

ACC

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CRITI
AUG.

540

CRITICISMS & REVISIONS OF ITALIAN LEGISLATION
AUG. 1943 - NOV. 1944

FILE CLOSED 2 November 1944

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4078/L.

GGH/ap.
2 November 1944.

SUBJECT : Amendment of Italian Law.

TO : Regional Commissioner (Attn R.L.O.) Toscana *Province*
(for P.L.O., Florence Province).

1. If the First President of Florence feels that existing Italian legislation should be amended he should approach the Minister of Justice stating the reasons which have prompted him to make the suggestion.

2. If the Minister agrees and this Sub-Commission is in accord, the necessary amendment will be published in the Gazzetta Ufficiale and implemented by AMG in the territory under its control in accordance with existing procedure.

By Command of Commodore STONE :

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

ALLIED MILITARY GOVERNMENT
HEADQUARTERS
FLORENCE PROV. E

FL/30

28 October 1944

SUBJECT: Amendment of Italian Law

TO : Legal Sub-Commission HQ., A.G.C.
Attention Officer in charge of
Italian Courts (through R.L.O., HQ.,
Toscana Region)

1. The First President of the Court of Appeals suggests the desirability of amending the R.D.L. of 22 April 1943 No. 245 in the following respects:

(a) so as to abrogate Arts. 23 and 24 et seq. to the extent that provision is made for the sending of black market charges to the Prefect and to the extent he is authorized to deal with them himself, it being recommended that the complaint should be sent direct to the Procuratore del Reame or to the Pretore;

29

(b) so as to amend Art. 25, first part, which gave the Special Tribunal for the defense of the State special jurisdiction of the more serious offences mentioned in Arts. 12 and 13, by providing that the jurisdiction for such crimes might be returned to the Court of Appeals Anzi (see Art. 29 of the Code of Penal Procedure).

2. The recommended amendments seem reasonable and I am therefore forwarding them to you for your consideration.

LEGAL SUB-COM

CLO

DCLO

Chief Counsel

CLO

Italian Sec

CLERKS

11 NOV 1944

HLG/FV

HENRY I. GLENN

Major, JAGD.,

Legal Officer for the
Province and City of Florence

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4070/D.

/rlp.
27 May 1944.

SUBJECT : "Direttissima" Procedure under Italian Law.

TO : Regional Legal Officer (RLO: Regional Commissioner), Region II.

In reply to your letter ref 2201/70/B dated 21 May 44 and enclosures, this matter has been submitted to the Minister of Justice in connection with measures now under consideration for the speeding up and simplification of penal procedure in the minor classes of ^{criminal} offenses.

A. R. Thackrah
A. R. THACKRAH,
Major,
for Chief Legal Officer.

✓ 4078

Agenda

288

25

HEADQUARTERS
ALLIED CONTROL COMMISSION
REGION II

21 May 44

Ref: :- 2201/70/B
Subject:- Italian Law
To :- C.I.O. Legal Sub-Commission, SALERNO

A copy is enclosed of a letter from I.O. Apulia with the contents of which this H.Q. is in complete agreement. If the Ministry could be induced to make the suggested alteration in the law, the disposal of cases would be greatly speeded up.

B. Cousins
D. E. S. COUSINS, Lt. Col.
R. L. O.
Region II

DES/im

LEGAL SUB COMMISSION	
GO	✓
DPD	
Chief Clerk	
CO	
Legal Section	
CL-PC	

Agenda
Friday

27

24

ALLIED CONTROL COMMISSION
LEGAL LIAISON OFFICE
APULIA

To: R.C.L.O.
Subject: Direttissima

The Avvocato Generale of Lecce in his report copy of which was sent to you, recommends that the period of 5 days from the date of arrest laid down in art. 502 C.R.E., should be increased to 10 days. This to my mind appears to be the only solution for the present impasse in which more arrests are made than cases disposed of, because even if the courts are made to hear more cases there will always be a delay in the istruttoria.

I strongly recommend this proposal be given maximum support at Salerno.

Bari, 15th May, 1944

L.I.O. Apulia

INS FOR FARGO - 752

19th November 1943
URGENT

To: FATIMA FOR THACKRAH

URGENTLY REQUIRE TO KNOW WHAT LAWS OR DECREES WERE ENACTED BY ITALIAN
GOVERNMENT & PAREN TO FATIMA FOR ⁷⁴THACKRAH FROM INS FOR FARGO FROM
UPJOHN CITY AND SEVEN FIVE TWO FARGO & BEFORE LEAVING ROSE ONE
DISSOLVING FASCIST ORGANIZATIONS TWO ABOLISHING LAWS DISCRIMINATING
AGAINST ANY PERSON ON BASIS OF RACE COLOUR OR CREED AND PROVIDING FOR
A RETURN OF THEIR PROPERTY

Originator: Col. G. Upjohn,
Deputy Chief Legal Officer.
Legal Sub-Commission.

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Stallin Liberta.

Stallin through the following divisions of
 Foreign Affairs
 Internal Security
 Economic
 and
 Intelligence

25 October, 3.

1. Two copies of "Stallin Liberta" are enclosed.
2. You will find in them the following information:
 - (a) The party affiliation to Italian procedure.
 - (b) The organization of the committee.
3. Will you please give these documents the required priority in your office.

J. C. McLEOD,
 Major,
 Legal Division.

cc to 1000/1000.

Note to Proclamation No. 13.

Il divieto previsto nell' Articolo 1 del Proclama N. 13 non si applica al caso in cui una persona sia ritenuta a disposizione della polizia, quando la ritenzione a luogo per indagini che si riferiscono all' accertamento di reati.

SUBJECT: Article 506, C.P.P.
TO: Legal Officers, Region 2

9 October 1943

21

1. The question has been raised, and may arise again, as to whether the provisions of Article 506 of the Codice di Procedura Penale have been abrogated by Article 2 of Proclamation 13. Although the provision of the Code was a Fascist enactment not contained in the pre-fascist Code of Criminal Procedure it is considered that the powers conferred on the Pretori by Article 506 may continue to be exercised. The right of the defendant to have a hearing on the decree in accordance with the terms of Article 509 is considered a sufficient protection of his interests.

