

ACC

10000/142/638

POWER
SEPT. 19

10000/142/638

POWER TO SUSPEND SENTENCES, AM COURTS
SEPT. 1943 - OCT. 1945

FILE CLOSED 5 October 1945

HEADQUARTERS ALLIED COMMISSION
AND 394
LEGAL SUB-COMMISSION

JL/rm.

5 October 1945.

AC/4585/L.

SUBJECT : Release of prisoners from Frato Prison.

TO : Lt. Primo Fratois, Dr. BERNARDI

FRATO

1. Reference your letter of 10 Aug. 45 addressed to American Police Co., Florence, and your letter of 17 Sept. 45 subject, "Release of prisoners from Frato Prison".

2. BERNARDI Inzo is not entitled to be at liberty. Please issue the necessary instructions for the re-arrest of BERNARDI Inzo so that he may serve the sentence imposed on him by the Allied Military Court.

ANTHONY P. NOCCHI,
Major,
Chief Counsel,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUBCOMMISSIONJ/rm.
5 October 1945.

AC/4033/85/L.

SUBJECT : Temporary release of BENJAMIN Anzo.

TO : Regional Commissioner (attn. Capt. G.E. GIB)
Venezia Region.

1. This Sub-Commission has learned that you granted BENJAMIN Anzo a temporary release from prison from 1 May 45 to June 45.

2. Please inform this Sub-Commission the reason and authority for your order.

By command of Rear Admiral STONE:

ANTHONY P. HUGGENT,
Major,
Chief Counsel,
for Chief Legal Advisor.

Copy to : AC/4033/85/L.

4085

HEADQUARTERS
ALLIED MILITARY GOVERNMENT

AG/4002/L.

1 November 1943.

ADMINISTRATIVE INSTRUCTION (LEGAL)

1. Summary Courts have jurisdiction to impose a sentence of imprisonment for not more than one year or a fine of not more than 50,000 lire or both such imprisonment and fine. Further, the Court has power to order compensation in default of payment of a fine, but in no case can a person convicted by a Summary Court be kept in prison in respect of that conviction for more than one year.
2. A sentence of one year's imprisonment and a fine of 20,000 lire means, therefore, that whether the fine is paid or not, the accused must be released at the expiration of one year.
3. Similarly, no person convicted by a Superior Court can be detained in respect of that conviction for more than ten years.
4. Where a fine alone is imposed the Court should specify the period to be served in default of payment, such period not being merely assessed on the Italian basis of 90 lire a day, but having regard to the probable expediency of the accused to pay.
5. Where a sentence of imprisonment and fine is imposed, the sentence should be in the following form:
"Two months imprisonment and a fine of 50,000 lire; in default of payment of the fine, sentenced to serve a further period of three months imprisonment."
6. Please take steps to see that all officers trying cases are instructed accordingly.

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Sub-Commissions

WILLIAM C. CHAMBER,
Lt. Col., RA,
Chief Legal Officer.

AMCOT/4002/L
AMCOT HQ., SICILY
1 October 1943

SUBJECT: Allied Military Courts - Sentences.

TO : All Senior Civil Affairs Officers
and All Senior Legal Officers.

1. On page 10 of minutes of meeting of Senior Civil Affairs Officers ref. AMCOT/263/HQ, the report is contained of directions of Chief Civil Affairs Officer that there was to be no suspension of any sentence pending his decision as to whether or not he would review it.
2. The above directions have been cancelled by the Chief Civil Affairs Officer and the directive contained in para. 3 of this instruction has been substituted.
3. All Allied Military Courts may impose suspended sentences. As, however, this type of sentence has been much too frequently imposed in the past, Allied Military Courts will suspend a sentence only when it is desirable, having regard to special circumstances of the case, such as the age or other circumstances of the accused, or such as the fact that the accused has acted without any bad intent but has still committed a minor offence.
4. Senior Civil Affairs Officers have no power to review cases, or suspend sentences.

5. The Chief Civil Affairs Officer is concerned about the smallness of sentences imposed for grave offences where the accused has been found "guilty". The attention of all officers who sit on Allied Military Courts will be drawn to the fact that sentences must not only be assessed on the circumstances in which the offence was committed, but also on the gravity of the offence, the frequency with which the offence occurs and its effect on Military Security. As an example, illiterate peasants have frequently been committing the grave offence of cutting off pieces of Military telephone wires. This offence has generally been committed openly to obtain binding wire and with little or no knowledge of the possibilities of its results on the Allied Forces. Nevertheless, the offence must be punished severely as it is a grave offence, is very prevalent and the whole security of the Army may be jeopardised by it.

Charles H. Spofford
CHARLES H. SPOFFORD,
Colonel, G. S. C.,
Chief Staff Officer.

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Charles M. Spofford
 CHARLES M. SPOFFORD,
 Colonel, C. S. C.,
 Chief Staff Officer.

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Subject: The Power to Suspend Sentences.

To: AMGOT H.Q. Sicily.

4035

PR/128

From: AMGOT, Province of Ragusa.

14 Sep 43.

P.10.

Reference your AMGOT/4034/L dated 8 Sep 43.

Your instructions are directly opposed to the orders given by the S.C.A.O. at the meeting of S.C.A.Os. at Palermo on Aug 20 and 21.

On this occasion he said that Summary Courts would not suspend sentences, as this could always be added by S.C.A.O. or C.C.A.O.



