

1407

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

785016

ACC

10000/142/560

1408

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

785016

00/142/560

REPUBLICAN FASCIST, LEGISLATION
JULY 1943 - OCT. 1945

40/1002/5/2.

OPENED : 29 JULY 1945

CIXOED : 9 OCTOBER 1945

SUBJECT : GERMANIAN FASCIST - LEGISLATION

SUBJECT: HAWAIIAN PACIFIC - INVESTIGATION

NO CHASE
WTHS BOWDLE

READY FOR ARCHIVES

40 cases : 10000 / 142 / 560

THIS FILE

CONTAINS PAPERS

July 43

Oct. 45

ATLANTIC

case.

Folio 10A for signature of war please.

if approved

legat/c
3 APR 1949

W.E. Bohlen
Ave. Dela

LEGOL

This 10a. War signed.

R.R. Gippes et.

CMS
4 April 49

22

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

23A

AC/4082/8/L.

GGH/lc.
9 October 1945.

SUBJECT : O.N.M.I.

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

Copy of a letter received from Public Health Sub-
Commission is forwarded for your information and that of the
Commissario O.N.M.I.

By command of Rear Admiral STONE:

7 39

G. G. HANNAPORD,
Lt. Col.,
Deputy Chief Legal Advisor.

Incl.

22A

HEADQUARTERS ALLIED COMMISSION
APO 391
Public Health Sub-Commission

8th October 45.

AC/3020/3/22

SUBJECT: - Fascist Decree confirming charitable
bequests to O.N.M.I.

TO : - Legal Sub-Commission.

Reference your AC/4082/6/L of 22 September, this Sub-Commission has now been informed that the Italian Government has passed a decree, which will be published in a few days, confirming the one previously passed by the Fascist Government regarding the acceptance of bequests by O.N.M.I.

LEGAL SUB COMMISSION

TO THE DIRECTOR:

CLO

DCLO

Chief Counsel

CJO

Chief Clerk

CLAS

9 OCT 1945

Guariga
G.H. FRIEDMAN, Colonel,
Deputy Director,
Public Health Sub-Commission. *ed*

*P.L. Howard only
Cmmt. 4/1/46
Copy of a letter received from P.H.S.
is forwarded for your information &
that of the Commission. B.M.*

21A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
22 Sept 1945

AC/4082/5/L.

SUBJECT : Decrees of the Republican Fascist Government confirming bequests
to and purchases by O.N.M.I.

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

1. Reference your letter LEG/5055 of 19 Sept 1945 re O.N.M.I.,
the question is being dealt with by Public Health Sub-Commission, to which
all correspondence and documents have been passed, as notified to you in
this sub-commission's letter AC/4082/8/L of 24 July 1945.

By command of Rear Admiral STONE:

37

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

(20A)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
22 September 1945.

AC/4082/8/L.

SUBJECT : Decree of the Fascist Republican Government confirming charitable bequests to and purchases by O.N.M.I.

TO : Public Health 3/C.

1. Further to our AC/4082/8/L and your AC/3020/3/PH of 25 July 1945, a further letter from the Commissario of O.N.M.I. is forwarded to you for necessary action.

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

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Incl: Letter fr Commissario Straordinario of O.N.M.I.
Prot. No. 7148 dtd 6 Sept 45.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LOMBARDIA REGION
APO 394
Legal Division

Ref.: LEG/5028

26 July 1945

SUBJECT : Commissioner Extraordinary for the Republican
ex-Ministry of Justice.

TO : HQ Allied Commission
Legal Sub-Commission

16A

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1. This Headquarters is in entire agreement with your letter to the Ministry on the above subject, copy of which was enclosed with your AC/4082/8/L. dated 23rd July 1945.
2. Since the visit of Judge Zingale, there are no archives or assets in this Region which require a Commissario to protect them, nor, so far as is known, has the ex-Commissario ever taken the slightest interest in them.
3. This Division has adopted from the outset the policy of bringing the Senior Italian Magistrates into direct contact with the Ministry in Rome and of restoring the normal system of administration.
4. The superfluous interposition at this date between the Ministry and the judiciary of a local Commissario, whose sole function would be to "supervise" the work of the latter, is calculated to cause considerable resentment amongst the magistrates and to be of no value whatsoever to the Italian Government.

./.

-2-

5. With regard to the last paragraph of your letter, if the Italian Government should nevertheless decide to appoint a Commissario and should select for the post Avv. Aurelio Becca, it is requested that the Decree be not implemented so long as this Region is under Allied Military Government. The Regional Commissioner having declined to confirm Avv. Becca's nomination as Commissario by the C.L. N.A.I. on the ground that such a post was no longer necessary and every effort having been made to prevent his unofficial interference with the magistracy, his official reinstatement in office would produce an impossible situation.

For the Regional Commissioner :

H.M. Dickie
H.M. DICKIE
W/Comdr., R.A.F.
Regional Legal Officer.

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ar/

LEGAL SUBCOMMISSION	
CLO	<i>lu</i>
DCLO	
Chief Counsel	
CJO	
Italian Section	<i>h</i>
CL RKS	

27 JUN 1947
5761 40C 1246

4088/8 ✓

(18A)

HEADQUARTERS ALLIED COMMANDER
APO 394

Public Health Sub-Commission

25 July 65

AG/3020/3/PA

SUBJECT: - Requests to and Purchases by O.N.M.I.

TO : - High Commissioner for Public Health.

1. The attached copy of a letter to the Legal Sub-Commission, from the Legal Officer Lombardia, together with numerous letters from O.N.M.I. are forwarded to you for your opinion please.

2. When replying, please return the O.N.M.I. letters.

For the DIRECTOR:

G. M. FRIZZELL
G. M. FRIZZELL,
Lt Colonel,
Chief, Public Health for 33.

Copy to: - Legal Sub-Commission.

Incls:

As stated above.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

ES/lc.

24 July 1945.

AC/4082/B/L.

SUBJECT : Decrees of the Republican Fascist Government
confirming charitable bequests to and purchases by
O.N.M.I.

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

Your LEG/5055 of 16 July 1945 was passed to the
Public Health Sub-Commission which will consult the Ministry of
Interior and the decision taken will be communicated to you.

By command of Rear Admiral STONE:

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

File.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

16A

AO/4082/8/L.

/lc.
23 July 1945

SUBJECT : Commissioner Extraordinary for Republican
ex Ministry of Justice.

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

1. This Sub-Commission has been approached by the
Presidency of the Council of Ministers (Undersecretary Amendola)
with a view of obtaining the appointment of the above
Commissioner.

2. Enclosed is this Sub-Commission's reply. Do you
agree?

By command of Rear Admiral STONE:

31

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

Incl.

NEW YORK TWO ALIEN COMMISSION
 AND 39A
 LOCAL SUB-COMMISSION

15A

10/1082/8/1.

21 July 1945.

SUBJECT : Commissioner Extraordinary for Republican ex Ministry
 of Justice.

TO : The Ministry of Pardon and Justice.

Reference your Prot. No. 4712 (Cab. Off. Coll.).

1. The Regional Commissioner LOMBARDIA considers that there exists no reason for the appointment of a commissioner to the ex fascist Ministry of Justice because the representatives of the Ministry of Justice in Rome can deal with all the archives and assets of the said dicastero.

2. As you very well point out the former Minister sent 4 officials who spent two weeks in the North and who as far as we know have done whatever was considered necessary at the time.

3. In these conditions it is felt that it is not a function of AMG to add expenses to the Italian budget by paying salaries and indemnities to a person whose duties would be, to say the least, far from essential to the welfare of Italy.