22

Ward J.W. Hark

Major, AUS, S.I.O., Region 2

Dear Lady - Do you agree with this - if not let me know and I'll reverse the instruction to my rather ready staff. Many thanks for sending me the copy of your earlier instructions - my only regret that you sent them is that I'll have to see that they are carried out & while they were forgotten they I did bother me. I do hope it's really true that you & some of the others will be over here before long - & from what you say I should think you wouldn't be sorry to see the last of Palermo. As H.A. is a very pleasant person, I suspect, but you must have been a fairly lively dancing man at the moment. Please remember me to Lord & Lady Hark & all their dancing members of the legal section I don't at all like the idea of the wine full cheeks waiting to pour.

Yours
Ward Hark

Provisional & Conditional Liberty

R.S.L.O. Region II

20
AMCOT/4078/3

29th Oct. 3

1. Your interpretation of directive AMCOT/4001/L of 19 Sep 43 is correct.
2. A directive in clarification of the above is attached.

for, Lt. Col.
Chief Legal Officer.

21

DRAFT/ (In course of preparation)

29/10/43

SUBJECT: Release and mitigation of sentence of offenders sentenced by
or awaiting trial in Italian Courts.

TO: All S.L.Os (THRU: C.A.Os)

1. This letter is in clarification and amplification of previous directives on the above subject.
2. Three kinds of liberation exist under the Italian law; provisional liberty, before trial or pending appeal; conditional liberty after serving one-half the sentence or $\frac{3}{4}$ in the case of previous offenders; and Grazia (pardon), which includes reduction of sentence.
3. Provisional liberty is granted by the Procuratore del Re or by a Judge or Court, according to the nature of the proceeding. The power has been extended by order of the Allied Military Government to cases in which provisional liberty is not permitted under the Italian Penal Code.
4. Conditional liberty and also the conditional suspension of sentences (probation) if for less than one year, Art. 133-163-164 to 168 C.P., is granted by the Ministry of the ~~Justice~~ Interior at Rome upon recommendation of the Pretore, if imprisonment in a mandamental jail, otherwise of the Giudice Istruttore of the Tribunale of the place of confinement. Applications are initiated automatically when a prisoner becomes eligible. By order of the Allied Military Government, the S.C.A.C. of the place of confinement has power to order release on conditional liberty even in cases not permitted under the Italian Law, after receiving the opinion of the competent Italian authority. He may exercise his power by a commission of suitable officers

a Judge or Court, according to the nature of the proceeding. The power has been extended by order of the Allied Military Government to cases in which provisional liberty is not permitted under the Italian Penal Code.

4. Conditional liberty and also the conditional suspension of sentences (probation) if for less than one year, Art. 133-163-164 to 165 C.P., is granted by the Ministry of the Interior at Rome upon recommendation of the Pretore, if imprisonment in a mandamental jail, otherwise of the Giudice Istruttore of the Tribunale of the place of confinement. Applications are initiated automatically when a prisoner becomes eligible. By order of the Allied Military Government, the S.O.A.G. of the place of confinement has power to order release on conditional liberty even in cases not permitted under the Italian law, after receiving the opinion of the competent Italian authority. He may exercise his power by a commission of suitable officers appointed by him, which may include one Italian official.

5. Pardon in the Italian law is granted by the King through the Ministry of Pardon and Justice at Rome, on application of the prisoner and recommendation of the Procuratore del Re' of the place of conviction. In AMGOT, the power resides in the Military Governor. In view of the broad power of conditional liberation, there should be little or no occasion for exercise of the power of pardon. An application which has been processed by the Procuratore del Re' for pardon may be determined as one for conditional liberty.

Subject: Provisional and Conditional Liberty

24 October 1943

To: Chief Legal Officer
 AMG
 Palermo

4078

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1. There has been some uncertainty in Region 2 as to the intended scope of the directive of 19 September (ref. AMOCT/4001/I) concerning provisional liberty. The policies now being carried out in this Region, both in regard to Liberazione Condizionale and Libertà Provvisoria, are described herein for your information.

2. The Italian prosecuting and judicial officials have been advised that they are to continue to grant conditional liberty and provisional liberty through the same procedures and in the same circumstances in which they would have done so prior to the occupation, and that this may be done whether the prisoner was sentenced (in the case of liberazione condizionale) or arrested (in the case of libertà provvisoria) before the occupation. The only fundamental changes are, first, that libertà provvisoria may be granted even in cases set forth in Art. 253 of the O.P.P., and, second, that the recommendation which was usually transmitted to Rome shall now be transmitted to the Provincial S.E.A.O. through the Provincial Legal Officer.

3. If we have misinterpreted the H.Q. directives we should appreciate it if you would let us know.

19

Wm J. W. H. W.

Major, AUS, E.I.O., Region 2

See Region 11 -

1. Your interpretation of directive AMOCT/4001/I of 19 Sep 43 is correct
2. A directive of clarification of the above is attached

Copy to 4078/L

Article V of Proclamation No. 1.
S.L.O (through S.C.A.C.) Catania.

2417
ASCT/4001/L.

23 October 3

Officially no modification of Italian Law or Procedure has been effected, further than as set forth in various proclamations or orders, and temporary amendments to Procedure of which you are aware. (ASCT Directives, (ASCT/4001/L. of 19 Aug. and 22 Oct. refer).

G. G. RICHARDSON,
Major,
Legal Division.

jd

18

AMCOT/4001/L.
AMCOT HQ., SICILY
11 October 1945

SUBJECT: Fines under Italian Penal Code.

TO : All SLO's (through SCAD's).

1. Articles 163 to 168 of the Italian Penal Code give the right to Judges and Magistrates to suspend pecuniary penalties for two to five years. However this suspension must be granted when pronouncing the sentence and cannot be conceded after the latter has become executive.

2. Certain cases of hardship have been reported to this Division by SLOs in the Provinces concerning persons sentenced to imprisonment and fines by Italian Courts prior to our occupation, who had served their sentences in jail but could not pay the amount of the fine.

3. Italian legislation provides no means of redress for such contingencies, with the exception of the pardon or commutation which were the privileges of the King or Minister of Justice.

4. To meet this situation, SLO's are hereby authorized, in such cases of hardship as may from time to time be brought to their notice to instruct Italian Judges and Magistrates to extend the time for the settlement of "multe and ammende" over a longer period and to accept small installments at regular intervals as part payments of the amount involved.

