

ACC

10000/142/666

10000/142/666

POWER OF R.C.'S & RLO'S
OCT. 1943 - SEPT. 1944

FILE CLOSED 11 September 1944

035

4089
HEADQUARTERS REGION 12
Allied Control Commission
APO 394

11 September 1944.

TO : Chief Legal Officer, Legal Sub-Commission, A.C.C.
(Attn. Officer i/o Italian Courts).
SUBJECT: Conditional Liberty and Pardon.

FILE NO: P 12/12/742/3/05.

1. Reference your 406/4060/1 dated 8 September 1944.
2. I thank you for pointing out the error in my Legal Instructions, Part II, paragraph 24(b). I regret the error and am taking steps to correct it.
3. The statement contained in my Instructions was based on the "Memorandum on Italian Courts and Legal Intent", Appendix "A", paragraphs 4 and 5. It is there stated that whereas "pardon" is granted by the King, "Conditional Liberty" is granted by the Ministry of the Interior at Rome. It appears that this is a mistake, and that in the case of both Pardon and Conditional Liberty the King acts through the Ministry of Justice.

H. L. Linner

Colonel
Regional Legal Officer
Region 12.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

8 September 1944.

ACC/4089/L.

SUBJECT : Legal Instructions.

TO : RLO (thru Regional Commissioner), Region 12.

1. Receipt is acknowledged of a copy of the excellent "Legal Instructions" received under cover of your RL2/LE/Reg/13/010 dated 5 September 1944 which has been perused with much interest.

2. With reference to Part II of "Italian Courts and Officials" - para. 24 (b) attention is drawn to a slip - namely that for "Minister of the Interior" should be read "Minister of Justice".

Def
A. R. THACKRAH.
Lieutenant-Colonel,
Italian Branch,
for Chief Legal Officer.

031

AMT/wow.

IT IS THE POLICY OF THE
JUDICIAL BRANCH OF THE
GOVERNMENT OF THE
UNITED STATES OF AMERICA
TO PROVIDE FOR THE
PROTECTION OF THE
PUBLIC INTERESTS
AND THE
HONOR OF THE
JUDICIAL BRANCH
OF THE
GOVERNMENT OF THE
UNITED STATES OF AMERICA
IN THE
PROTECTION OF THE
PUBLIC INTERESTS
AND THE
HONOR OF THE
JUDICIAL BRANCH
OF THE
GOVERNMENT OF THE
UNITED STATES OF AMERICA

2 September 1947.

TO : Chief Legal Officer,
Legal Sub-Commission, U.S.C.
SUBJECT: Legal Instructions.

FILE NO: 12-12/Reg/2/CLO.

Herewith for your information copy of Instructions
issued by this Division. The Instructions are divided into
3 parts. Parts I and II are for General issue to Provincial
Officers. Part III is for issue to Legal Officers only.
The Appendices to Part III are not forwarded, as these consist
solely of directives issued by your H.Q., copies of which are
already in your possession.

H. L. Wickner

Colonel,
Regional Legal Officer
Region 12.

033

LEGAL SUB COMMISSION	
CLO	☒
SCLO	☒
Chief Counsel	☐
CIO	☐
Indian Section	☒
EL RKS	☐
	☐
	☐

C.L.O., Legal Sub-Commission, A.C.C.

4089 ✓
File
HEADQUARTERS REGION XII
Allied Control Commission
APO 394

Legal Instructions
Amendment No. I.

Part II, Paragraph 24 (b)

For "Minister of the Interior" read "Minister of Justice".

H. C. Williams

Colonel
Regional Legal Officer
Region XII.



032

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394.

Regional Control & Military Government Section.

5th March 1944.

Ref: 203/42/C.

SUBJECT: Allied Military Courts in Unoccupied Territory.

TO : Regional Commissioner, Regions I, II, III & VI.

1. On the landing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offences against the Allied Forces created by Proclamations and Orders will no longer exist as such.

2. The Allied Forces have reserved to themselves the right to hold military courts in unoccupied territory including the four provinces of Apulia and Basilicata, for the trial of acts hostile to the Allied Forces. An extract from the Decree conferring this power upon Allied Courts is appended hereto as appendix "C". Such Courts will try only cases of a serious nature such as would normally have been brought before a General Military Court during occupation.

3. Where cases of this nature are alleged to have occurred it will be the duty of the Regional Commissioner to have the facts investigated and if he considers that trial by an Allied Military, as opposed to an Italian civil court, is necessary he will so report to H.Q., A.C.C. with a request that a Military Court be appointed.

4. All such courts will be convened only by order of H.Q., A.C.C. and as appears from the decree will punish offenders in accordance with the Code, but will follow their own procedure.

(a) In view of these facts all charges will be framed under the Italian codes by H.Q., A.C.C. and, therefore, it is essential that in requesting a Military Court pursuant to paragraph 3 herof, full and complete facts be supplied in order that the charges may be properly framed.

(b) Normally a member of the Department of Special Prosecutions will undertake the prosecution.

(c) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence not expressed in the charge, or (ii) evidence of aggravating circumstances (Art. 61, Penal Code) not mentioned in the citation or charge, then on such question being raised by the President or submitted by the Prosecutor, the accused may apply for an adjournment of not more than 5 days to prepare his defence (ref. 444, 445 and 446 Code Penal).