[Handwritten signature]

It-Col.
S.C.A.O. AMGOT,
Province of Ragusa.

Ragusa.

(136)

C.S.O.

Ref page 11, the directions of C.E.A.O. referred to in para 2 of Major Howe's letter ~~are~~ were obviously issued in error. I imagine the C.E.A.O. did not appreciate at the time that the ~~direction of sentences~~ award of suspended sentence was the same as binding over an accused in British practice and was entirely a matter for the Court.

2. May the instruction please be cancelled?

As may give
suspended sentences
when making recommendations
should not mention

18/9/43

H. J. H. H.
Dcho.

I do not think that C.E.A.O. was thinking of "suspended sentences" when he gave the direction referred to - he was thinking of the putting into execution of sentences of I.H.L.B.

2. I have spoken Col. Rowe who says there is no urgency & that this can await return of C.E.A.O.
3. A simple amendment will put it right.

CIR 19/9.

11 B.O.
25/9

Subject: Suspended Sentences

To: Chief Judicial Officer
Legal Department
AMGOT

Sept: 6, 1943

1. The minutes of the meeting of the S.C.A.O.'s and AMGOT HQ staff which was held in Palermo on August 20-21 have just now come to my attention.

2. On Page 10 of those minutes the C.C.A.O. is quoted as saying that "there was to be no suspension of any sentence pending his decision as to whether or not he would revise it." Is this statement intended as a directive binding upon all Military Courts and depriving them of their power of suspending sentences of imprisonment, or does it have some more limited significances? If the power has been taken from the courts it is most important that they be informed of that fact, for they are now exercising it quite extensively, and, I believe in a very useful way. If they do not exercise the power are they to recommend review by the C.C.A.O. in cases in which they think it would be appropriate, that sentence should be suspended?

3. If such recommendations can be made, how promptly can a decision by the C.C.A.O. usually be expected?

Handwritten signature

Senior Legal Officer

Province of Catania

Summary - The report to General Hamilton.

For Review by General Hamilton:
(through S. C. H. C.)

ANNEX II. SUMMARY

Re: Summary of

1. Your letter of September 2nd, 1953 received in which you state:

"All summary reports have been submitted to the proper authorities and are being handled by the S. C. H. C."

2. Section 1, Act 1, Resolution No. 4, provides that a military court may suspend the whole or any part of a sentence.

3. Section 3, Act 1, Resolution No. 4, provides that a sentence by the S. C. H. C. and given him the power to act under the provision, to suspend, reduce or extend the sentence or to award a new trial.

4. It does not appear that the S. C. H. C. is a "court" as the power of suspension of sentence.

5. All summary reports in your review will be reviewed and they have the responsibility for the decision and the power to suspend the sentence in whole or in part.

6. All cases will be forwarded to this office for review in accordance with Section VII, Resolution No. 2.

W. G. GILBERT
Lieut. Col. (AM)
Chief Legal Counsel

Copy to file summary/1000/h

184

SUBJECT: Suspension of Sentences by S.C.A.O.

4034
AMGOT/1000/L.

AMGOT HQ. - SICILY.

7th September, 1943.

TO: C.C.A.O.

1. Herewith is a letter which it is proposed to send to Legal Officers of Ragusa through the S.C.A.O. if approved.
2. It appears that the Legal Officer, Ragusa has taken from the Summary Courts ~~the~~ power to suspend sentences and states that such power may only be exercised by the S.C.A.O.
3. This is in derogation of the power granted by the Proclamation to the Courts and to the C.C.A.O. to modify or suspend sentences.
4. Recommend approval.

W. C. Chanler
Wm. C. CHANLER,
Lieut. Col. (AUS).
Chief Legal Officer.

9/7

SUBJECT: The power to suspend penalties.

TO: Senior Legal Officer, Ragusa.
(Through S.C.A.O.).

AMGOT HQ.
Sicily.

7th September, 1943.

1. Your letter of September 2nd 1943 received in which you state:

"All Summary Courts have now been informed that the power to suspend sentences can now be exercised only by the S.C.A.O."

2. Section 6, Art. V, Proclamation No.4 provides that a Military Court may suspend the whole or any part of a sentence.

3. Section 3, Art. VII, Proclamation No.4 provides for review by the C.C.A.O. and gives him the power to set aside any conviction, to suspend, reduce or commute the sentence or to order a new trial.

4. It does not appear that the S.C.A.O. of a Province has the power of suspension of sentences.

5. All Summary Courts in your Province will be notified that they have the responsibility for the decision and the power to suspend the sentence in whole or in part.

6. All cases will be forwarded to this office for review in accordance with Article VII Proclamation No.2.

W. C. Chandler

Wm. C. CHANDLER.
Lieut. Col. (AUS).
Chief Legal Officer.

Copy to file AMGOT 4004/c

Original in file NOT/4003/LCOPY/
for file ANGOT/4034/L

A M G O T

GOVERNO MILITARE ALLEATO TERRITORI OCCUPATI

PROVINCE OF RAGUSA

Subject: Summary Trials.

Date: 2/9/1943

To: C.L.O. Palermo.

17 Cases received from C.A.O. Ragusa are forwarded herewith.

All Summary Courts have now been informed that power to suspend sentences can now be exercised only by the S.C.A.O.

(sgd) M. Drayfus Capt.

for, Major.

S.L.O.

Province of Ragusa.

1

26

ORIGINAL IN FILE ANGOT/4003/L

COPY/ for file ANGOT/4034/L

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