W. C. CHAMLER,
Lt. Col., AUS,
Chief Legal Officer.

17

Distribution:

Agirigento	3	Amcot Liaison	1
Caltanissetta	2	Amcot 8th Army Reg. 2.	10
Catania	2	Amcot 5th Army Reg. 3.	10
Enna	2	Files 4001/-	1
Palermo	4	" 4034/-	1
Reggio	3	Flout	1
Syracuse	2	M.G.S. - A.F.H.Q.	12
Messina	3	Spares	16
Trapani	3		

jd

Subject: - Italy Order.To: C.I.O.

AMST/1001/1.

5th Oct. 1943

1. There are at present four documents awaiting official signature, which should be published, if agreed upon, with as little delay as possible. They are :-

The Order reorganising the Bar Association.

Law temporary amendments to Italian Procedure.

Appointments of Judicial Officials.

Constitution of National Councils.

The relations between Property Controller and Notaries has been determined by C.I.O.'s instructions to all S.C.A.Cs.

2. The fact that none of these ~~has~~ been promulgated as yet, is creating the same form of disorganisation which existed in August and which this H.Q. has strived hard to prevent.

Thus to meet urgent local contingencies, Syracuse had to adopt amendments to procedure which would not be valid in any other province; Catania has appointed a new Procuratore Generale and Roma has dismissed the Presidente del Tribunale. In other provinces other modifications have taken place of which this H.Q. is not completely aware.

3. *Will be sent to Major*
~~order to~~ Further discrepancies between Region I and Region II this Division has forwarded unofficially to Major How a copy of the proposed orders, indicating to him that these were not yet in force, but asking him to bear in mind the general policy set out in these documents whenever he would have to issue instructions in these matters.

4. If the signature of these orders and instructions are to be again delayed, could not general instructions on the lines expounded therein be forwarded to all provinces in order to avoid further inconsistencies in the present judicial set up.

5. The D.C.I.O. has generally approved the various drafts.

G. H. H.
Major.
Legal Division.



PRIMA PRESIDENZA DELLA CORTE DI APPELLO DI PALERMO

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Disposto a nota del di

Coppella: Procedura per reati militari-

N. 3070 Prot.

Allegato N

*Palermo 4 4 ottobre 1943 *** Anno XXI*

Com
TI

ST3. CAPO DELL'UFFICIO LEGALE DELL'AMGOT

Barl 8



P A L E R M O

1 *15*

Il Comando della Legione dei Carabinieri ha scritto alla procura Generale sollevando il seguente quesito: "i reati militari previsti dai Codici Penali militari italiani a quale autorità vanno denunciati e da quale Tribunale saranno esaminati e giudicati gli imputati." Ciò perchè i Tribunali militari italiani non sono stati conservati ed il proclama n.2, mentre stabilisce che rimangono in vigore i Codici Penali italiani, nulla dice in ordine ai Codici Penali militari.

prego cotesto Ufficio legale di fornirmi sul proposto quesito la risoluzione conforme alla legislazione vigente, perchè io ne dia comunicazione al Comando della Legione dei Carabinieri.

11

313. CAPO DELL'UFFICIO LEGALE DELL'AMGOI

HEADQUARTERS BART 3



P A L E R M O

15

Il Comando della Legione dei Carabinieri ha scritto alla Procura Generale sollevando il seguente quesito: "i reati militari previsti dai Codici Penali militari italiani a quale autorità vanno denunciati e da quale Tribunale saranno esaminati e giudicati gli imputati." Ciò perchè i Tribunali militari italiani non sono stati conservati ed il proclama n.2, mentre stabilisce che rimangono in vigore i Codici Penali italiani, nulla dice in ordine ai Codici Penali Militari.

Prego cotesto Ufficio legale di fornirmi sul proposito quesito la risoluzione conforme alla legislazione vigente, perchè io ne dia comunicazione al Comando della Legione dei Carabinieri.

IL PRESIDENTE DELLA CORTE

21/11

HEADQUARTERS

3 OCT 1943

AMGOT

CIVIL AFFAIRS OFFICE
City of Trapani

September 30, 1943.

SUBJECT: Temporary Modifications to the Code of Penal
Procedure.TO : HQ, Allied Military Government of Sicily,
Palermo (through Senior Civil Affairs Officer).

REFERENCE: AMGOT/4001/L and 1, September 6, 1943.

This is to inform you that in the absence of a local press, notices were printed and posted throughout this Province setting forth in Italian the "Temporary Modifications of the Italian Code Penal Procedure," recently made.

Henry L. Glenn
HENRY L. GLENN, Captain, J.A.G.D.,
Senior Legal Officer, Province of
Trapani.

HLC/JJD

September 30, 1943.

785016

SUBJECT: Temporary Modifications to the Code of Penal Procedure.

TO : HQ, Allied Military Government of Sicily, Palermo (through Senior Civil Affairs Officer).

REFERENCE: AMGOT/4001/I and I, September 6, 1943.

This is to inform you that in the absence of a local press, notices were printed and posted throughout this Province setting forth in Italian the "Temporary Modifications of the Italian Code Penal Procedure," recently made.

14

Henry L. Glenn
HENRY L. GLENN, Captain, D.A.C.D.,
Senior Legal Officer, Province of
Trapani.

HLG/JAD

*Forwarded:
Lt. J. J. Macnamara
to Capt. Dry. S.C.A.C.*

PA
*The name of the person in the
above mentioned office is
Lt. J. J. Macnamara
use this name*

Temporary Adjuncts to Civil and Penal Courts

ART I.

The Procureurs della legge shall have the right to order that an accused whether under arrest or at liberty be brought before the Court without further investigation, as set forth in Art 544 to 505 of the C.P.P. and he shall not be bound by the provisions specified in Art 502 in connection with legal delays.

ART II.

The course of prescription in regards to the entries to be effected in the mortgage register is suspended from July 10th until further notice.

ART III.

The course of prescription in civil, penal and financial actions already started on July 10th is hereby suspended and legal terms extended until further notice.