1. On the handing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offences against the Allied Forces created by Proclamations and Orders will no longer exist as such.
 2. The Allied Forces have reserved to themselves the right to hold military courts in unoccupied territory including the four provinces of Apulia and Basilicata, for the trial of acts hostile to the Allied Forces. An extract from the decree conferring this power upon Allied Courts is appended hereto as Appendix "C". Such Courts will try only cases of a serious nature such as would normally have been brought before a General Military Court during occupation.
 3. Where cases of this nature are alleged to have occurred it will be the duty of the Regional Commissioner to have the facts investigated and if he considers that trial by an Allied Military Court is opposed to an Italian civil court, in necessary he will so report to H.Q., A.C.G. with a request that a Military Court be appointed.
 4. All such courts will be convened only by order of H.Q., A.C.G. and as appears from the decree will punish offenders in accordance with the Italian Codes, but will follow their own procedure.
 - (a) In view of these facts all charges will be framed under the Italian codes by H.Q., A.C.G. and, therefore, it is essential that in requesting a Military Court pursuant to paragraph 3 herof, full and complete facts be supplied in order that the charges may be properly framed.
 - (b) Normally a member of the Department of Special Prosecutions will undertake the prosecution.
 - (c) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence not expressed in the charge, or (ii) evidence of aggravating circumstances (Art. 61, Penal Code) not mentioned in the citation or charge, then on such question being raised by the President or submitted by the Prosecutor, the accused may apply for an adjournment of not more than 5 days to prepare his defence (Art. 444, 445 and 446 Code Penal Procedure).
- If the accused does not ask for time, the offence in question or the aggravating circumstances are forthwith to be included in the charge and the trial proceeded with.
- A note of compliance with these rules of procedure must appear on the record.
- (d) The procedure to be followed will be the same as the procedure in a General Military Court in occupied territory, except, of course, that all sentences will be imposed in accordance with the applicable Penal Code.
 - (e) Reviews and appeals are dealt with in paras. 7, 8 and 9 below.

-2-

5. Where a Regional Commissioner requests that a military court shall be appointed, his request will also specify the names of officers available to sit on the court (a court will normally consist of not fewer than 3 officers), the interpreter, the officer to act as prosecuting officer in case none is available from the Department of Special Prosecutions, and the officer to act for the defense in the event of the accused not being represented by an advocate.

6. Every accused will be defended by a legal representative. Where the financial position of the accused does not permit him to engage the services of a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 126) and of the Rules of Penal Procedure contained in the Decree No. 602 of 20 May 1931 (Article 3 et seq.). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

- (a) an examining magistrate (giudice istruttore);
- (b) the public minister (procuratore del Re or procuratore generale);
- (c) president of a tribunal (presidente di tribunale);
- (d) the praetor (pretore).

The several jurisdictions of Italian courts being determined by standard complicated rules, applications should be addressed in the first instance to the praetor of the local court or to a procurator of a tribunal, whichever is the most expeditious or convenient, so that this official may determine the proper functionary having the power to take immediate action in each instance. The advocates or defense procurators, as the case may be, who are nominated under these rules, are obliged to appear for the accused, and are selected for this purpose from an official roll established locally at the seat of each Tribunal. If no such arrangements can be made, the accused must be defended by an Allied officer.

7. Any person convicted by a Military Court may, within 30 days of the imposition of sentence, file with the Regional Commissioner a petition addressed to the Chief Commissioner, H.Q., A.C.C. submitting reasons why the conviction should be set aside or the sentence modified.

8. Where a petition is so filed, the petition together with the record of the case shall be forwarded by the Regional Commissioner to H.Q., A.C.C. for review. Where no such petition is filed the record of the case shall at the expiration of 30 days from the imposition of sentence be transmitted to H.Q., A.C.C. for review.

9. In any case in which sentence of death is imposed whether a petition is filed or not, the record of the case at the expiration of the 30 days or on filing of a petition, whichever shall be sooner, shall be forwarded by the Regional Commissioner to H.Q., A.C.C. for confirmation of such sentence by the Chief Commissioner.

10. The above directive does not apply in any area which has been declared a military zone. If any area is hereafter declared to be a military zone further instructions will be issued for that area concerning the holding of

or a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 128) and of the Rules of Penal Procedure contained in the Decree No. 602 of 28 May 1934 (Article 3 et seq). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

- (a) an examining magistrate (giudice istruttore);
- (b) the public minister (procuratore del Re or procuratore generale);
- (c) president of a tribunal (presidente di tribunale);
- (d) the pretor (pretore).

The several jurisdictions of Italian courts being determined by somewhat complicated rules, applications should be addressed in the first instance to the pretor of the local court or to a procurator of a tribunal, whichever is the most expeditious or convenient, so that this official may determine the proper functionary having the power to take immediate action in each instance. The advocates or defense procurators, as the case may be, who are nominated under these rules, are obliged to appear for the accused, but are selected for this purpose from an official roll established locally at the seat of each Tribunal. If no such arrangements can be made, the accused must be defended by an Allied officer.

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10. The above directive does not apply in any area which has been declared a military zone. If any area is hereafter declared to be a military zone further instructions will be issued for that area concerning the holding of Allied Military Courts.

M. S. INGH,
Brigadier,
Executive Commissioner.

Copy to: Regional Commissioner, Regions IV and V.
H.Q., A.C.C.E.
H.Q., No. 1 District
H.Q., No. 2 District
H.Q., No. 3 District
Legal Sub-Commission (3)

Appendix "A" to 283/42/CA
dated 5th March 1944

Article 3 of Royal Decree Law No. 31,
11th February 1944.

Whoever within the liberated Italian territory commits a hostile act or crime against property to the prejudice of the Allied Military Forces or of any member thereof or of any functionary, representative or agent of United Nations, or whoever takes part in seditious manifestations against the Allied Forces or commits any act which in whatever way may hamper the war effort or help the enemy, shall be punishable under Italian penal law and shall be tried in Allied Military Courts according to their own procedure.

In the case contemplated by the preceding paragraph 1 any member of the Allied Armed Forces can effect the arrest of any person who may be reasonably believed to be implicated in acts herein above contemplated, except where an Italian officer or high government official is concerned, in which case the Italian Government or the appropriate superior local authority will be requested to co-operate in the premises to the extent necessary.