4. If, however, the Presidency of the Council or the Ministry of Justice are of a different opinion they may very well appoint a Commissario to the Republican Ministry by decree and such decree will be implemented by AMG if so desired.

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Copy to : NO (Attn: RLO)
 LOMBARDIA Region.

C. C. HUGHES, JR.,
 Lt. Col.,
 Officer i/o Italian Branch,
 for Chief Legal Advisor.



Ministero di Grazia e Giustizia

Ufficio di Collegamento con l'A.C.

Mod. 2

Gabinetto di S.E. il Ministro

Roma 20 luglio

1945 A

Protocollo 12672

OGGETTO Commissari straordinari.

Alla Commissione Alleata
Sottocommissione Legale

R o m a

Dalla Presidenza del Consiglio dei Ministri è pervenuta la lettera che si allega in copia relativa alla necessità della ratifica della nomina dell'Avv. Aurelio Becca a Commissario straordinario per gli uffici del Ministero della Giustizia del Nord da parte del C.L.N.A.I.

Poichè è opinione di questo Ministero che tale ratifica non sia necessaria, trattandosi di un ufficio che ha cessato completamente di funzionare, e per la liquidazione del quale (trasporto archivi) sono stati tempestivamente inviati da questo Ministero appositi funzionari, si prega di volere comunicare il punto di vista di codesta Commissione sulla necessità che permanga in loco tale commissario straordinario per potere avere ulteriori elementi di risposta alla Presidenza del Consiglio.

L'UFFICIALE DI COLLEGAMENTO
(Dr. Giorgio Bonelli)

Bonelli

PRESIDENZA DEL CONSIGLIO DEI MINISTRI
Gabinetto

Roma, 16 luglio 1945

N. 40875/21.2

Al Ministero di Grazia e Giustizia

R o m a

O G G E T T O : Commissari straordinari.

Si porta a conoscenza che subito dopo l'insurrezione d'aprile, il C.L.N.A./I. ha nominato Commissario Straordinario per gli uffici di codesto Ministero trasferitisi da Roma al Nord con il governo fascista, l'Avv. Aurelio Becca, allo scopo di provvedere ai bisogni urgenti delle varie amministrazioni e di coordinarne l'attività nella nuova situazione creatasi.

Qualora codesto Ministero non abbia ancora provveduto alla ratifica della nomina suddetta, si prega di volerlo fare al più presto, dandone comunicazione comunque a questo Sottosegretariato di Stato incaricato dei collegamenti con il Nord, in modo che il lavoro per affrettare l'unificazione dei due rami dell'amministrazione non abbia a subire intralci.

In questo senso, a proposito dei casi più volte occorsi di elementi inviati da Roma per assumere la gestione di Enti a carattere nazionale che hanno già avuto Commissari nominati da parte del C.L.N.A.I., si ritiene giustificata l'opinione del Comitato Liberaazione Nazionale Alta Italia, secondo la quale l'unificazione della gestione delle Aziende e degli Enti a carattere nazionale, non deve essere compromessa da atti arbitrari, e la scelta delle persone da proporre all'Ente e all'Organizzazione unificata, deve essere fatta d'intesa col C.L.N.A.I. stesso.

IL SOTTOSEGRETARIO DI STATO
F.to Giorgio Amendola

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UNITED STATES ARMY
AFD 394
LEGAL SUB-COMMISSION

13A

AG/4082/8/L.

/mt.
11 July 1945.

SUBJECT : Acts of Republican Fascist Government.

TO : Chief, Property Control Division, Finance Sub-Commission.

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1. You will recall that I signed letter AG/4082/8/L of 10 July 45 for you in great hurry.

2. There are two typing mistakes in para 5 (b), where the words "requisitioned" and "requisition" should read "sequestered" and "sequestration".

3. I should be grateful if you would amend your letter accordingly.



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

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original handed to Mr. [unclear]

HEADQUARTERS ALLIED COMMISSION
A.P.O. 394
LEGAL SUB-COMMISSION

12A

AC/1082/8/L

10th July 1945

SUBJECT: Acts of Republican Fascist Government

TO: Chief, Property Control Division, Finance Sub-Commission

1. In reply to your AC/021.1/CP of 9 July 1945, I think that your statement represents the larger part of the agreement which we reached.
2. As I told you, I think that the position falls to be examined in the light of D.L. No 249 of 5 October 1944, which prescribed rules for determining the validity or invalidity of acts of the Fascist Republican Government.
3. Under this law by Art 1.(2) all confiscations and sequestrations of the Fascist Republican Government are void, and by Art 2 (3) all administrative acts, based on laws of the Fascist Republican Government are also void.
4. However by Art 4 all administrative acts not previously covered by the decree are validated.
5. I think the true effect of this is that :-
 - (a) In any property to which a sequesterator had been originally appointed by the Italian Government (i.e. prior to 8 Sept 1943) any acts done by the sequesterator, whether the original sequesterator or a substitute appointed by the Fascist Republican Government, are valid.
 - (b) When property was originally ^{sequestered} requisitioned since 8 Sept 43 by the Fascist Republican Government, such ~~requisition~~ ^{sequestration} is void and the property should be restored to the original owner. In such case it appears doubtful whether in strict law any liability can be charged against the Italian state for any loss incurred, and it might be that the only right of compensation is against the sequesterator personally.

S. E. SEPTANS,
Colonel,
Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 384
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

AC/C21.1/CP

9 July 1945

Subject: Acts of Republican Fascist Government
with respect to Allied property.

To : Legal Sub-Commission, AC.
(Attn: Colonel Behrens, C.L.C.)

1. Does the statement on the attached sheet fairly
represent the point of view expressed in our conversation
of this morning?

Edward C. King
EDWARD C. KING
Lt. Col., Spec. Res.
Chief, Property Control Division
Finance Sub-Commission

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Enclosure

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CIO	
ADMIN. STAFF	
CLERKS	
9 JUL 1945	

8
HEADQUARTERS ALLIED COMMISSION
APO 394
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

ECL/ev

120

AC/G21.1/CP

9 July 1945

MEMORANDUM:

Acts of Republican Fascist Government
with respect to Allied property.

1. This morning Colonel Behrens, C.D.C., and the undersigned, conferring with regard to the effect to be given to acts of the Republican Fascist Government, reached the following conclusion:

- a After the formation of the R.F.G., and until it was replaced by A.S.G., the said R.F.G. was the only government, and therefore was the de-facto government, in the area which it controlled.
- b The Leggi di Guerra, under which Allied properties had been sequestered and managed, were, at the time of the formation of said R.F.G., an integral part of the laws of the legitimate Italian Government. Accordingly, acts performed pursuant to such laws, whether by the original sequesterator or by appointees of the R.F.G., should be given full effect, in the same way as laws relating to marriage, to successions, and to transfers of real estate are given effect.
- c In view of the above, the following specific conclusions were reached:
 - 1) Sales, transfers, leases, and the like, made by sequestrators or liquidators acting pursuant to the said Leggi di Guerra are prima facie good, even though such sequestrators or liquidators were appointed by the R.F.G.
 - 2) If an Allied owner (of property which was the subject of any such transaction) feels that the sale, transfer or lease was improperly made

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his remedy should be sought in the Italian courts, and/or by seeking indemnification from the Italian Government when machinery is created for that purpose.

- 3) The R.F.G. could remove a sequestrator and appoint a successor just as it could remove and replace a Prefect or other official holding office under laws of the former legitimate government.

EDWARD C. KING

23

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

SUBJECT : Legal status of Italian-owned equipment
requisitioned by the Germans.