All other terms in connection with cases of the competence of the Corte di Cassazione, Council of State, Court of Accounts and the High Court of Public Water Supply, or any other Court sitting outside Sicily, are hereby suspended until new regulations have been instituted to reorganise such procedure.

ART IV.

Civil actions already on the roll for which a date of hearing has been fixed after 1st October 1943 or adjourned to a specific date after October 1st by order of the Court will follow their normal course. The Judge will determine if one or both parties are not represented or their legal representatives have failed to appear, that the hearing be adjourned and the parties duly notified of the new date of hearing.

ART V.

Civil actions already on the roll for which no date of hearing is fixed or for which a previous adjournment was granted, before October 1st, will be heard in consecutive sittings starting from October 1st as soon as the Court Registrar will have been able to notify the parties' legal representatives of the exact date, or, in their absence, the parties personally.

ART VI.

Copies of the original summons will have to be served again at the request of the most diligent party, when the date fixed for the hearing of the case roll due after 10th April 1943, and the civil action therein referred to was not already on the roll.

ART VII.

In all actions, civil or penal, when service of summons may legally be effected by post, a duplicate service will be made by judicial process seven three days after the date of the posting of the first service.

ART VIII.

In civil actions when the absence of one or both parties is due to the fact that no summons can be served on them, or if appearance cannot be entered owing to the present new conditions, a special

13

hearing to adjourned and the parties duly notified of the new date of hearing.

ART V.

Civil actions already on the roll for which no date of hearing is fixed or for which a previous adjournment was granted, before October 1st, will be heard in consecutive sittings starting from October 1st as soon as the Court Registrar will have been able to notify the parties' legal representatives of the exact date, or, in their absence, the parties personally.

ART VI.

Copies of the original summons will have to be served again at the request of the most diligent party, when the date fixed for the hearing of the case fell due after 1st April 1943, and the civil action therein referred to was not already on the roll.

ART VII.

In all actions, civil or penal, when service of summons may legally be effected by post, a duplicate service will be made by judicial process server three days after the date of the posting of the first service.

ART VIII.

In civil actions when the absence of one or both parties is due to the fact that no summons can be served on them, or if appearance cannot be entered owing to the present new conditions, a special counter may be appointed to represent the absent party or parties under the provisions of Articles 78, 79 and 80 of the Code of Civil Procedure, whenever such absence would be prejudicial to the party or parties concerned.

ART IX.

In all cases where the law provides that judicial decisions or other notices be published in the official Gazette or the official Bulletin of the Province, such publication will be made in the local newspaper two days in succession.

ART X.

All new appointed officials will take the following oath :-

"I swear to observe the law and to fulfill my duties with conscience".

Original of the ~~original~~ signed
(2) Lord Russell in R/20

Folios

13 -14

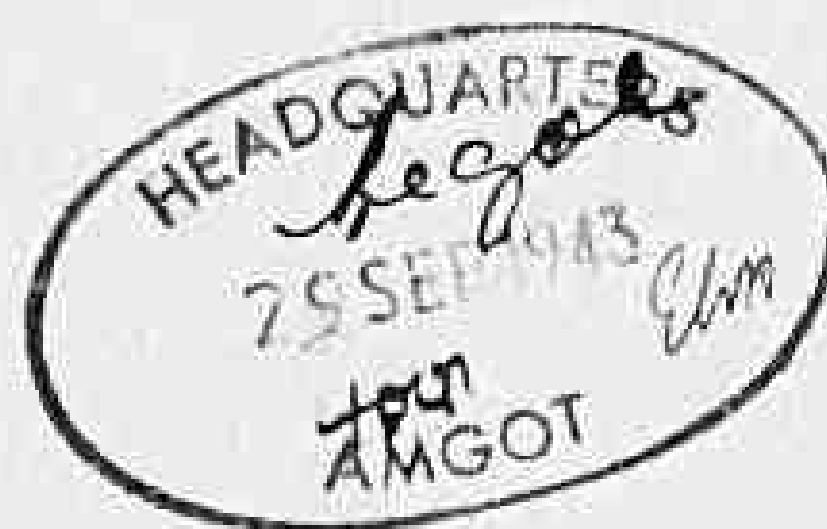
(Itaban of 15)

extracted by

Wm. Bamford

21/10/83

Recommendation to modify a Section of April 24, 1942 Act.



STUDIO LEGALE
GIUSEPPE BROCCIO
VIA C. DE VITO N. 10
Agrigento

Agrigento, 28 settembre 1943

Al Comitato Legale Italiano e Consulente
presso la Corte di Appello di
Palermo

La legge 24 marzo 1942 N. 200, nel dettare le norme relative agli affitti delle case di abitazione, mentre da un lato facultava il locatore a chiedere il rilascio dell'immobile per abitarlo egli personalmente o per i suoi parenti, qualora avesse dimostrato di averne urgente ed improrogabile necessità, dall'altro lato escludeva tale rilascio - anche trattandosi di improrogabile necessità - se il locatore avesse acquistato l'immobile dopo la data di detto decreto.

Intanto, pur essendo la detta disposizione di legge in evidente contraddizione tra se stessa, e che perciò dovrebbe essere riformata, è avvenuto che, a causa della guerra, la casa, abitata dal locatore, è crollata, aggravando, così, la di lui improrogabile necessità di avere una casa da abitare, in quanto che tra i due, locatore e locatario, è logico, naturale e giuridico, sia costretto il locatario a cercare casa anzi che il proprietario.

Si propone, quindi, la modifica della dizione di detta legge, abrogando la quistione del tempo di acquisto dell'immobile urbano per necessità sorta dall'attuale stato di guerra.

Con osservazioni

G. Broccio

*This seems
logical. Look
up a case
of damaged
+ destroyed
premises
1943*

4001/1

AMGOT HEADQUARTERS

19 Sept. 1943

SUBJECT: Changes in Italian Law--Procedure.TO : S.I.C., Catania

1. Delay in answering your letter of 11 inst. is regretted and is due to the fact that Major Mansford was away from this Headquarters for four days on a General Court held in Agrigento.

