses for the public and bar.

2

6. One or two problems have arisen which seem beyond the competence of any provincial staff to solve on a permanent basis. The first concerns the scope of Sec. 43 of the 2nd. Proclamation. Attempts are quite frequently made to prosecute civilian employees of AMGOT, and other civilians, for their failure to execute oral orders of AMGOT officers. To date the Legal Officer has expressed it as his opinion that such orders do not fall within the scope of Sec. 43. Headquarters advice on this problem of interpretation would be appreciated, for the frequency with which this problem arises evidences its continuing importance.

7. The second troublesome question has been raised by the Italian judges. It concerns their duty to enforce the existing rules of law concerning landlord and tenant in circumstances in which, as a result of the destruction of buildings, conventional doctrines may well work unreasonable hardship on either party of the dispute. The whole problem of the terms for which new contracts of lease may be made has also been presented by the judges. They have been advised to take no action in landlord and tenant cases until they have received further instructions. It would be of great assistance to us to be told whether a general policy in this matter is to be established for the whole island or whether local authorities, either communal or provincial, should take the responsibility of working out some equitable rule.

8. The Legal Officer has visited each of the districts in the Province and has directed each C.A.O. as to his duties as Summary Court. There are a total of 6 districts in the Province; in each of these, except the City of Catania, the C.A.O. will himself hold Summary Court. In Catania the Assistant Legal Officer will hold the Summary Court until such time as the C.A.O. is free to do so.

9. The instructions delivered to the Legal Officer by Major Campbell concerning the detention of prisoners are being carried out. A preliminary investigation ~~was~~ indicates that no more than a very few prisoners are being held in jail pending trial for pre-occupational offences.

10. There is attached hereto a copy of the letter of instructions delivered to the Presidente of the Corte d'Appello defining the present duties of the Courts. A similar communication requiring the opening of civil courts is in process of preparation.

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Catania,
6th. September 1943.

J. Bollerby

Lt. Col,
S.C.A.O. Amgot ;
Province of Catania.

JUDICIAL COURTS CASES

	<u>CONVICTIONS</u>	<u>ACQUITTALS</u>	<u>COMMITALS</u>
CATANIA	47	12	3
PATERNO	3	1	0
CALTAGIRONE	8	0	0
ACIREALE	24	3	2
ADRANO	1	0	0
GRAMMICHELE	2	2	0
TOTAL	85	18	5

SUPERIOR COURTS CASES

	<u>CONVICTIONS</u>	<u>ACQUITTALS</u>	<u>COMMITALS</u>
CATANIA	2	1	0

6

BEST COPY POSSIBLE

OFFICE OF THE SENIOR LEGAL OFFICER

PROVINCE OF AGRIGENTO

HEADQUARTERS
12 SEP 1943
4041
AMGOT

4 September 1943

SUBJECT: Corte di Assise (Agrigento)

TO : Chief Legal Officer, Headquarters AMGOT,
(Thru S.C.A.O., Province of Agrigento).

1. The president of the Civil and Penal Tribunal of Agrigento, Serra Cav. Uff. Giuseppe, advises me that the Corte di Assise will not hold a session at Agrigento before next June or July, under the Italian Court Schedule.

2. Two cases, that have to be tried by said court, have come to my attention in which the accused, one charged with murder and the other with accessory to murder, have been in jail for nearly four years without trial. I have discussed these cases with President Serra and the Procuratore del Re, Ponte Com. Alfredo. They tell me that these cases have been called for trial twice and each time a continuance was requested by the counsel for the accused, the last time being July 18, 1942. The cases would have come on for trial at the session of the Court for July 1943 but for the war and the invasion. The Procuratore expressed the opinion that the accused are guilty.

3. The accused are man and wife. The wife, Camella Rosa, is charged with murdering her father in law. The husband, Cardella Simone, is charged with being an accessory. No one saw the murder. The case rests entirely upon circumstantial evidence based upon statements of the chief witness, who had been living with the murdered man as his mistress. She stated that the daughter in law, Camella Rosa, was jealous of her and that there had been bad feeling and quarrels between the murdered man and the accused, his son and daughter in law. It is said that Cardella Simone, at the time, told the Carabinieri that his wife, Camella Rosa, killed his father. He subsequently denied and now denies that he made such a statement. I have seen and talked with the accused and they both deny guilt and say they are innocent.

4. There seems to have been no racial, religious, or fascist motives involved in the arrest of the accused.

5. There are at least seven (7) cases, including the two mentioned, in which the accused have been in jail awaiting trial for one or more years up to five (5) years. I have not had time to investigate the other five cases, but will do so shortly.

6. In the two cases above discussed, I am of the opinion that it would have been difficult to convict the accused on the circumstantial evidence in the case. If convicted I doubt whether they would have been given sentence exceeding the time they have already been in jail, certainly in the case of the accessory. Neither

have been in jail for nearly four years without trial. They tell me with President Serra and the Procuratore del Re, Ponto Comm. Alfredo. They tell me that these cases have been called for trial twice and each time a continuance was requested by the counsel for the accused, the last time being July 18, 1942. The cases would have come on for trial at the session of the Court for July 1943 but for the war and the invasion. The Procuratore expressed the opinion that the accused are guilty.