7 May 1945.

TO : V. P., C. A. Sec.

Herewith is submitted the opinion of this Sub-Commission upon the questions raised in AD/506 of 2 May 1945.

Requisitions in the name of the Fascist or Republican Fascist Governments.

1. Under Italian law the rules covering requisitions are prescribed in RD No. 1741 of 8 Aug 1940. Under this decree property may be requisitioned "per acquisto", in which case title thereto vests in the Italian state, or it may be requisitioned "per uso" when title remains in the private owner. The form of receipt given in each case will show into which category a particular requisition falls, but

- (a) Immovables, including commercial undertakings may only be requisitioned for use; and
- (b) Movables which are consumed or substantially changed in the course of use may only be requisitioned for acquisition.

All requisitions by the Fascist Government before 8 Sep 1943 are covered by the rules laid down in this decree.

2. So far as concerns requisitions by the Republican Fascist Governments since 8 Sep 1943, these may have been made under the terms of the 1940 decree or under some special Republican Fascist law, the contents of which (if any) are unknown to this Sub-Commission. In either case the validity of the requisition is determined by the provisions of D.L. No. 249 of 5 Oct 1944 which establishes rules for the treatment of the legislation and administrative acts of this so-called Government.

Under this D.L., if the requisition was made in pursuance of a special Republican Fascist law, the requisition is null and void and title to the property purported to have been requisitioned remains in the private owner thereof.

It is reasonable to assume, however, that requisitions were made under the decree of 1940. In this case they are to be considered valid until formally declared invalid at the instance of the interested party. No such declaration will yet have been made so that the principles laid down in paragraph 1 apply.

Requisitions in the name of the Germans.

3. All such requisitions are governed by international, not Italian, law.

- 2 -

4. The German forces, by virtue of their occupation, were entitled to requisition goods and services in accordance with Art. 52 of the Laws and Customs of War.
5. In the case of immovable property so requisitioned the title remains in the private owner. Compensation for use falls to be paid by the German State.
6. In the case of moveable property it is a disputed question whether the title to requisitioned property remains in the private owner or vests in the requisitioning state. It is the opinion of this Sub-Commission that the title vests in the requisitioning state - in this case the German State. When such property therefore falls into the hands of the armed forces of a country at war with Germany, title thereto passes to the Government of the armed forces concerned, the Italian Government or the Allied Governments as the case may be.
7. It is of course possible that "requisitions" were made by the German forces contrary to the Laws and Customs of War e.g. the property requisitioned may not have been "for the needs of the army of occupation", as properly interpreted and no receipt or payment may have been given. In such cases, as a matter of law, the "requisition" is mere theft and the title to the property remains in the private owner. As a practical proposition it appears extremely doubtful whether this aspect of the problem is worth consideration.

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W. A. BARRETT,
Colonel,
Deputy Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION

AFC 394

CIVIL AFFAIRS SECTION

5 April 1945.

40/4082/18/L.

SUBJECT: Fascist Republican Legislation.

TO: Regional Commissioner (Attn: Regional Legal Officer),
TOSCANA, EMILIA, LIGURIA, FRIULI, VENETIA,
LOMBARDIA and VENEZIA Regions, SCIO, 5th & 8th Army, and HQ IV Corps.

1. The so called Government of the Italian Social Republic has never been recognized by the United Nations or by the Italian legitimate Government.

2. Consequently all acts of this so called Government or its officials must be considered null and void in so far as they affect territories under AM or Italian administration except as provided under para 3 below. The statement in a communication of Article III that "Your existing laws will remain in force and effect" refers to Italian laws as it existed on 8 September 1943. It does not refer to subsequent modifications of this law introduced by the Government of the Italian Social Republic.

3. The Italian Government in agreement with this Sub-Commission has promulgated a decree defining and delimiting the effects of the various acts (legislative, judicial and administrative) issued by the so called Fascist Republican Government during the period of their de facto administration of territory now liberated. This decree (Legislative Decree of the Lieutenant General No. 249 of 5 October 1944, adjustment of legislation in liberated territories) will in due course become effective in your Region by virtue of the usual implementation procedure of Italian legislation.

4. Pending such implementation you will ensure that no legislative provision purportedly issued by the so called Fascist Republican Government is enforced in your Region and that no action is undertaken by allied or Italian authorities in respect of the judicial and administrative acts of such Government which would be contrary to the terms of the above mentioned decree.

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existing laws will remain in force and effect. refers to Italian law as it existed on 8 September 1943. It does not refer to subsequent modifications of this law introduced by the Government of the Italian Social Republic.

3. The Italian Government in agreement with this Sub-Commission has promulgated a decree defining and delimiting the effects of the various acts (legislative, judicial and administrative) issued by the so called Fascist Republican Government during the period of their de facto administration of territory now liberated. This decree (Legislative Decree of the Lieutenant General No. 249 of 5 October 1944, Adjustment of legislation in liberated territories) will in due course become effective in your Region by virtue of the usual implementation procedure of Italian legislation.

4. Pending such implementation you will ensure that no legislative provision purportedly issued by the so called Fascist Republican Government is enforced in your Region and that no action is undertaken by Allied or Italian authorities in respect of the judicial and administrative acts of such Government which would be contrary to the terms of the above mentioned decrees.

5. An English translation of the decree No. 249 is appended for your guidance.

6. This directive is issued for distribution to HQ's.

By Command of Major General STONE:

G. R. L. [Signature]

G. R. L. UPJOHN, Major,
VF-61, 3rd AG

Incl. Translation of ILL 249
of 5 Oct 1944.

LEGISLATIVE DECREE OF THE LIEUTENANT GENERAL OF THE KINGDOMNO. 249 OF 5 OCTOBER 1944Adjustment of the legislation in liberated territories

UMBERTO DI SAVOIA ETC...

ART. 1.

The following measures and provisions enforced under the rule of the so called Government of the Italian Social Republic are void of any legal efficacy:

- (1) legislative provisions, regulations and acts of the Government;
- (2) confiscations and sequestrations ordered by any administrative or political authority;
- (3) sentences rendered and orders issued during pretrial investigation by the Special Tribunal for the defense of the State or by any other body of judicial character with penal jurisdiction newly (ex novo) constituted by said Government;
- (4) penal sentences rendered by ordinary judicial authority and orders issued during pretrial investigations applying the rules of penal character enacted by said Government;
- (5) grants and revocations of citizenship;
- (5) suspensions and cancellations from professional rolls made for political reasons;
- (7) awards of decorations.

ART. 2.

The following measures and provisions enforced under the rule of the aforesaid so called Government are equally void of any legal efficacy: -

- (1) provisions concerning appointment, career, or termination of service of State employees, employees of public bodies and of bodies subject to State supervision or control (tutela) or to the control of which the State has contributed or in the financing of which the State participated in any form whatsoever.

- body of judicial character with penal jurisdiction newly (ex novo) constituted by said Government;
- (4) penal sentences rendered by ordinary judicial authority and orders issued during pretrial investigations applying the rules of penal character enacted by said Government;
- (5) grants and revocations of citizenship;
- (6) suspensions and cancellations from professional rolls made for political reasons;
- (7) awards of decorations.

ART. 2.