2. It is hoped to forward to you next week further amendments to Italian Procedure as approved by this Headquarters.

3. As you justly remarked, such amendments should be issued for the whole Island.

W. C. CHAMBER,
Lt. Col. (AUS),
Chief Legal Officer.

Subject:- Temporary Amendments to Italian Penal Procedure. AMGOT/14001/L. - JH

AMGOT H.Q. SICILY

26034
B
To:- All S.I.Os. through S.C.A.Os.

19 Sept. 1943. 

Further to instructions set out in para. 4 of the Temporary Modifications to Italian Penal Procedure published in "Sicilia Liberata" of 6 Sept. 1943, reading as follows:-

"The Court and Prosecution to have the right to grant provisional liberty even in cases set forth in Article 253 of the Code of Penal Procedure, whenever the offence is not serious or the circumstances in which the act has been committed do not justify the continuous detention of the accused".

This provision applied only to offences committed since the occupation. It has now been decided that Procuratore delle Legge may also grant provisional liberty in cases of prisoners sentenced to a term of imprisonment by the Italian Courts before our occupation. In this instance, however, the decision of the Procuratore must be submitted to and approved by the S.C.A.O. of the Province.

W.C. CHANLER, Lt. Col. (A.U.S.)
Chief Legal Officer.

Subject:- Form of Execution of Instruments by Notaries.

To:- S.C.A.O. Agrigento (for the attention of S.L.O.)

ANGOT/4001/L.

ANGOT. H.Q.

SICILY.

8th Sept. 1943

Reference letter dated 4th Sept. 1943 from S.L.O.

Agrigento, it is confirmed that the advice given to the Notary is correct.

GCH/HW.

W.C.CHAMLER, Lt.Col. (A.U.S.)
Chief Legal Officer.

Temporary Production of Evidence Code of Penal Procedure

SICILIA LIBERATA 6/9/1943 N. 31.

Modificazioni proposte al Codice di Procedura Penale.

7A

Art. 2. - I termini di comparizione in giudizio, qualunque sia l'autorità giudicante, sono ridotti a cinque giorni, escluso il giorno della notifica e quello della comparizione.

Art. 3. - A completamento o parziale notifica degli articoli 462 e 463 Cod. proc. penale, il Giudice può rinviare alla presenza di testimoni e parti lese ed ordinare la lettura delle dichiarazioni da loro citazione e la loro comparizione risultata impossibile per motivi attinenti all'attuale stato di guerra.

Art. 4. - A abbinamento ed integrazione degli articoli 414 e 439 Cod. proc. penale, il Giudice può ordinare la revisione dei giudizi tutte le volte che non sia possibile svolgere il dibattimento contro tutti gli imputati di uno stesso reato o di reati connessi per motivi attinenti all'attuale stato di guerra.

Art. 5. - Il Pubblico Ministero o il Giudice possono concedere la libertà provvisoria anche nei casi di cui all'art. 293 Cod. proc. pen., quando per la lievissima entità del delitto o per altre eccezionali circostanze, che accompagnano il fatto delittuoso, ravvisi che sia eccessivo mantenere lo stato di detenzione del l'imputato.

OFFICE OF THE SENIOR LEGAL OFFICERPROVINCE OF AGRIGENTO

4 September 1943

SUBJECT: Form of Execution of
Instruments by Notaries.

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

1. Instruments executed by Italian Notaries were formerly executed "in the name of the Crown". Today, a notary requested instructions as to how such instruments should now be executed.

2. Following, as a precedent, the instructions given by you relative to judgments of courts, your letter to the President of the Court of Appeal, Palermo, 19th August 1943 (AMOT/4001/L), I advised the notary that such instruments should now be executed "in the name of the Law".

3. If my advice to the Notary was erroneous, please advise me of the correct manner in which such instruments should be executed.

*Delivered to Court
8/9/43*

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

Submitted to S.C.A.C.:

Approved:

G. H. Mc Caffrey
G. H. Mc CAFFEY
LT. COL., Infantry
S.C.A.C., Province of Agrigento.

6

Draft Memorandum

AWOT/4001/L.

TO: Chief Civil Affairs Officer.

1. The enclosed documents are submitted for your approval and possible amendments. They are:-

- (a) An Order creating an Italian Legal Advisory Committee.
- (b) A letter to the Presidente della Corte d'Appello agreeing to his proposal that the provisions of certain articles of the Italian Codes should be temporarily suspended and new forms of procedure adopted to meet present contingencies.
- (c) A Directive to S.C.A.s. concerning the re-opening of Italian Courts based on the two previous documents.

2. The chief reasons which have decided me to put forward and to recommend the above mentioned proposals are:-

- (a) The congestion of prisons with people awaiting trial and already tried. This position has forced many S.C.A.s. to act free confirmed criminals without being able to investigate their cases.
- (b) The fact that some S.C.A.s. have opened or are on the verge of opening the Courts and that it is desirable that all the Italian Courts, when re-established, be controlled under identical rules and regulations throughout the island.
- (c) To hasten as much as possible the return of normal legal practice in Sicily.

6

/s/ W. C. Chandler

Lt. Col., AUS,
Chief Legal Officer.

August, 1943.

2761 100000 1
FIELD NO. 10000
AWOT/4001/L.

Subject:- Temporary Amendments to Italian Penal Procedure.

To:- The President of the Court of Appeal, Palermo. AMGOT/4004/L.

From:- The Chief Legal Officer, AMGOT, H.Q. 19th Aug. 1943.

1. I have studied with interest your memorandum of 13th August, and as a result of your recommendations, I agree that notwithstanding the provisions of the Italian Penal Code and Code of Penal Procedure, the following forms of procedure will be adopted to meet present emergencies:-

(a) The legal delay between date of service and date of trial to be reduced to 5 days.

(b) Articles 462 and 463 of the Code of Penal Procedure to be modified so that whenever witnesses or injured parties are absent or cannot be served by reason of the state of war, the Court may have power to dispense with their presence and to order that the evidence given by them before the examining magistrate should be read instead.

(c) Article 439 (requiring joint trial of joint defendants) and Article 414 (permitting separation during trial) to be amended to permit separate trial of joint defendants now in custody when it is impossible to produce all the joint defendants.

(d) The Court and Prosecution to have the right to grant provisional liberty even in cases set forth in Article 253 of the Code of Penal Procedure, whenever the offence is not serious or the circumstances in which the act has been committed do not justify the continuous detention of the accused.