N.B. An amnesty decree is in course of preparation by the British Government, which will be the Allied Military Courts. This decree will not be signed by the British Government.

4089
HEADQUARTERS
MEDICAL CONTROL COMMISSION
R.O. & M.G. Section
APO 394

13 MAR 1944

Legal 25
1785
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Ref/287/5/CA.

11 March 1944.

SUBJECT: Powers of SCAGs and SLOs 5th and 8th Armies.

TO : Admin. Section - For attention Legal Sub-Commission.

The attached copy of Executive Memorandum No. 57 is forwarded for your information. Copies of this Memorandum have been sent out to SCAGs 5th and 8th Armies, and R.Os. Regions III, IV, and V, after signature by the Executive Commissioner.

W. D. White
Major
for NORMAN E. FESKE
Colonel, Cavalry,
Deputy Executive
Commissioner.

029

13 MAR 1944

HEADQUARTERS
JOINT CONTROL COMMISSION
R.C. & L.G. Section
APO 394

Ref/287/L/Ca.

EXECUTIVE MEMORANDUM

NUMBER

37

2 March 1944.

POWERS OF SLOs AND SLOs 5th AND 8th ARMY.

1. By Proclamation No. 14, certain powers, originally granted to the C.L.O., by Proclamation No. 2 and 4, were extended to S.L.O.s of Regions. In order to have uniformity in exercise of review and other powers, it has seemed wise to extend to the S.L.O.s 5th and 8th Armies, the same powers conferred on S.L.O.s by Proclamation No. 14. You are therefore herewith instructed that the powers conferred by Proclamation No. 14 on S.L.O.s are hereby extended to and conferred on the S.L.O.s of the 5th Army and on the S.L.O.s 6th Army.

2. As a result of the authority so granted, the procedure with respect to reviews, 5th and 8th Armies, shall hereafter be as follows:

All petitions for review originating in the 5th and 8th Army areas may be filed with the trial court or may be forwarded to the S.L.O. of the Army concerned but shall be addressed to the Chief Commissioner. Every record originating in the Army area shall be transmitted to the S.L.O., that Army, for examination and file. Where no petition for review has been filed under Proclamation No. 4 Art. VII, Section I and the sentence does not exceed two years' imprisonment or a fine of 50,000 lire, the Army SLO shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. In all cases where there is a petition for review or where the sentence exceeds 2 years' imprisonment or a fine of 50,000 lire, the record and petition for review, if any, shall be forwarded to the C.L.O., H.Q. A.C.O. for examination and review.

3. Other powers, functions and duties conferred on S.L.O.s by Proclamation No. 14 now applicable to S.L.O.s 5th and 8th Army are the following:

- (a) The S.L.O. may now in his area perform the functions previously assigned to the C.L.O. with respect to detention of suspects (Proc. No. 2, Art VII, Section 2).
- (b) The S.L.O. may now order an Allied Military Court in his area to sit in camera. (Proc. No. 4, Art VII, Section I).
- (c) The S.L.O. may now exercise the power of prohibiting any lawyer or other person from appearing in any court in his area. (Proc. No. 4,

3 copies

25A

1785

POWERS OF S.M.O.s AND S.L.O.s 5th AND 8th ARMY.

1. By Proclamation No. 24 certain powers, originally granted to the C.L.O. by Proclamation No. 2 and 4, were extended to S.L.O.s of Regions. In order to have uniformity in exercise of review and other powers, it has seemed wise to extend to the S.L.O.s 5th and 8th Armies, the same powers conferred on S.L.O.s by Proclamation No. 24. You are therefore herewith instructed that the powers conferred by Proclamation No. 24 on S.L.O.s are hereto extended to and conferred on the S.L.O.s of the 5th Army and on the S.L.O.s 8th Army.

2. As a result of the authority so granted, the procedure with respect to reviews, 5th and 8th Armies, shall hereafter be as follows:

All petitions for review originating in the 5th and 8th Army areas may be filed with the trial court or may be forwarded to the S.L.O. of the Army concerned but shall be addressed to the Chief Commissioner. Every record originating in the Army area shall be transmitted to the S.L.O., that Army, for examination and file. Where no petition for review has been filed under Proclamation No. 4 Art. VII, Section I and the sentence does not exceed two years' imprisonment or a fine of 50,000 lire, the Army S.L.O. shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. In all cases where there is a petition for review or where the sentence exceeds 2 years' imprisonment or a fine of 50,000 lire, the record and petition for review, if any, shall be forwarded to the C.L.O., H.Q. A.C.G. for examination and review.

3. Other powers, functions and duties conferred on S.L.O.s by Proclamation No. 24 now applicable to S.L.O.s 5th and 8th Army are the following:

- (a) The S.L.O. may now in his area perform the functions previously assigned to the C.L.O. with respect to detention of suspects (Proc. No. 2, Art. VII, Section 2).
- (b) The S.L.O. may now order an Allied Military Court in his area to sit in camera. (Proc. No. 1, Art. VII, Section I).
- (c) The S.L.O. may now exercise the power of prohibiting any lawyer or other person from appearing in any court in his area. (Proc. No. 4, Art. IV, Section 2(b)).

4. In order to preserve the mobility of HQ in Army areas the S.L.O. 5th and 8th Army is at liberty in cases where under para. 2 hereof he has reviewed a case and after all action thereon has been taken to send to the Regional Legal Office of the Region which will be ultimately responsible for the case in which the case was heard the record and petition (if any) for safe keeping.

5. This memorandum supercedes all previous directives issued by H.Q. A.C.G. or H.Q. A.M.G. 15 Army Group inconsistent herewith.

028

4089

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394.

24

CHU/gm

~~ACC/1002/A~~

7 March 1944.

SUBJECT: Allied Courts in Unoccupied territory.