The following measures and provisions enforced under the rule of the aforesaid so called Government are equally void of any legal efficacy: -

- (1) provisions concerning appointment, career, or termination of services of State employees, employees of public bodies and of bodies subject to State supervision or control (tutela) or to the control of which the State has contributed or in the financing of which the State participated in any form whatsoever; assignments to positions of stock broker or notary agents, however, the validity of notarial acts executed prior to the effective date of the decree;
- (2) administrative acts issued on the basis of laws and regulations enacted by the Italian Government;
- (3) grants in concession of inalienable state property and acts of transfer of alienable state property;
- (4) acts disposing of property of bodies constituted under public law, of confederations, federations, syndical associations (trade unions), the National Institute for cooperation (Ente Nazionale delle Cooperazioni) and the cooperatives of which it is composed, even if such bodies have already been dissolved and

their property in liquidation at the time the said Government was constituted; orders subjecting such bodies to liquidation and their merger.

ART. 3.

However, such provisions as set out in Art. 2 may be validated by decree of the competent Minister with due justification within one year after the effective date of the present decree.

The aforesaid Ministerial decree may restrict such validation to limited effects.

ART. 4.

Administrative provisions and measures other than those set out in the preceding articles are hereby validated.

However, they may be declared ineffective (inefficaci) automatically (di ufficio) or upon request of interested parties by a decree of the competent Minister with due justification within one year after the effective date of this decree.

Such faculty may not be exercised in respect of measures effecting personal status, entries in the mortgage registers, entries of transfers and other transactions involving real property.

ART. 5.

Sentences rendered under the so called Government of the Italian Social Republic by any ordinary judicial authority and orders issued in pretrial investigation in penal proceedings for offences under Part I of Book 2, Art. 415, 503 and for contraventions under Art. 650 and 656 of the Penal Code as well as sentences rendered and orders issued in pretrial investigations by military tribunals are void of any legal efficacy.

However, upon petition of the Procuratore Generale of the competent Court of Appeal or of the Procuratore Generale of the Supreme Military Tribunal, such Court or the Supreme Military Tribunal respectively may give effect to the sentence or to the order whenever it is ascertained that the offence was not inspired by a motive of hostility against the said

ART. 5.

Sentences rendered under the so called Government of the Italian Social Republic by any ordinary judicial authority and orders issued in pretrial investigation in penal proceedings for offences under Part 1 of Book 2, Art. 415, 503 and for contraventions under Art. 650 and 656 of the Penal Code as well as sentences rendered and orders issued in pretrial investigations by military tribunals are void of any legal efficacy.

However, upon petition of the Procuratore Generale of the competent Court of Appeal or of the Procuratore Generale of the Supreme Military Tribunal, such Court or the Supreme Military Tribunal respectively may give effect to the sentence or to the order whenever it is ascertained that the offence was not inspired by a motive of hostility against the said Government or against German authorities.

ART. 6.

Excepting the cases provided for by the preceding articles all judgments in civil and penal matters and acts of non contentious jurisdiction rendered by the ordinary judicial authority under the rule of the so called Italian Social Republic are hereby validated.

However, upon petition of the interested party and also of the Procuratore Generale in cases where the intervention of the public prosecutor (Pubblico Ministero) is admissible, the competent Court of appeal may declare ineffective (inefficaci) such judgments in civil and penal matters and acts of noncontentious jurisdiction rendered by ordinary judicial authorities, in respect of which there is good reason to believe that the decision was influenced by the then prevailing political situation. Judgments in civil matters and acts of noncontentious jurisdiction rendered

by ordinary judicial authorities in application of rules enacted by the Government of the so called Social Republic may be equally declared ineffective (inefficace) except where the decision would have been the same under the legal provisions enacted by the Italian Government or could stand on motives other than those set forth in the judgment.

The petition set out in the preceding article must be made within six months after the effective date of this law and the decision of the Court of Appeal shall be rendered in chambers after the Court has heard the Procuratore Generale and the parties.

If the judgment which has been declared ineffective was rendered on appeal, the judgment given in the first instance shall remain in force provided that it was pronounced prior to the constitution of the so called Government or has not been covered by the petition for declaration of inefficacy (inefficacia) set out in the preceding paragraph.

The petition set out in the second paragraph may be made also in cases where an appeal (ricorso) was lodged with the Court of Cassation against a sentence rendered by a Court of second instance and such appeal was rejected in full or in part.

Such petition for declaration of inefficacy may be made within the time limit established in Art. 9, para 2, in respect of judgments rendered by the Section of the Supreme Court of Cassation transferred from Rome by order of the so called republican Government. The petition shall be decided by the Court in joint session of the Sections sitting in chambers. If the petition is granted the original appeal in Cassation shall remain in effect and shall be adjudicated by the Court in ordinary proceedings. The First President shall have the power to grant, if necessary, new procedural delays for the regular hearing of the appeal.

ART. 7.

The provisions of the preceding article shall also apply to decisions rendered by bodies exercising special administrative jurisdiction; the Court of Appeal, however, shall be substituted by the Court of Account in respect of decisions rendered by the latter or by the Consiglio di Prefettura, and by the Stato Council (Consiglio di Stato) in its juridical capacity in respect of decisions rendered by any other body with administrative jurisdiction.

The Ministry concerned may also request a declaration of inefficacy provided that it was not a party to the

Such petition for declaration of inefficiency may be made within the time limit established in Art. 9, para 2, in respect of judgments rendered by the Section of the Supreme Court of Cassation transferred from Rome by order of the so called republican government. The petition shall be decided by the Court in joint session of the Sections sitting in chambers. If the petition is granted the original appeal in Cassation shall remain in effect and shall be adjudicated by the Court in ordinary proceedings. The First President shall have the power to grant, if necessary, new procedural delays for the regular hearing of the appeal.

ART. 7.

The provisions of the preceding article shall also apply to decisions rendered by bodies exercising special administrative jurisdiction; the Court of Appeal, however, shall be substituted by the Court of Account in respect of decisions rendered by the latter or by the Consiglio di Prefettura, and by the State Council (Consiglio di Stato) in its juridical capacity in respect of decisions rendered by any other body with administrative jurisdiction.

The Ministry concerned may also request a declaration of inefficiency provided that it was not a party to the proceedings.

ART. 8.

Copies of any document which according to law must bear the name of the Head of the State shall be issued with such heading. After the effective date of this decree in judicial proceedings the service of summons and documents bearing a formula other than that established by Art. 475 of the Code of Civil Procedure shall be of no effect.

ART. 9.

In respect of territories which have not yet been liberated or if liberated have not yet been transferred to the administration of the Italian Government the delays established in it is decree and commencing from its effective date shall commence from the date of the aforesaid transfer of administration.

The petition provided for by Art. 8, last para, must be filed within six months from the date of transfer under the administration of the Italian Government of the territory where the Sections of the Supreme Court of Cassation transferred from Rome by order of the so called Republican Government have functioned. If, however, on such date the seat of the Court which rendered the judgment opposed by appeal in Cassation (on which the Sections have passed decision) has not yet been transferred to the administration of the Italian Government the aforesaid delays shall commence from the later date of transfer.

We order

Transal. GAF/23 20 Oct. 1944.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

GGH/mt.

11 January 1945.

AC/4082/C/L

SUBJECT : Fascist Republican Laws.

TO : Regional Commissioner (Acting Regional Legal Officer),
EMILIA Region.

Ref. your RIX/LZ/781/203 dated 5 Jan. 45.

1. By existing law is understood all legislation passed by the recognized government of Italy. Enactments promulgated by a body of persons who, as far as the United Nations are concerned, have no constitutional or legal status are automatically null and void.

2. You are no doubt aware that legislation to that effect has already appeared in the Gazzetta Ufficiale (D.L. No. 245 of 5 Oct. 44, published in G.U. of 18 Oct 44, No. 70).