(e) If in any case before it the Court is of the opinion that the minimum sentence for the offence charged is excessive under the circumstances of the particular case, it will forward the record to the Chief Legal Officer of AMGOT with its recommendations.

Please have prepared forthwith and submit to me as soon as possible a draft of the amendments required to carry out the above.

2. It is also agreed that Italian Civil Courts may proceed with the following urgent procedures:-

"Appointment of receivers 'pendente lite' (deceased

(b) Articles 462 and 463 of the Code of Penal Procedure to be modified so that whenever witnesses or injured parties are absent or cannot be served by reason of the state of war, the Court may have power to dispense with their presence and to order that the evidence given by them before the examining magistrate should be read instead.

(c) Article 459 (requiring joint trial of joint defendants) and Article 414 (permitting separation during trial) to be amended to permit separate trial of joint defendants now in custody when it is impossible to produce all the joint defendants.

(d) The Court and Prosecution to have the right to grant provisional liberty even in cases set forth in Article 253 of the Code of Penal Procedure, whenever the offence is not serious or the circumstances in which the act has been committed do not justify the continuous detention of the accused.

(e) If in any case before it the Court is of the opinion that the minimum sentence for the offence charged is excessive under the circumstances of the particular case, it will forward the record to the Chief Legal Officer of AMGOT with its recommendations.

Please have prepared forthwith and submit to me as soon as possible a draft of the amendments required to carry out the above.

2. It is also agreed that Italian Civil Courts may proceed with the following urgent procedures:-

- "Appointment of receivers "pendente lite" (deceased persons and creditors)."
- "Declaration of absence or of presumed death."
- "Judicial Separation of Spouses."
- "Measures to protect the interests of minors."
- "Rights of married women."
- "Internment or release of Lunatics."
- "Orders concerning shares and bonds destroyed or lost."

Will you also submit in draft your proposals as to the Order to be issued by the Allied Military Government to carry this into effect.

3. In future all judgments will be given "in the name of the Law". Please issue the necessary instructions to that effect to all judges throughout the Occupied Territory.

4. In conclusion, I wish to draw your attention to the fact that in regards to both criminal and civil courts, the following powers are reserved to the Allied Military Government:-

(a) The right of attendance by a Civil Affairs Officer or Legal Officer at any court session:

- 2 -

- (b) The right to revise any sentence or verdict;
- (c) The right of recourse to the Military Governor by all defendants under petition by any party, when the claim is made that the judgment was affected by hostility towards the Allied Forces or was prejudicial to their interests;
- (d) The confirmation of death sentences and the power of clemency being vested in the Military Governor.

I agree with you in regard to the opening of Civil Courts and hope to be able to give the necessary instructions to that effect shortly.

ARGOT, H.Q.

[Handwritten signature]
Lieut. Col.,
Chief Legal Officer,
ARGOT.

ritiene, per le speciali circostanze del fatto delittuoso, che la pena da irrogare sia eccessiva e non corrisponda alla coscienza collettiva, possa temperare il vigore della legge concedendo le attenuanti generiche e sostituendo così alla pena di morte, quella dell'ergastolo ed alla pena dell'ergastolo quella di anni trenta di reclusione.

In relazione alla disposizione secondo cui le sentenze debbono pronunciare in nome della Legge è necessario disporre che il Procuratore del Re ed il Procuratore Generale del Re assumano invece la qualifica rispettivamente di Procuratore della Legge e Procuratore Generale della Legge.

Si rende doveroso fare rilevare che perchè la giustizia abbia il suo corso regolare è però necessario ripristinare i servizi ferroviari, postali e telegrafici e tutto quanto attiene al normale svolgimento della vita civile.

Le proposte di modifica si possono riassumere in questi brevi proposizioni:

1°) I termini di comparizione in giudizio, qualunque sia l'autorità giudicante, sono ridotti a giorni cinque.

2°) A completamento e parziale modifica degli art. 462 e 463 C.P.P. il giudice può rinunciare alla presenza di testimoni e parti lese ed ordinare la lettura delle dichiarazioni da costoro rese in istruttoria, quando la loro citazione o la loro comparizione risulti impossibile per motivi attinenti all'attuale stato di guerra.

3°) A chiarimento e integrazione degli art. 414 e 439 C.P.P. il giudice può

Legge.

Si rende doveroso fare rilevare che perchè la giustizia abbia il suo corso regolare è però necessario ripristinare i servizi ferroviari, postali e telegrafici e tutto quanto attiene al normale svolgimento della vita civile.

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3°) A chiarimento e integrazione degli art. 414 e 439 C.P.P. il giudice può ordinare la separazione dei giurati tutte le volte che non sia possibile svolgere il dibattimento contro tutti gli imputati di uno stesso reato o di reati connessi per motivi attinenti all'attuale stato di guerra.

4°) Il P.M. e il Giudice possono concedere la libertà provvisoria anche nei casi di che all'art. 253 C.P.P. quando per la lievissima entità del danno o per altre eccezionali circostanze, che accompagnano il fatto ravvisi eccessivo mantenere lo stato di detenzione dell'imputato.

5°) Nei reati gravissimi punibili con le pene fisse della morte e dell'ergastolo il giudice può concedere le circostanze attenuanti generiche di che all'art. 59 del codice abrogato, quando per le peculiarità cir-



PRIMA PRESIDENZA DELLA CORTE DI APPELLO DI PALERMO

Risposta a nota del di

Oggetto: *Proposte di modificazioni al Codice Penale
ED AL QUOTIDIANO DI PROCESSIONE PENALE
alla parte di Procedura Penale*

N. *Prot.* Alligati N.

Palermo, 13 Agosto 1943 Anno XX.

SIG. CAPO DELL'UFFICIO LEGALE
DEL COMANDO ALLEATO

P A L E R M O

Il Comitato legale italiano composto dai sottoscritti magistrati di Palermo ha l'onore di presentare delle proposte di modificazioni alle leggi penali giustificate dall'attuale stato di guerra, e dal fine di andare incontro al desiderio manifestato dagli ufficiali superiori degli affari civili di smaltire, cioè, sollecitamente il lavoro penale pendente e definire al più presto la posizione giuridica di molti detenuti.

I motivi che giustificano queste proposte di modificazione si possono così sintetizzare.