TO : Regional Commissioners, Regions 1, 2, 3 & 6.

Ref Directive on the a/m subject (ref 283/42/CA dated 5 March 44) will you please note that the Decree extracted in App. A appears to make it obligatory on the Allied Forces to try the type of case therein mentioned. An amending decree is being passed to put this error right. It was never the intention of the Allied Forces to do more than take the power to try these cases and it is the settled policy of the Chief Commissioner only to use this power in the most serious cases. All other cases will be referred to Italian Tribunals.

G. R. UPTON
Colonel
Chief Legal Officer.

027

Copy to:

Regional Commissioners, Regions 4 & 5
HQ ACOMF
HQ No. 1 District
HQ No. 2 District
HQ No. 3 District

SEE PAGE 17
10 March

Subject: Powers of SCAOs and SHOs
5th & 8th Army.

To ~~Col.~~ Col. Wilmer.

The directive on the above sent on
22 Feb to Executive Commission for
Signature. Nothing further in air
files. This explains why not
received by 5th & 8th armies.

Tha. Brown 025

Until signed, of course, no authority
to forward.

10 March 1944

Brig. Rush said he would sign
and Mr. D. White asked to have
documents delivered to him
immediately for signature

Tha. Brown

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
AFG 394.

M37/cmf

M37/400/L.

7 March 1944.

SUBJECT: Powers of Regional Legal Officers.

TO : Executive Commissioner, ACC.

Pursuant to the request of the Deputy Executive Commissioner, the Legal Subcommittee has reviewed letter RH/ACC.5/11 of 25 Feb 1944 of the Regional Commissioner of Region IV and its views are as follows:

1. Powers of Review.

Regional Commissioner of Region IV appears to assume that Executive Memorandum Number 18 had the effect of centralizing appeals for review in the Chief Commissioner. Such is not the fact. From the outset it was required that all petitions be addressed to the Chief Civil Affairs Officer (Procl. No. 4, Art. VII, Section 1). Executive Memorandum 18 which merely implements Procl. No. 14 not only does not provide for further centralization, but on the contrary tends toward decentralization in that petitions for review which under Procl. No. 4 were forwarded to the Chief Legal Officer are now forwarded to the Regional Chief Legal Officer (Procl. No. 14, Art. I), thus nearly enabling the Regional Chief Legal Officer critically to evaluate the work of the courts of his region.

Such powers of review on petitions as were exercised by the Regional Commissioner Region IV were vested in him not by virtue of his office as such, but by special delegation from the Chief Civil Affairs Officer. The intention and objective under both Procl. No. 4 and Procl. No. 14 were to place the power of review on petition in the Chief Civil Affairs Officer (now the Chief Commissioner), and not on a regional level as is now being urged by the Regional Commissioner Region IV.

The Legal Subcommittee is of the opinion that the power of review on petition should, for the time being, be retained by the Chief Commissioner as now provided under Procls. 4 and 14. No better means could be contrived for providing the Chief Commissioner with the information and means necessary for an adequate supervision of Allied Military Courts for securing a uniform and effective administration of justice, and an improvement in the standard, which at present is not satisfactory.

Nor does this procedure shut off the Regional Commissioner from a source of full information with respect to the courts within his region since all petitions pass through his Regional Legal Officer.

It should be pointed out that the Chief Commissioner may as heretofore, if he chooses, delegate the power of Review on petition to a Regional Commissioner provided he be a judicial officer and otherwise qualified under Procl. No. 14. But it is urged by the Legal Subcommittee, for the reasons already stated, that the power of review on petition be not placed, by a delegation or otherwise, on a regional level at the present time.

Experience does not support the statement (letter of RC, R4/250.5/(b), para 3(e), 25 Feb 1944) that serious delay is incident to the procedure prescribed by the proclamations whereby petitions on review shall be addressed to the Chief Commissioner. Except for some congestion following the disbanding of the 15th Army Group and a certain delay consequent on the move to Salerno reviews on appeal have been disposed of with reasonable expedition. The illustration of alleged serious delay set forth on the letter of Regional Commissioner IV is not supported by the facts. In the case of Vitozzi Francesco the petition on appeal was forwarded on 17 Jan 1944 and the sentence of 10 years affirmed on 23 Feb 1944. Since the trial took place in Dec, as much or more time would seem to have elapsed between the trial and the forwarding of the appeal as was consumed in the final disposition of the latter. 221

There need be no confusion such as is suggested (letter of RC, R4/250.5/(b), para 3(b), 25 Feb 1944) in the disposition of reviews of cases in which the sentence does not exceed two years imprisonment or a fine of 50,000 lire. The simple answer is that the Regional Commissioner can in such cases postpone a review until the 30 days have elapsed within which an appeal can be filed.

2. Italian Courts and Personnel.

We believe there is as suggested some ambiguity with respect to para. 4 of Executive Memorandum No. 18, and shall in due course submit a suggested clarification thereof to you.

With regard to the directive dated 4 Dec 43 this Subcommittee has only recently been shown a copy. This directive (which it is believed is in the course of amendment does not however cut across para 4 of Exec. Memo 18 but merely lays down machinery for the guidance of the R.C.)

3. Italian Military Tribunals.

Enclosed is a copy of "Rules for the establishment of Italian Military Tribunals" as requested by Regional Commissioner, Region IV (letter of R4/250.5/(b), para 5, 25 Feb 44). It is probably that a new directive will be issued after further consultation with the Italian Government

4. Legal Personnel.

The interpretation of the Regional Commissioner, Region IV (letter of RC, RA/250.5/(b), para 6) as to the disposition of legal personnel within the region is correct.