This decree has been implemented in AMG territory and will in due course become law in Ravenna Province.

3. It can hardly be conceived that Italians now under the legitimate government of Italy (whose powers are only suspended by the fact of the Allied administration) could be tried under two different legislations, i.e. in restored territory, by normal Italian procedure, in AMG territory, under procedure instituted by the enemy.

4. In cases of urgency you are always at liberty to legislate by Provincial Order.

5. Please advise the President of the Tribunale that he will NOT deal with the cases mentioned under the provisions of the Republican Fascist decree of 8 Jan 44.

By command of Rear Admiral STONE:

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

NR

4082/8 ✓
file

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HEADQUARTERS EMILIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

REF : RIX/IE/7E1/263.

WH1/nee.
5 January 1945.

SUBJECT: Fascist Republican Laws.

TO : Deputy Chief Legal Advisor, Legal Sub-Commission,
Headquarters, Allied Commission, APO 394.

1. There are pending on the calendar of the Ravenna Tribunale and ready for trial, 76 cases involving anonymous offenses. By Legislative Decree of 8 January 1944, No. 4, of the Fascist Republican Government, a special procedure was established for the hearing of this class of case.

2. As I understand the procedure established by this decree, there is first a hearing before a special administrative Board, and then a subsequent hearing before the Tribunale under "Direttissima". At the hearing before the Tribunale, the Court consists of the Section President, and one judge. In lieu of the third judge, an "expert" is nominated by the President of the Tribunale to sit with the court. He is selected from a panel chosen by the various Fascist Syndicates. There is no right of appeal from the decision of the Tribunale.

3. The President of the Tribunale informs me that in his opinion, "the accused will be given a fair trial" under this procedure, and he requests authority to continue with these cases, in order to avoid the delay and confusion that will result if these cases must be reprocessed. 16

4. According to Article III, Part I of Proclamation No. 1, "existing laws" remain in full force and effect except insofar as changed by proclamation or order of the Military Governor. The law in question was an "existing law", at the time Allied Troops entered Ravenna Province, and I do not know of any proclamation or order of AMG to date changing or superceding this law.

5. Because of the important policy question involved, I prefer to have a decision from you as to whether this law is to be considered in force, and authority given for the trial of these cases thereunder.

6. At the same time, I would appreciate being advised, if you rule that the law is still in force, whether your ruling applies generally to all Fascist Republican legislation.

For the Regional Commissioner:

William H. Levitt

WILLIAM H. LEVITT
Major, J.A.G.D.
Regional Legal Officer:

10 JAN 1945

HEADQUARTERS

10 JAN 1945

A.

C.

HEADQUARTERS ALLIED COMMISSION
ATO 394
LEGAL SUB-COMMISSION

AC/4282/6/1.

10 Nov. 1944

SUBJECT: Republican Fascist Laws.

TO : Regional Commissioner (Attn. Regional Legal Officer)
TOSCANA Region.

With regard to the letter of the Legal Officer for the Province and city of Florence -ref. FI/30 dated 27 Oct 44, we are sending you herewith a further copy of the Official Gazette No. 70 of 18 Oct. 1944 containing D.L.L. No. 249 of the 5th Oct. together with a translation thereof, in case the copies circulated thru channels have failed to reach him in the meantime.

By command of Contradore STONE:

Enclosure:

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

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ALLIED MILITARY GOVERNMENT
HEADQUARTERS
FLORENCE PROVINCE

PL/30

27 October 1944

SUBJECT: Republican Fascist laws.

TO : First President of the Court of Appeals.

1. You will recall our conversation in the first days after our occupation of the City of Florence regarding to Republican Fascist laws. At that time you mentioned the injustice of the Republican Fascist black market laws mentioned below, and I in turn raised the question as to whether all laws enacted by the Republican Fascist Government should not be abrogated by the Allied Military Government.

2. I have now ascertained that the Italian Government in territory under the direct jurisdiction of the Italian Government has not enacted any law abrogating the Republican Fascist laws in effect in such territory during its occupation by the Republican Fascist Army and German troops and that its view is that it is unnecessary to do so in view of the fact that it is considered that all laws made by the un-constitutional republican Fascist Government are inso facto null and void. At the same time the Italian Government recognized that certain persons acquired rights under the Republican Fascist legislation during the period when they were lawfully in effect in accordance with the international law of war and that the status of invalidity of such laws as to the future does not affect persons who claim to have acquired rights thereunder before the arrival of Allied troops.

3. The Allied Military Government, therefore, considers that the matter will be handled in the same way in Military Government territory. You are, therefore, instructed that all legislation enacted by the Republican Fascist Government and all laws and orders, if any, issued by the German Army became null and void from the time of effective occupation by Allied forces of any territory in question and that, therefore, the Italian courts are to give no recognition to such legislation and laws after such date, provided, however, that the Italian courts shall recognize the rights which persons have acquired under such laws during the occupation of the territory by the Republican Fascist Government or German troops, as the case may be, to the extent that it is required to do so under international law or such Italian legislation as may hereafter become effective in this Province.

have now ascertained that the Italian Government in territory under the direct jurisdiction of the Italian Government has enacted any law abrogating the Republican Fascist laws in effect in such territory during its occupation by the Republican Fascist Army and German troops and that its view is that it is unnecessary to do so in view of the fact that it is considered that all laws made by the un-constitutional Republican Fascist Government are ipso facto null and void. At the same time the Italian Government recognized that certain persons acquired rights under the Republican Fascist legislation during the period when they were lawfully in effect in accordance with the international law of war and that the status of invalidity of such laws as to the future does not affect persons who claim to have acquired rights thereunder before the arrival of allied troops.

3. The Allied Military Government, therefore, considers that the matter will be handled in the same way in Military Government territory. You are, therefore, instructed that all legislation enacted by the Republican Fascist Government and all laws and orders, if any, issued by the German Army because null and void from the time of effective occupation by Allied forces of any territory in question and that, therefore, the Italian courts are to give no recognition to such legislation and laws after such date, provided, however, that the Italian courts shall recognize the rights which persons have acquired under such laws during the occupation of the territory by the Republican Fascist Government or German troops, as the case may be, to the extent that it is required to do so under international law or such Italian legislation as may hereafter become effective in this Province.

4. This disposes of the recommendation you made in your communication of the 35th August for the abrogation of the black market decrees of the Republican Fascist Government of the 7 January 1944, No. 4, and 12 March 1944, No. 99, for these laws are already null and void. R.D.I. 22 April 1943, No. 245 the black market law enacted by the then constitutional Italian government, therefore, would seem to remain in effect unaffected by such laws, although that is something to be decided by your Italian courts. With respect to your recommendation as to the amendment of Arts. 23, 24, and 25 of the 1943 law, I am taking this up with higher authority.

HENRY L. GLENN

MAJOR, JAGD.

Legal Officer for the
Province and City of
Florence

Copy to:

-R.L.O., Toscana Region--

W/Cdr. Bixie, Adj. 5 Army

Hq., A.C.U., Legal Sub-Commission ✓

(Att. Officer 1/c Division Courts)

LEGAL SUB-COMMISSION	
C/O	
D.C.O.	
Chief Counsel	
C/O	
Italian Section	
CL RKS	13

(6A)

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4082/B/L.

/r1p/
22 October 1944/

SUBJECT : Fascist Republican Legislation.

TO : Regional Commissioner (Attn: Regional Legal Officer).
TOSCANA Region.

1. Reference is made to your RV 111/19/2013 dated 20 Oct 44 and basic communication attached.

2. The presumption referred to in par. 2 of the FLOS letter is correct, namely, that the only laws recognized are those of the constitutional Italian Government.