I termini di comparizione in giudizio sono secondo la legge di procedura lunghi e diversi a secondo il magistrato che deve giudicare.

Si può senza danno della giustizia e senza ledere i diritti della difesa disporre l'abbreviazione di detti termini ed unificarli stabi-

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Si può senza danno della giustizia e senza ledere i diritti della difesa disporre l'abbreviazione di detti termini ed unificarli stabilendo, che almeno cinque giorni debbono intercedere fra la citazione ed il giudizio.

Secondo gli art. 462 e 463 del C.P.P. occorre il consenso della difesa per potere dare lettura in giudizio delle dichiarazioni rese da parti lese e da testimoni lungo l'istruttoria, quando sia impossibile la loro citazione o comparizione al pubblico dibattimento.

Queste disposizioni costituiscono un ostacolo insormontabile nell'attuale stato di guerra, dato che molti testimoni e parti lese non possono essere citati e non possono comparire o perchè sono prigionieri, o perchè sono sfollati e non si conosce l'attuale recapito o perchè

sono residenti nel continente italiano e per altri motivi.

Molti processi sono stati varie volte rinviati a nuovo ruolo per queste ragioni di procedura e sarebbe inutile tentare di riportarli al dibattimento. Si rende pertanto necessario che si dia facoltà in questi casi al giudice di rinunziare alla presenza dei predetti testimoni o parti lese ed ordinare la lettura delle dichiarazioni da loro rese in istruttoria.

Appunto per l'attuale stato spesso non è possibile svolgere il dibattimento in processi contro vari imputati di uno stesso reato o di reati connessi ed avviene che detenuti presenti debbono attendere per lungo tempo che la loro posizione venga definita in attesa che gli altri imputati vengano citati o vengano arrestati. Si ravvisa pertanto opportuno, a chiarimento ed integrazione degli art. 414 e 439 C.P.P.; di dare facoltà al giudice di ordinare in questi casi la separazione dei giudizi.

Per l'art. 253 C.P.P. non è possibile concedere la libertà provvisoria in numerosi casi sia per il titolo di reato, sia per l'entità della pena edittale. Ma nella pratica si presentano dei casi in cui tale divieto si ravvisa ingiusto data la lievissima entità del danno e date le eccezionali circostanze che accompagnano il fatto delittuoso. Si pensi al furto più volte aggravato di un po' di carbone o di poca frutta per giustificare un'opportuna modifica alla predetta disposizione restrittiva.

Per il Codice penale precedente, (Zanardelli), poteva il giudice concedere all'imputato le circostanze attenuanti generiche (art. 59) oltre

lungo tempo che la loro posizione venga definita in attesa che gli altri imputati vengano citati o vengano arrestati. Si ravvisa pertanto opportuno, a chiarimento ed integrazione degli art. 414 e 439 C.P.P.; di dare facoltà al giudice di ordinare in questi casi la separazione dei giudizi.

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Per il Codice penale precedente, (Zanardelli), poteva il giudice concedere all'imputato le circostanze attenuanti generiche (art. 59) oltre le diminuzioni di pena stabilite dalla legge. In questo caso all'ergastolo veniva sostituita la reclusione per 30 anni e le altre pene potevano essere diminuite di un sesto. Tale istituto giuridico non fu accolto nel codice vigente, (Rocco) per il motivo che il magistrato italiano ne aveva fatto un uso molto largo ed eccessivo. Tale opinione però non è stata accolta favorevolmente dai giuristi e, date le attuali contingenze, si ravvisa conforme a giustizia rimettere in vigore la predetta disposizione, ma solo nei casi di reati gravissimi punibili con pene fine (morte ed ergastolo) disponendo che il giudice, quando

ritiene, per le speciali circostanze del fatto delittuoso, che la pena da irrogare sia eccessiva e non corrisponda alla coscienza collettiva, possa temperare il vigore della legge concedendo le attenuanti generiche e sostituendo così alla pena di morte, quella dell'ergastolo ed alla pena dell'ergastolo quella di anni trenta di reclusione.

In relazione alla disposizione secondo cui le sentenze debbono pronunciare in nome della Legge è necessario disporre che il Procuratore del Re ed il Procuratore Generale del Re assumano invece la qualifica rispettivamente di Procuratore della Legge e Procuratore Generale della Legge.

Si rende doveroso fare rilevare che perchè la giustizia abbia il suo corso regolare è però necessario ripristinare i servizi ferroviari, postali e telegrafici e tutto quanto attiene al normale svolgimento della vita civile.

Le proposte di modifica si possono riassumere in questi brevi proposizioni:

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2°) A completamento e parziale modifica degli art. 462 e 463 C.P.P. il giudice può rinunciare alla presenza di testimoni e parti lese ed ordinarne la lettura delle dichiarazioni da costoro rese in istruttoria, quando la loro citazione o la loro comparizione risulti impossibile per motivi attinenti all'attuale stato di guerra.

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costanze del fatto stimi eccessiva la pena da infliggere. In questo caso alla pena di morte si sostituisce quella dell'ergastolo ed alla pena dell'ergastolo quella di anni trenta di reclusione. Dell'uso di questa facoltà il giudice deve dare congrua motivazione.

6) I rappresentanti del P.M. assumono la qualifica di Procuratori Generali della Legge e di Procuratori della Legge.

Data la disposizione relativa al funzionamento della sola giustizia penale sorge il dubbio ~~che~~ possa il giudice civile emettere quei provvedimenti di natura urgente previsti dal codice e proc. civile, quali il sequestro conservativo, il sequestro giudiziario, ed i provvedimenti relativi alla separazione personale dei coniugi e così via. Sarebbe opportuno autorizzare l'esercizio di questi poteri di natura civile, d'indole conservativa e cautelare che non potrebbero sospendersi a lungo senza grave danno, potendo anche prevedersi che tra non molto sarà possibile ordinare che anche la giustizia civile abbia il suo normale svolgimento nella sua complessa attività tanto utile per il vivere civile.