5. Legal Directives and Opinions.

The answer to the Regional Commissioner's query (letter of RC, RA/250.5/(b), para 7) as to why his Regional Legal Officer should not render opinions dealing with matters of general legal policy is that questions of this character were specifically reserved by para 1(c) of General Order No. 8 dated 23 Nov 43, a copy of which was no doubt sent to Region IV when ACC took over from 15 Army Group. On the other hand, it appears likely that Region IV put an unduly narrow construction on this sentence which should be construed in the light of the above mentioned General Order.

All questions should be referred to HQ ACC when they involve general questions of legal policy, e.g. general questions which may affect other regions either then or at some later stage, legal policy with the Italian Government and so on. No one desires to prevent the RLO giving advice on legal questions to the R.C.

Incl: Rules, copy of.

G. R. UPJOHN, Colonel
Chief Legal Officer.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

File
MJG/rlp
4 March 1944.

TO : Colonel Upjohn.

1. Attached is proposed letter to VP, Admin. Section expressing views of Legal Sub-Commission on letter of Regional Commissioner, Region IV dated 25 Feb 1944 as requested by Deputy Executive Commissioner.

2. It would seem to me that the only meritorious point raised by Regional Commissioner, Region IV in his letter of 25 Feb, is contained in para 4 thereof. It must, I think, be conceded that para 4 of Executive Memorandum No. 18 is ambiguous if not inconsistent in the respect he points out. After first conferring on the Regional Commissioner, the power to fill existing vacancies on a temporary basis, this paragraph proceeds to make emergency appointments effective only upon confirmation by Hq, ACC. Thus it would appear that temporary appointments require no confirmation, whereas emergency appointments do. It is suggested that this ambiguity be resolved by providing that the RC may on a temporary basis appoint all Italian Counsellors, judges, magistrates and other judicial officials other than:

1st President of Court of Appeal,
Procuratore Generale,
Procuratore del Re',
President of Tribunale,
First Pretori in towns over 40,000 inhabitants,

who shall be appointed by the RC, subject however to confirmation by Hq, ACC.

Marc J. Grossman
MARC J. GROSSMAN,
Major.

*Redraft dictated to Major
Duffield White. 6 hour 49*
gross

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

29 February 1944.

Ref/203/51/CA

SUBJECT: Powers of Regional Legal Officers

TO : Vice President, Administrative Section

1. A copy of a letter from Regional Commissioner, Region IV, is forwarded with the request that the Legal Sub-Commission be asked to express their views.

2. Para. 2 of the enclosed letter has already been dealt with.

[Signature]
NORMAN E. FISKE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

Incl
As above.

Legal

will you please

sign before

the letter is

121

15/6.

REV/jam

HEADQUARTERS REGION
Allied Military Government
APO 394

TO : HQ, ACC - RC & MGS

FROM : HQ, Region 4 AMG

SUBJECT: Powers of Regional Legal Officers

REF : R4/250.5 (b)

DATE : 25 February, 1944

1. Executive Memorandum No 18, dated 14 February, 1944, deals with a number of subjects, which I have discussed with the Regional Legal Officer, and I now desire to bring the following points to your notice.

2. General Military Courts

I refer to my R4/250.5 (b) of 19 Feb. 44, in which I pointed out what I conceive to be the disadvantages of the policy of centralisation with regard to this. I am now waiting your reply.

3. Powers of Review

It is suggested that the policy of centralisation whereby all petitions for review must be submitted to the Chief Commissioner, is a mistake. Hitherto, petitions for review where the sentence did not exceed 2 years imprisonment or a fine of 50,000 Lire, have been dealt with at Regional level, in pursuance of delegation of authority by Brigadier Lush to myself on the 14th December, 1943. This procedure has worked smoothly in practice and should, it is submitted, be adhered to. The change now proposed, under Executive Memorandum No 18, is in my opinion open to the following objections:-

(a) It will lead to very serious delay in dealing with petitions for review. Petitions, if considered at Regional level, can be dealt with very expeditiously, taking at most a few days. Owing to delays in communication, this is not possible if every petition has to be forwarded to the Chief Commissioner. As an illustration of this, I would cite the case of Vitozzi Francesco, petition for review of which was forwarded on 17 Jan. 1944. Up to the time of handing over Reggio Province, no intimation of the decision on review had been received at this HQ. It is not known whether since the handing over the decision has been communicated to HQ, Region 5. As this case was originally tried in December, it is considered that the delay in reaching a determination is most undesirable. If all petitions are in practice to be forwarded to the Chief Commissioner, the chances of delay will be imme-

1. Executive Memorandum No 18, dated 14 February, 1944, deals with a number of subjects, which I have discussed with the Regional Legal Officer, and I now desire to bring the following points to your notice.

2. General Military Courts

I refer to my R4/250.5 (b) of 19 Feb. 44, in which I pointed out what I conceive to be the disadvantages of the policy of centralisation with regard to this. I am now waiting your reply.

3. Powers of Review

It is suggested that the policy of centralisation whereby all petitions for review must be submitted to the Chief Commissioner, is a mistake. Hitherto, petitions for review where the sentence did not exceed 2 years imprisonment or a fine of 50,000 Lire, have been dealt with at Regional level, in pursuance of delegation of authority by Brigadier Lush to myself on the 14th December, 1943. This procedure has worked smoothly in practice and should, it is submitted, be adhered to. The change now proposed, under Executive Memorandum No 18, is in my opinion open to the following objections:-

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(b) Cases arise from time to time when a decision involving punishment of less than 2 years imprisonment or a fine of 50,000 Lire, is reviewed without petition at Regional level, under the powers conferred by Proclamation 14, and subsequently a petition for review in the same case is received. Cases of this sort have actually occurred. Such a petition should surely be dealt with by the officer conducting the original review. If the petition has to be forwarded to the Chief Commissioner, nothing but confusion will result, since there will be two decisions on review in the same case.