3. In regard to the "acts and provisions" of the so-called Republican Social Government a legislative decree, published in the Official Gazette on 18 October depriving certain of such acts, etc. of juridical effect, is in course of circulation to you for information with the customary memorandum. On this occasion a translation of the decree is attached in order that you may be better able to enlighten all concerned as to its scope pending action as to its implementation.

By Command of Commodore STONE:

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

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1st Ind.

✓
4082/8

(5A)

BVIII/19/2013

Regional Legal Officer, Toscana Region, 20 Oct. 44.
TO : Chief Legal Advisor, Hqtrs, ACC.

1. It has been decided to forward the basic communication to your office with the intent in mind of communicating your reply to all Provincial Legal Officers for their information and guidance, in as much as the proposition does not seem to be clear in the minds of several of such officers.

[Signature]
JOHN R. WEBER,
Colonel, Infantry,
Regional Legal Officer.

	LEGAL SUB-COMMISSION	
	CLO	
→	CCLO	✓
	Chief Counsel	
	CJO	
→	Public Section	✓
	CL RKS	
21 OCT 1944		

ALLIED MILITARY GOVERNMENT
HEADQUARTERS
FLORENCE PROVINCE

4A
P.O.

FL/30

11 October 1944

SUBJECT: Fascist Republican Legislation.

TO : C.L.O. HQ, A.C.C. (through R.L.O., HQ.,
AMG., Toscana Region)

1. From the early days of the occupation here in Florence, I have had under discussion with the First President of the Court of Appeals the question of the applicability of laws enacted by the Fascist Republican Government. Art. III of Proclamation No.1 provides that, "all existing laws" would remain in force and effect until abrogated. Presumably this is intended to be applicable only to the existing laws of the Constitutional Italian Government and not those of the Rebel Republican Fascist Government.

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2. It appears from your communication of the 18th September 1944 (AOC/4082/8/L) on the above subject that there has been no Italian Government decree repealing Fascist Republican Legislation. Notwithstanding this I assume that the position recognized by the Italian Government and A.C.C. is that all Fascist Republican Legislation is null and void in territory occupied by the Allied forces, but will you kindly advise me if this conclusion is proper and if so whether it is sufficient to notify the Italian Judicial Authorities to this effect by letter without the necessity of a formal Provincial order or the awaiting of a Regional or General Order to that effect.

HENRY H. GLENN,
Major, JAGD.,

Legal Officer for the Province
and City of Florence.

HLG/FV

RVm/14/2013

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4082/8/L.

/ap.
22 September 1944.

SUBJECT : Fascist Republican Legislation.

TO : H. E. The Minister of Justice.

1. Shortly after the fall of Rome a study of so called Fascist Republican laws was begun by Your Ministry with a view to taking the necessary action with regard to them.

2. While this subject has been frequently referred to in our conferences, thus far the only tangible result has been the issuance of the circular of 9 August 1944. Incidentally, I suggest that this circular be given some publicity, so that in addition to the judiciary, the public will have some knowledge of it.

3. It is extremely important not only from the Italian standpoint but also from the standpoint of ACC legal officers particularly in territory now occupied and to be occupied, that further measures be taken by Your Government with respect to so called Fascist Republican laws other than those already dealt with in the above mentioned circular. enacted after the Italian Government moved from Rome to Brindisi. At present there is a great amount of uncertainty and confusion in the minds of everyone as to what attitude is to be taken with respect to these Fascist Republican laws not so far dealt with by Your Government. I trust that some early solution will be arrived at.

RICHARD H. WILMER,
Colonel, CAG.,
Chief Legal Officer.

file 4022/8

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(2)

SUBJECT Fascist Republican Laws

To C.L.O

Arising out of item 7 on this
moms agenda I thought the
position regarding the apm laws required
considerable ~~and~~ clarification.

I think the Govt should be
urged to pass whatever legislation is
necessary or if no such legislation is
necessary to issue a clear cut directive
to which publicity should be given
stating the position.

The matter seems true to be 8

urgent.

Wobes
pky

Graham

Recd.
21/9/44

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

CEH/pa.
18 Sept 44.

ACC/4082/E/L.

SUBJECT : Fascist Republican Legislation - (Tribunale Speciale).

TO : Regional Legal Officers (THRU: Regional Commissioner) Regions I, IV, V, VI, VIII, IX, XI and XII, Southern, Piemonte and Liguria Regions.

1. The attached circular from the Ministry of Justice which was sent to all Italian Courts deals exclusively with one aspect of the question, the nullity or rather non existence of sentences pronounced by the various special "tribunali" created or restored during the Fascist Republican Administration.

2. The above referred legislation was not repealed by legislative decree because of the many problems entailed affecting not only the administration of a number of ministries but in many cases third party interests also - (as for example forced sale of property and moratorium of bankers promissory notes).

3. Each problem will be dealt with separately by the Italian Government and you will be kept regularly informed of the progress achieved in relation thereto.

Richard H. Weimer

RICHARD H. WEIMER,
Colonel, GAC,
Chief Legal Officer.

1 Incl.

No. of

<u>Regs</u>	<u>Letters</u>	<u>It/Eng.</u>	<u>Ital. only</u>
I	5	3	2
IV	20	12	8
V	20	12	8
VI	10	6	4
VIII	20	12	8
IX	20	12	8
XI	20	12	8
XII	20	12	8
Sn	20	12	8
Po	10	6	4
Lug	10	6	4

TRANSLATION

MINISTRY OF PARDON AND JUSTICE

File No. 75
Circular

Rome, 9 Aug 1944.

TO : Excellencies Procurators General of the Kingdom
and for information
Excellencies First Presidents of Court of Appeal of the Kingdom.SUBJECT : Invalidity of sentences rendered by judicial bodies reconstituted
or created by the republican pseudo-government.

Pending the contemplated general revision of the existing legislation in order to settle definitely the present conditions resulting therefrom it is however requisite to take forthwith the necessary steps in order to remedy such situations as may have been created through obvious illegality. This action shall apply especially to the legal effect of sentences delivered by judicial bodies illegally constituted during the period which preceded the liberation of the national territory.

Among these bodies is prominent the Tribunale Speciale per la Difesa dello Stato suppressed by R.L. No. 668 of 29 July 1943, but re-established by an enactment of 3 Dec 1943 No. 794, which also set up regional divisions of this Tribunale. Furthermore, this government organized also a (central) "Tribunale Speciale Straordinario" and (local) "Tribunali Speciali Straordinari". Therefore, in view of the indisputable illegality of this government, it appears evident that all sentences pronounced by the above referred illegally constituted judicial bodies must be considered void of all judicial effect, and consequently all penal decrees pronounced by the Tribunale Speciale under the provisions of the decree No. 95 of 22 Mar 44, and the sentences delivered on review under the legislative decree of 21 Jan 44, No. 6 fall under the same nullity.

In order to proceed rapidly with the liberation of prisoners illegally detained as a result of the above the Procuratore del Reame of the Tribunale of the place where the sentenced person is incarcerated, shall immediately take the necessary steps to free them, unless such person had been sentenced for an offense falling under the common law of Italy or if detained for some other reasons.