IL COMITATO LEGALE ITALIANO

Luigi La Cava

PRESIDENTE DELLA CORTE DI APPELLO

PROCURATORE GENERALE ~~D. M. M. M.~~

sequestro conservativo del coniugi e così via. Sarebbe opportuno autorizzare l'esercizio di questi poteri di natura civile, d'indole conservativa e cautelare che non potrebbero sospendersi a lungo senza grave danno, potendo anche prevedersi che tra non molto sarà possibile ordinare che anche la giustizia civile abbia il suo normale svolgimento nella sua complessa attività tanto utile per il vivere civile.

IL COMITATO LEGALE ITALIANO

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PROCURATORE GENERALE ~~DELLA CORTE DI APPELLO~~

PRESIDENTE DEL TRIBUNALE

PROCURATORE ~~DELLA CORTE DI APPELLO~~

Reale

MINUTES OF MEETINGS OF 2, 10 AND 12 AUGUST,
1943 between Local Section Headquarters ANOC and Italian Local Committee.

Abstract

Lt. Col. W. C. Chandler, L.I.C.
 Lt. Col. W. E. Jordan, L.I.C.
 Mayor G. C. Wainford, L.C. W/c Italian Courts
 Lt. Col. Brock, L.I.C.
 Major Pitts, Public Welfare
 Lt. Col. Bernstein, Finance Division

WHAT'S NEW

1.° **Donno.** re **Emilio La Cella**, Presidente di Corte d'appello.
 " " **Giuseppe Rinaldi**, Presidente del Tribunale Inferno.
 " " **Rosario Ricci**, Procuratore Generale.
 2.° **Dr. C. de off.** **Le Giuseppe Pelici**, Procuratore del Re.
 3.° **Donno** re **Fico**, re **Robbo**, **Juvenile Court**.

ASTHMA

1. ITALIAN-LEGAL COMMITTEE.

The formation of an Italian Legal Committee was approved by C.I.C. and it will include the following Italian Officials:

Presidente Corte di Appello,
Presidente del Tribunale,
Avvocato Procuratore Generale,
Procuratore della legge (ex del Re),

Definite instructions as to its functions will be issued by the Legal Section of AVOF shortly.

EXAMINER OF PRISONERS, NEW JAIL IN COURT.

As prisoners are dispersed all over the Province, it was recommended to instruct the Pina y. Carano, local contractor, previously concerned with this work, to submit an estimate of his requirements and costs to under take the transport of prisoners from various provincial prisons to the Courts.

7. ADDITIONAL COMMENTS.

The functioning of Juvenile Courts was explained by Procurator General, Public Prosecutor, detached to Juvenile Courts. A copy of his report is attached to the necessary arrangements with

ATTACHES1. ITALIAN JUDICIAL SYSTEM.

The formation of an Italian Legal Committee was approved by C.I.O. and it will include the following Italian Officials:

Presidente Corte di Appello,
Presidente del Tribunale,
Avvocato Generale,
Procuratore della Legge (ex del Re),

Definite instructions as to its functions will be issued by the Legal Section of AUSA shortly.

2. TRANSPORT OF PRISONERS FROM JAIL TO COURT.

As prisoners are dispersed all over the Province, it was recommended to instruct the Sign V. Carnac, local contractor, previously concerned with this work, to submit an estimate of his requirements and costs to undertake the transport of prisoners from various provincial prisons to the Courts.

3. JUVENILE COURTS.

The functioning of Juvenile Courts was explained by Procuratore Pochette, Public Prosecutor, detached to Juvenile Courts. A copy of his report is attached. The Public Office will make the necessary arrangements with Proc. Pochette to study conditions in reformatories. A list of inmates was handed and urgent cases pointed out.

4. COST OF TRANSPORT OF COURTS TO DISTRICTS AND JAILS.

An estimate is to be supplied by the President of the Court of Appeals and the Financial Section has agreed to authorize payment out of AUSA funds when expenses approved by C.I.O.

5. JUDICIAL PAY AND SALARIES.

A complete list of all Court Officials and clerks, their salaries and office expenses were presented by the various legal branches. If approved, the Finance Section will authorize the Banca d'Italia to carry on payments as per the past. All officials and clerks have been paid up to end of July.

6. QUESTIONS OF SUPPLEMENTARY COURTS OVER MATTER OF ITALIAN JUDICIAL SYSTEM OF PUBLIC SAFETY ACT.

(1) A proclamation was prepared abrogating the powers of imprisonment of the questions without trial before the ordinary Courts, thus cancelling all possibility of arbitrary arrest and valities to.

(2) After Lewis has brought various provisions under Italian Penal Code, Public Safety Code, etc. are under consideration and will form the subject matter of a report by Italian Committee.

7. ITALIAN PRISONERS WHO HAVE SERVED LONG TERMS IN ITALIAN PRISONS FOR GOOD BEHAVIOR.

The President of the Court of Appeal will recommend this step in his report.

8. FACTS RELATIVE TO ITALIAN CITIZENS WHO WERE DETAINED OR TRANSPORTED.

General papers were issued to the members of the Committee. An explanation for the supply of certain forms of transport has been forwarded to G.I.O., Palermo.

9. DATA CONCERNING ITALIAN CITIZENS.

The possibility of creating a Court of Cassation in Palermo during the present emergency will be studied at an early date.

10. LIST OF ITALIANS.

A complete list of prisoners was handed by the Italian authorities. A small Committee of Allied Officers assisted by two Italian legal officials were formed to review all individual cases of prisoners either awaiting trial or under sentence. The first sitting of this Committee to take place on Thursday 13.

11. GENERAL ADMINISTRATION OF ITALIAN COURTS.

It was agreed that the Italian Committee will sit once a week with a representative of the legal Section and report all cases brought or pending before the various Courts.

Each legal officer in the provinces to take similar step with the local authorities.

12. LIST OF PRISONERS.

This was handed to the G.I.O. Particulars about each individual will be asked from special branch.

13. REPORT OF COM. DE LA ZONA ON APPLICATIONS TO ITALIAN PRISONERS.

After considerable discussion it was decided that a formal report would be handed by the Italian Committee to the G.I.O., requesting that certain temporary amendments to the Italian Penal Procedure be effected in order to meet present conditions and are especially to speed up trials and relieve congestion in provincial prisons.

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11. PRESENTATION OF ITALIAN CASES.

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13. REPORT TO C.I.C. RE J.A. COUNCIL ON AUTHORITY TO ITALIAN PROSECUTION.

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