24 February, 1944

TO : HQ, ACC

4. Italian Courts and Personnel

Paragraph 4 of Executive Memorandum No 18 is not fully understood. By the first sentence I am given power to remove Italian Judges and Officials and to make temporary appointments. Later in the same paragraph it is stated that I am to report to HQ, ACC, on any proposed appointment, promotion or transfer, except in emergency, when I am given power to act subject to confirmation. The instructions referred to above appear to be materially inconsistent, and further clarification is desired. There also appears to be conflict between the terms of this paragraph and the directive dated 4 December, 1943, with regard to "Screening of Italian Officials" which delegated power of removal of the senior officials to the Regional Commissioner and of the minor officials to the Provincial Commissioner.

5. Italian Military Tribunals

Paragraph 6 of Executive Memorandum No 18 refers to a Directive issued with regard to Italian Military Tribunals. I am unable to trace receipt of any such Directive. I consider it vitally important that I should receive detailed instructions with regard to the constitution and powers of Military Tribunals authorized to sit within territory under AMG control, and the duties of AMG legal officers in relation thereto. May I, please, have your instructions in this respect?

6. Legal Personnel

Paragraph 9 of Executive Memorandum No 18 is not clear to me. It is presumed that the power of HQ, ACC to assign, attach, relieve or replace Regional legal personnel is not intended to interfere with my disposition of legal personnel within the Region, which, according to normal practice, would be a matter for my decision on the advice of the Regional Legal Officer.

7. Legal Directives and Opinions

With reference to paragraph 10 of Executive Memorandum No 18, it is not clear to me why my Regional Legal Officer should not render opinions, for the guidance of myself and the heads of other Divisions, on matters of general legal policy. Hitherto I had assumed that one of his primary functions was to keep me advised on all legal matters arising out of the administration of the Region.

8. May I, please, have your comments and instructions with regard to the above points?

Regional Commissioner
Region 4, AMG

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Regional Commissioner
Region 4, AMG

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

4089
ACC/1403/1/L

22nd February 1944

SUBJECT: Powers of SCAOs and SLOs, 5th & 8th Army.

TO : Executive Commissioner

1. Enclosed is a directive extending the powers conferred upon R.L.Os by Proclamation No. 14, to S.L.Os of the 5th and 8th Armies.
2. Will you please sign the directive if approved by you.

RICHARD H. WILMER,
Lt. Col. C.A.C.
Deputy Chief Legal Officer.

HEADQUARTERS
ALLIED CONTROL COMMISSION
A.P.O. 394

22nd February 1944

SUBJECT: Powers of SCAGs and SAGs, 5th & 8th Army.

TO : S.C.A.G., A.M.G., 5th Army
S.C.A.G., A.M.G., 8th Army

1. By Proclamation No. 14 certain powers, originally granted to the S.L.O. by Proclamation No. 2 and 4, were extended to R.L.Os of regions. In order to have uniformity in exercise of review and other powers, it has seemed wise to extend to the S.L.Os, 5th and 8th Armies, the same powers conferred on R.L.Os by Proclamation No. 14. You are therefore herewith instructed that the powers conferred by Proclamation No. 14 on R.L.Os are hereby extended to and conferred on the S.L.O. of the 5th Army and on the S.L.O. 8th Army.

2. As a result of the authority so granted, the procedure with respect to reviews, 5th and 8th Armies, shall hereafter be as follows :-

All petitions for review originating in the 5th and 8th Army areas may be filed with the trial court or may be forwarded to the S.L.O. of the army concerned but shall be addressed to the Chief Commissioner. Every record originating in the army area shall be transmitted to the S.L.O., that army, for examination and file. Where no petition for review has been filed under Proclamation No. 4 Art. VII, Section 1 and the sentence does not exceed two years' imprisonment or a fine of 50,000 lire, the Army SCAG shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. In all cases where there is a petition for review or where the sentence exceeds 2 years' imprisonment or a fine of 50,000 lire, the record and petition for review, if any, shall be forwarded to the S.L.O., R.C., A.S.C. for examination and review.

3. Other powers, functions and duties conferred on R.L.Os by Proclamation No. 14 now applicable to S.L.Os 5th and 8th Army are the following :

- (a) The S.L.O. may now in his area perform the functions previously assigned to the R.L.O. with respect to detention of suspects (Proc. No. 2, Art VII, Section 2).
- (b) The S.L.O. may now order an Allied Military Court in his area to sit in camera. (Proc. No. 4, Art. VII, Section 1).
- (c) The S.L.O. may now exercise the power of prohibiting any lawyer

- 2 -

(15)

or other person from appearing in any court in his area. (Proc. No. 4, Art. IV, Section 2(b)).

4. This directive supercedes all previous directives issued by H.Q., A.M.G. or H.Q., A.M.G., 15 Army Group inconsistent herewith.

A. B. LEBR
Brigadier,
Executive Commissioner,
For, Chief Commissioner.

16

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission
APO 394

ORU/gmf

24 February 1944.

ACC/ACB9/L

SUBJECT: Legal Questions.

TO : SLO AND 5th Army.

Ref your OA/13/45A dated 31 Jan 44.

(1) Agreed. As the result of experience this HQ is becoming more and more insistent on the policy that breaches of Italian law should be tried in Italian Courts unless there is some good reason to the contrary e.g. that no appropriate Italian Courts are sitting or that they have very large arrears of work to cope with or of course there may be some particular reason for trying a particular case in an A.M. Court.

(2) Agreed.

(3) This matter was taken up with the new Minister of Justice on Tuesday last when it was agreed that the decrees ordering inhabitants to surrender copper, wool etc. for the use of the army (R.D. 13.12.39 No. 1805) should not be repealed but that all prosecutions should be suspended sine die.