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7. If it is possible to arrange to have the Court of Assize sit in special session at Agrigento sometime this year, and the two aforementioned cases can be tried at such special session, I think this would be the proper disposition of these two cases. If it is not possible to arrange for the trial of these cases before next July 1944, I would recommend that the cases be dismissed.

8. If a special session this fall of the Court of Assize cannot be authorized to dismiss these cases where, in my judgment, the accused been in jail for such a period as constitutes sufficient punishment. If I do not have such authority, please advise me of the procedure such cases.

Submitted to S.C.A.O.:

Approved:

G. H. Mc Caffrey

G. H. Mc Caffrey, Jr., COL., Infantry

S.C.A.O., Province of Agrigento.

Hammond: Why not

tell the Corte di Assize

to sit & try these

cases?

W.C.

Richard:

RICHARD

LT. COL.

Senior

Provin

OFFICE OF THE SENIOR LEGAL OFFICERMINUTES OF AGONY

4 September 1943

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3. The accused are man and wife. The wife, Camilla Rosa, is charged with murdering her father in law. The husband, Camilla Biunno, is charged with being an accessory. No one can see the murder. The case rests entirely upon circumstantial evidence based upon statements of the chief witness, who has been living with the married man as his mistress. She avowed that the daughter in law, Camilla Rosa, was jealous of her and that there had been bad feeling and quarrels between the married man and the accused, his son and daughter in law. It is said that Camilla, at the time, told the Governor that his wife, Camilla Rosa, killed his father. He subsequently denied and now denies that he made such a statement. I have seen an "interview" with the accused and they both deny guilt and say they are innocent.

4. There seems to have been no racial, religious, or fascist motives involved in the arrest of the accused.

5. There are at least seven (?) cases, including the two mentioned, in which the accused have been in jail awaiting trial for one or more years to five (5) years. I have not had time to investigate the other five cases, but will do so shortly.

6. In the two cases above discussed, I am of the opinion that it would have been difficult to convict the accused on the circumstantial evidence in the case. If convicted I doubt whether they would have been given sentences exceeding the time they have already been in jail, certainly in the case of the accessory. Neither of the accused looks like a criminal to me.

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3. The accused are men and also. The wife, Camella Rose, is charged with murdering her father in law. The husband, Cardello Rose, is charged with being an accessory. He was one of the murderers. The case rests entirely upon circumstantial evidence based upon statements of the chief witness, who has been living with the murdered man as his mistress. She stated that the daughter is now, and his son, was junior of her son. There had been bad feeling and quarrels between the murdered man and the accused, his son and daughter in law. It is said that Cardello Rose, at the time, told the Carabinieri that his wife, Camella Rose, killed his father. He subsequently denied and now denies that he made such a statement. I have come and talked with the accused and they both deny will and say they are innocent.

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8. If a special session this fall of the Court of Assize cannot be arranged, I am authorized to dismiss these cases when, in my judgment, the accused have already been in jail for such a period as constitutes sufficient punishment for the crime charged. If I do not have such authority, please advise me of the procedure to be followed in such cases.

Submitted to S.C.A.S.:
Approved:

Initials: J.L.
J.L. MC.
Senior Legal Officer
Province of Agrigento.

C.M. DECASTRO, Jr. D.M., Inspector
S.C.A.S., Province of Agrigento.

Major Hannaford
for comment
WCC ①
 Office of the Senior Legal Officer
 Province of Agrigento
 September 2, 1943.

SUBJECT: Request by Dr. Cav. Uff. Giuseppe Serra,
 President of the Royal Tribunale of Agrigento,
 for information on two questions.

TO : Chief Legal Officer, Army Headquarters,
 (Through S.C.A.O., Province of Agrigento)
 ATT: Major Hannaford.

1. Forwarded herewith is a request, (dated August 26, 1943), but
 received today, from the President of the Royal Tribunale Di Agrigento,
 asking:

Re: Real Estate,

(1) May judgment, given by the Italian Court before allied
 military occupation, be executed now?

(2) May the Courts act in urgent matters other than the cases
 stated in paragraph 2 of the memorandum of August 19, 1943, dealing with
 temporary amendments to the Italian Codes?

2. It is requested that this office be advised of the decisions reached
 in regard to these questions.

Richard H. Hill
 RICHARD H. HILL
 LT. COL. AUS.
 Senior Legal Officer
 Agrigento. 3

RHH/mjd

1. I should think so. The court is supposed to execute its judgments.
 2. All courts civil & other are now open.

Col Hill
informed
October
1943

Major Hannaford to
Spoken to Col Hill on above

7/9/43

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Province of Agrigento
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LT. COL. AUS.
Senior Legal Officer
Agrigento.

2

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LT. COL. AMB.
Senior Legal Officer
Agrigento.

RHH/mjd

0807