If the Procuratore is of the opinion that evidence exists of an offense he shall initiate the required penal proceedings; he shall also order the sentenced person released if the offense for which the proceeding is initiated does not require an obligatory warrant of arrest or if a warrant of arrest may be issued for such offense at discretion and he does not intend to issue the order for arrest;

Among these bodies is prominent the Tribunale Speciale per la Difesa dello Stato established by R.L. No. 668 of 29 July 1943, but re-established by an enactment of 3 Dec 1943 No. 794, which also set up regional divisions of this Tribunale. Furthermore, this government organized also a (central) "Tribunale Speciale Straordinario" and (local) "Tribunali Speciali Straordinari". Therefore, in view of the indisputable illegality of this government, it appears evident that all sentences pronounced by the above referred illegally constituted judicial bodies must be considered void of all judicial effect, and consequently all penal decrees pronounced by the Tribunale Speciale under the provisions of the Decree No. 95 of 22 Mar 44, and the sentences delivered on review under the legislative decree of 29 Jan 44 No. 6 fall under the same nullity.

In order to proceed rapidly with the liberation of prisoners illegally detained as a result of the above the Procuratore del Regno of the Tribunale of the place where the sentenced person is incarcerated, shall immediately take the necessary steps to free them, unless such person had been sentenced for an offense falling under the common law of Italy or if detained for some other reasons.

If the Procuratore is of the opinion that evidence exists of an offense he shall initiate the required penal proceedings; he shall also order the sentenced person released if the offense for which the proceeding is initiated does not require an obligatory warrant of arrest or if a warrant of arrest may be issued for such offense at discretion and he does not intend to issue the order for arrest; provided, of course, that the sentenced person is not held for another reason.

In cases where the Procuratore del Regno of the place where the sentenced person is incarcerated is not competent to initiate the penal action, he shall request the competent Procuratore to take the necessary steps according to the above provisions.

If the competent Procuratore del Regno is located in that part of Italy which is still occupied, the Procuratore del Regno of the place where the sentenced person is incarcerated shall take the necessary steps to effect the liberation or order preventive custody. (NOTE: by "occupied" part of Italy is obviously meant the part occupied by Germans).

Each Procuratore del Regno shall forward a speedy communication to the respective Procuratore Generale del Regno in respect to the steps taken in pursuance to this circular.

THE MINISTER
Turini

NOTE: In Italian law mandato di cattura (arrest) may be either compulsory or left at the discretion of the judge, according to the type of offense. (see Art. 253 and 254 of C.P.P.).

MINISTERO DI GRAMIA E GIUSTIZIA

Roma, 11 9 Agosto 1944

Prot. N° 75

CIRCOLARE

ALLE LL.EE. I PROCURATORI GENERALI DEL REGNO

e; per conoscenza:

ALLE LL.EE. I PRIMI PRESIDENTI DELLE CORTI DI
APPELLO delREGNO

OGGETTO : Inefficacia delle sentenze pronunziate dagli organi giurisdizionali ricostituiti o creati dal pseudo governo repubblicano.

In attesa che si proceda da una revisione generale della legislazione per sistemare in modo definitivo i rapporti sorti in questi ultimi tempi, è necessario non indugiare a provvedere senza altro in quelle materie, per cui, specialmente a causa di evidente illimità, è più agevole rimuovere situazioni che non devono protrarsi, come per ciò che riguarda gli effetti di decisioni pronunziate da organi illegalmente costituiti durante il periodo anteriore alla liberazione del territorio nazionale.

Tra questi organi è il tribunale speciale per la difesa dello Stato che fu soppresso con il R. decreto legge 29 luglio, n. 668; ma il pseudo governo fascista repubblicano lo ripristinò con provvedimento del 3 dicembre 1943, n. 794, stabilendo altresì sezioni regionali dello stesso tribunale. Inoltre quel governo istituì un tribunale speciale straordinario e dei tribunali speciali straordinari.

Ora, atteso l'assoluta illegittimità del predetto governo, appare senz'altro manifesto che la sentenza emanata dagli accennati organi giurisdizionali da esso illegalmente costituiti si devono considerare prive di qualsiasi effetto giuridico, e così pure i decreti penali emessi dal tribunale speciale a norma del decreto 22 marzo 1943, n. 95, e le sentenze pronunziate a seguito di revisione, di cui al decreto legislativo 22 gennaio 1944, n. 6.

Occorre quindi procedere prontamente alla scarcerazione di coloro che si trovano illegalmente detenuti in virtù degli accennati provvedimenti di condanna. Pertanto il Procuratore del Regno presso il Tribunale del luogo in cui il condannato esple la pena, qualora nel fatto per il quale fu pronunziata la sentenza o il decreto di condanna non ravvisi gli estremi di un reato preveduto dalle leggi italiane, deve immediatamente ordinare la liberazione del condannato, se non de-

Tra questi organi è il tribunale speciale per la difesa dello Stato che fu coppresso con il R. decreto legge 29 luglio, n. 668; ma il pseudo governo fascista repubblicano lo ristabilì con provvedimento del 3 dicembre 1943, n. 794, stabilendo altresì sezioni regionali di quello stesso tribunale. Inoltre quel governo istituì un tribunale speciale straordinario e dei tribunali speciali straordinari.

Ora, attesa l'assoluta illegittimità del predetto governo, appare senz'altro manifesto che le sentenze emanate dagli accennati organi giurisdizionali da esso illegittimamente costituiti si devono considerare prive di qualsiasi effetto giuridico, e così pure i decreti penali emessi dal tribunale speciale a norma del decreto 22 marzo 1943, n. 95, e le sentenze pronunciate a seguito di revisione, di cui al decreto legislativo 22 gennaio 1944, n. 6.

Occorre quindi procedere prontamente alla scarcerazione di coloro che si trovano illegalmente detenuti in virtù degli accennati provvedimenti di condanna. Formando il Procuratore del Regno presso il Tribunale del luogo in cui il condannato capiva la pena, qualora nel fatto per il quale fu pronunciata la sentenza o il decreto di condanna non ravvisi gli estremi di un reato previsto dalle leggi italiane, deve immediatamente ordinare la liberazione del condannato, se non detenuto per altra causa.

Si invece il procuratore del Regno ritiene che sussistono gli estremi di un reato, promuove l'azione penale, disponendo perimenti la liberazione del condannato non detenuto per altra causa, se riguardo al reato per cui intende promuovere l'azione penale non sia obbligatorio il mandato di cattura o, se questo è facoltativo, non ritenga di emettere ordine di cattura. Il procuratore del Regno del luogo in cui il condannato capiva la pena, qualora non sia competente a promuovere l'azione penale, richiama il procuratore del Regno competente affinché provveda nei sensi innanzi accennati.

Se infine il procuratore del Regno competente si trova in zona dell'Italia ancora occupata, i provvedimenti circa la liberazione o la custodia preventiva del condannato sono adottati dal procuratore del Regno del luogo in cui il condannato capiva la pena.

Ciascun procuratore del Regno dovrà dare sollecita comunicazione al rispettivo procuratore generale del Regno dei provvedimenti adottati, ai sensi della presente circolare.

IL MINISTRO
Turini

In attesa che si proceda ad una revisione generale della legislazione per sistemare in modo definitivo i rapporti sorti in questi ultimi tempi, è necessario non indugiare a provvedere senz'altro in quelle materie, per cui, specialmente a causa di evidente illegittimità, è più agevole rinuovere situazioni che non devono protrarsi, come per ciò che riguarda gli effetti di decisioni pronunziate da organi illegalmente costituiti durante il periodo anteriore alla liberazione del territorio nazionale.

Tra questi organi è il tribunale speciale per la difesa dello Stato che fu soppresso con il R. decreto legge 29 luglio 1943, n. 653; ma il pseudo governo fascista repubblicano lo ripristinò con provvedimento del 3 dicembre 1943, n. 794, stabilendo altresì sezioni regionali dello stesso tribunale. Inoltre quel governo istituì un tribunale speciale straordinario e dei tribunali speciali straordinari.