G. R. UPDESH
Colonel
Chief Legal Officer.

Copy to: SLO AND 5th Army
(for info paras (1) & (3))

HEADQUARTERS,
ALLIED CONTROL COMMISSION
APO 394

14th February, 1944

EXECUTIVE MEMORANDUM

NUMBER 13

TO : Regional Commissioners,
Regions III, IV & V.

POWERS OF REGIONAL LEGAL OFFICERS.

MILITARY COURTS.

1. The Regional Commissioner shall have the authority and is responsible for the establishment of Superior and Summary Military Courts in his region. He will request HQ. A.C.C. to appoint a General Military Court whenever necessary.

2. Review of the Decisions of Allied Military Courts will be in accordance with Proclamation No. 14. As it amends Proclamation No. 4 which provides for reviews substantially, in the following manner:-

Any person convicted by a Military Court may, within thirty days after imposition of sentence, file with the trial court or forward to the Chief Legal Officer of the Region a petition addressed to the Chief Commissioner submitting reasons why the conviction should be set aside or the sentence should be modified.

Every record of trial by an Allied Military Court shall be transmitted to the Chief Legal Officer of the Region for examination and file. The record in any case may on the recommendation of the Chief of the Legal Sub-Commission, and shall, in the event of the sentence exceeding two years imprisonment or a fine of L.50,000 be reviewed by the Chief Commissioner or by an officer of the Allied Military Government not below the rank of Lieutenant Colonel who may be appointed by the Chief Commissioner for that purpose. Where there has been no petition of appeal as above provided and the sentence does not exceed two years imprisonment or a fine of L.50,000 the Chief Legal Officer of the Region shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. Confirmation of death sentences remains as heretofore.

3. By Proclamation No. 14 referred to above the Regional Commissioner may order an Allied Military Court to sit in camera. The

TO : Regional Commissioners,
Regions III, IV & V.

POWERS OF REGIONAL LEGAL OFFICERS.

MILITARY COURTS.

12

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3. By Proclamation No. 14 referred to above the Regional Commissioner may order an Allied Military Court to sit in camera. The Chief Legal Officer of the Region may also perform the functions previously assigned to the Chief of the Legal Sub-Commission (C.L.O.) in connection with the detention of suspects. See Proclamation 2, Article VII, Section 2.

ITALIAN COURTS AND PERSONNEL.

4. The Regional Commissioner may remove Italian Judges and officials connected with the Italian Courts and on a temporary basis during vacancies may fill existing vacancies. He may appoint Notaries when vacancies occur, upon the recommendation of the Material Council of the district in which such vacancies exist. For the purpose of securing assistance

- 2 -

and advice on Italian legal and judicial matters, he may appoint a Central Committee of Italian Citizens. The Regional Commissioner will report in detail to HQ. ACC on any proposed appointment, promotion or transfer of judges and court officials except in an emergency when an appointment, promotion or transfer may be made subject to confirmation by HQ. ACC. Any removal will be reported to HQ. ACC as soon as possible.

5. The opening and functioning of all Italian Courts, criminal, civil, is the responsibility of the Regional Commissioner.

ITALIAN MILITARY TRIBUNALS.

6. The Regional Commissioner acting on the advice of the Chief Legal Officer of the Region will be responsible for permitting Italian Military Tribunals to function within his region in accordance with the Directive issued in that regard.

PRISONERS.

7. The Regional Commissioner shall be responsible for investigating the circumstances of all prisoners held in jail without trial and for investigating all cases of complaint by prisoners that they have been unjustly condemned for their political views. The Regional Commissioner shall forward to HQ. ACC his recommendations for release of all such prisoners and may pending receipt of orders thereon grant provisional or conditional liberty or release, on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crimes and never brought to trial because of political connections and report made to HQ. ACC.

ITALIAN LEGISLATION AND LAWS.

8. The Regional Commissioner shall not abrogate or amend any laws on the ground that they are discriminatory or of a fascist nature and this matter is reserved to HQ. ACC. The Regional Commissioner may, however, temporarily amend Italian rules of procedure for the more expeditious hearing of trials but only in accordance with directives already issued.

GENERAL.

9. HQ. ACC. will issue orders and directives binding upon regions, to assign, attach, relieve or replace regional legal personnel, and to review decisions of Allied Military Courts in accordance with paragraph 3 above.

10. The Chief Legal Officer of the Region will NOT issue directives or render opinions dealing with matters of general legal policy without previous reference to HQ. ACC. He will NOT fix penalties for prescribed offences but it is his duty to secure reasonable uniformity of sentences commensurate with the prevalence of any particular type of crime in his region, and commensurate with the particular crime itself.

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PRISONS.

7. The Regional Commissioner shall be responsible for investigating the circumstances of all prisoners held in jail without trial and for investigating all cases of complaint by prisoners that they have been unjustly condemned for their political views. The Regional Commissioner shall forward to HQ, AOC, his recommendations for release of all such prisoners and any pending receipt of orders thereon from provisional or conditional liberty or release, on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crimes and never brought to trial because of political connections and report made to HQ, AOC.

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By the command of Lieut-General VASON MACFARLANE.

M. S. Lush

M. S. LUSH
Brigadier,
Executive Commissioner.

21/4/41.

13 Lt. Col. Crump. (Rep.)

Conference with Commerce & Industry S/Com^{rs} who advise against maintenance of these regulations for following reasons (a) difficulty of application; (b) prosecutions rare and trivial in nature (c); no economic importance under existing circumstances; (d) Present policy to allow materials to come on to market and for prices to find their own level.

SUBJECT: Legal ques 18.Rear 8. Eighth Army.

Ref : OA/13/45A.

P.S.L.O. Campobasso.