Ora, attesa l'assoluta illegittimità del predetto governo, appare senz'altro manifesto che le sentenze emanate dagli accennati organi giurisdizionali da

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esso illegalmente costituiti si devono considerare prive di qualsiasi effetto giuridico, e così pure i decreti penali emessi dal tribunale speciale a norma del decreto 23 Marzo 1944, n. 95, e la sentenza pronunciata a seguito di revisione, di cui al decreto legislativo 22 Gennaio 1944, n. 6.

Occorre quindi procedere prontamente alla scarcerazione di coloro che si trovano illegalmente detenuti in virtù degli accennati provvedimenti di condanna. Pertanto il procuratore del Regno presso il tribunale del luogo in cui il condannato sapa la pena, qualora nel fatto per il quale fu pronunciata la sentenza o il decreto di condanna non ravvisi gli estremi di un reato previsto dalle leggi italiane, deve ordinare immediatamente la liberazione del condannato, se non detenuto per altra causa.

Se invece il procuratore del Regno ritiene che sussistano gli estremi di un reato, promuove l'azione penale, disponendo perimenti la liberazione del condannato non detenuto per altra causa, se riguardo al reato per cui intende promuovere l'azione penale non sia obbligatorio il mandato di cattura o, se questo è facoltativo, non ritiene di mettere ordi

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detenuti in virtù degli
condanna. Pertanto il procuratore del Regno presso
il tribunale del luogo in cui il condannato od i de
tenui, qualora nel fatto per il quale fu promulgata
la sentenza o il decreto di condanna non pervieni gli
estremi di un reato previsto dalla legge italiana,
dove ordinare immediatamente la liberazione del con
dannato, se non detenuto per altra causa.

3

Se infine il procuratore del Regno competente si trova in zona dell'Italia ancora occupata, i provvedimenti circa la liberazione o la custodia preventivi del condannato sono adottati dal procuratore del Regno del luogo in cui il condannato espia la pena.

Ciascun procuratore del Regno dovrà dare scelle circa comunicazione al rispettivo procuratore generale del Regno dei provvedimenti adottati, ai sensi della presente circolare.



I L L I N I S T R O
Tupini

3

Allocation of the Special Tribunal for the defense of State.

GARANTIA UFFICIALE DEL REG. D'ITALIA No. 174 IN DATA 29.7.1943.

RACIO RECLUSO LAGER 29 LUGLIO 1943, No. 600.
Corruzione del Tribunale Speciale per la difesa dello Stato.

VITTORIO MANFREDI III
per Grazia di Mio e per Volontà della Nazione
DE D'ITALIA E D'ARABIA
IMPERATORE D'EUROPA

Visto L'Art. 18 della legge 19 gennaio 1939, No. 129:
Riconosciuto che si versa in stato di guerra, per causa di guerra:
Sottito il Consiglio dei Ministri;
Sulla proposta del Capo del Governo, Primo Ministro Segretario di Stato di
concerto con i Ministri per l'Interno, per la Giustizia e Cristianità, per la Guerra
la Marina e per l'Aeronautica;

ARMANDO DE LUCA E DE LUCA.

ART. 1

Il Tribunale speciale per la difesa dello Stato, istituito con la legge 25
novembre 1926, n. 2008 e' soppresso.

La cognizione dei reati gia' spettanti al Tribunale predetto e' devoluta
durante lo stato di guerra, ai tribunali militari, secondo la rispettiva compe-
tenza territoriale. La devoluzione ha luogo anche per i procedimenti in corso.

Relativamente ai predetti reati, i tribunali militari procedono in ogni caso,
durante lo stato di guerra, col rito di guerra.

ART. 2

Nei procedimenti relativi ai reati devoluti alla competenza dei tribunali
militari a norma dell'articolo precedente, il giudice militare può, valersi
della facoltà prevista dall'articolo 253 del Codice penale militare di guerra.
Per gli stessi procedimenti che siano in corso alla data di entrata in vigore
del presente decreto, l'autorità giudiziaria militare può, omettere la li-
bera provvisione anche che alla data suddetta sia già stato disposto il rinvio
a giudizio.

ART. 3

La cognizione delle trasgressioni alla o disubbidienza di polizia emanata dall'auto-
rità militare in seguito a passaggio dell'autorità stessa dei poteri per la
tutela dell'ordine pubblico, ai sensi dell'Art. 217 del testo unico delle leggi
di pubblica sicurezza appartiene ai tribunali militari.

ART. 4.

novembre 1926, n. 2008 o' soppresso.
 La cognizione dei reati già spottanti al Tribunale predetto e' devoluta durante lo stato di guerra, ai tribunali militari, secondo la rispettiva competenza territoriale. La devoluzione ha luogo anche per i procedimenti in corso, relativamente ai predetti reati, i tribunali militari procedono in ogni caso, durante lo stato di guerra, col rito di guerra.

ART. 2

Nei procedimenti relativi ai reati devoluti alla competenza dei tribunali militari a norma dell'articolo precedente, il giudice militare può valersi della facoltà prevista dall'articolo 233 del Codice penale militare in vigore. Per gli stessi procedimenti che siano in corso alla data di entrata in vigore del presente decreto, l'ordinamento giudiziario militare può, comunque, le deleghe, provvisoria anche che alla data suddetta sia già stato disposto il rinvio a giudizio.

ART. 3

La cognizione delle trasgressioni alla o diminuzione di polizia emanata dall'autorità militare in seguito a passaggio dell'autorità stessa dei poteri per la tutela dell'ordine pubblico, ai sensi dell'art. 217 del testo unico delle leggi di pubblica sicurezza appartiene ai tribunali militari.

ART. 4.

Quando sia ritenute necessario un giudizio immediato a scopo di esemplarità, l'ordinamento dell'Unità, presso cui e' costituito il Tribunale militare, che sarebbe competente secondo la norma ordinaria, che prescrive nei modi e con le norme stabilite dagli articoli 263, secondo comma, 284, e 285 del Codice Penale militare di guerra e dagli articoli 24, secondo comma, 16, 17 e 28 dell'ordinamento giudiziario militare per giudicare le persone arrestate, perche' imputate di reati soggetti alla giurisdizione militare di guerra, punibili con pena detentiva o con pena piu' grave.

L'ordine di convocazione del Tribunale indicato nel comma precedente non può essere dato dopo, che nel procedimento, già iniziato nei modi ordinari d'istruzione, sia stata chiusa.

Nel caso di convocazione del Tribunale indicato nel primo comma del presente articolo restano validi gli atti di istruzione eventualmente compiuti con le norme ordinarie.

Il presente decreto, che entra in vigore il giorno stesso della sua pubblicazione nella Gazzetta Ufficiale del Regno, sarà presentato alle assemblee legislative per la sua approvazione in legge. Il Capo del Governo, proponente, e' autorizzato a presentare il relativo disegno di legge.

2

Ordinavo che il presente decreto, munito del sigillo dello Stato sia
 inserito nella raccolta ufficiale delle leggi e dei decreti del Regno d'Italia,
 mandando a chiunque spetti di osservarlo e di farlo osservare.

Dato a Roma, addì 29 luglio 1945.

VITTORIO EMANUELE III

Badoglio - Presidente
 Assuriti - Soriano
 De Gennaro - Santalini.

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MINISTERO DELLE CORPORAZIONI



Direzione Generale del Lavoro e della Previdenza Sociale

UFFICIO CONTRATTI COLLETTIVI

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