31 Jan 44.

1. In answer to your reference CR(Legal)18, of 29 Jan 44, by your numbered paragraphs.

(1) Your understanding is correct, with the addition however, that, at the direction of an officer under authority of the Military Governor, the Summary Court may prosecute for violations of specific provisions of Italian Law. This office is of the opinion that the P.S.L.O. may be deemed to be authorized to direct such prosecutions. Such authority should be exercised by you in writing either (a) generally to all Summary Courts, (b) generally to certain Summary Courts where no Italian Court is functioning in the vicinity (c) for certain named cases, upon request of the Summary Court for such authority. In exercising such discretion you should bear in mind policy of this Headquarters to require Italian Courts to deal with violations of Italian Law. Where we are particularly interested the responsible officer should follow such prosecutions, and my order that any case be tried "diritissimo".

(2) Your expressed opinion is correct.

(3) Your letter has been forwarded to C.L.O., AMG 15 Army Group for his consideration. In the meanwhile you may if you think best direct the Italian Courts to refrain from such prosecutions until further order as long as this is "occupied territory", or you may direct a similar stay in specific cases. Where a judgement has been entered you may likewise stay execution.

2. Your letter is forwarded, with a copy of these directions, to C.L.O., H.Q. AMG 15 Army Group.

EDWIN J. HERGER. Maj. CMD.
Senior Legal Officer,
AMG Eighth Army.

Copy to: C.L.O.,
AMG H.Q. 15 Army Group.

694.

Ref: CP.(Legal). 18.

29th. January, 1944.

SUBJECT: Legal Questions.

TO: Senior Legal Officer, A.M.G. H.Q. 8th. Army Main.

FROM: P.S.L.O. Campobasso Province.

1. PROCLAMATION 2, ART. 4.

Some C.A.O.s are using this ART. as a basis of charge and trial for violation of Italian law---especially for violation of price fixing regulations. The undersigned believes ART. 4 merely states a procedure for prosecuting a violation of Italian law, but that it states no crime, and that violation of price control or price fixing order should be prosecuted either under the specific order or under PROC. 8. May I have your interpretation of PROC. 2 ART. 4.?

2. Power of Court to modify sentence partly executed.

Some C.A.O.s have raised the question of their power to modify sentences they have imposed and which have been partly executed. It is my opinion that a sentence, once imposed, must stand, unless modified upon petition of review. I find no provision allowing a court to revise its opinion on its own motion. May I have your opinion?

3. Prosecutions by Italian Courts of War Provisions.

Italian courts are still prosecuting persons for failure to turn in Copper, copper utensils, wool etc. Such laws were passed in the period 1939---41 by royal decree in order to get war material for the Italian army. It seems unnecessary and undesirable to now prosecute such cases unless the Allies wish to "squeeze" these articles out of the citizens for the use of the present Italian army. If such is not the case---these royal decrees should be cancelled and such prosecutions prohibited. Perhaps you will wish to take this up with interested persons, and if so, may wish specifically to refer to "R.D. 13---12---1939 No. 1805---Ministerial Decreto---19th. April 1941.

Henry K. Marshall
Captain.

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S.R.M./N.J.M.

Shirley K. Marsh
Provincial Senior Legal Officer.
Campobasso Province.
Captain.

1st Ind.

31/1/44

To: C.A.O., R.M. & 149 15 Army Gp.

1. Forwarded, with copy of reply, which reply is

COPY

28 JAN 1944

SUBJECT: Instructions to Legal Officers.AMG H.Q. Eighth Army.

Ref: OA/13

~~P.S.L.O. Campobasso.~~
~~P.S.L.O. Chieti.~~

19 Jan 44. 10

1. In discussion with C.L.O., 15 Army Group it was tentitively decided that Major Wellsford, being the senior AMG Legal Officer in the Province of Chieti and Capt. Marsh being the same in the Province of Campobasso, each could correctly describe himself as Senior Legal Officer of his Province.
2. C.L.O., 15 Army Group will take matter of title up with C.L.O. Region IV.
3. Until further notice the Legal Officer who is actually senior in the legal branch in each Province will sign and describe himself as Provincial Senior Legal Officer. (P.S.L.O.).

(Sgd) EDWIN J. MERCER.

Major, ORD.,
Senior Legal Officer,
AMG Eighth Army. 10

Copy to: C.L.O.,
AMG 15 Army Group. ✓

ALLIED MILITARY GOVERNMENT
SICILY REGION HEADQUARTERS
ABO 512

20 November 1943

OFFICIAL (RDA):
NO. 11

Release of prisoners sentenced before Occupation.

It is hereby ordered that the power to grant liberation to prisoners sentenced by Italian Courts before occupation, vested in Senior Civil Affairs Officers by AMGP Instruction 4001/A dated 15 September 1943 shall, after recommendation of the competent Italian authority, be exercised by the Regional Legal Officer, Sicily Region Headquarters, or by his Deputy.

This order shall be effective immediately.

Charles F. Felt
CHARLES FELT,
Lt. Colonel,
Regional Civil Affairs Officer.

Distribution:

2
10 copies

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 512
LEGAL SUB-COMMISSION

21st November, 1945.

AMG/4043/2/L

SUBJECT: Monthly Report.

TO : RUCLO. Region II.

1. Thank you for your monthly report for October and for your letters on the status of Italian Soldiers and on Committees of Investigation.
2. A directive containing the rules under which Italian Military Tribunals may function is enclosed. Normally, all members of the Italian armed forces will be tried before such courts unless Allied personnel or property is involved, but any civilian will not be tried before such courts but before an Allied Military Court; you will exercise your discretion in the application of these rules.
3. Your action in appointing a committee of investigation, though admirable in many ways, is somewhat premature as this is a matter to be coordinated with the Italian Government. By all means continue investigations already begun but do not institute prosecutions without further reference to this HQ. It is hoped that this matter will be dealt with on a National basis shortly.
4. Your notice announcing the appointment of the Committee of Investigation should not have been signed by you as Legal Officer. All public notices must as a staff matter be signed by or for the SGAO. 8
5. Your policy outlined in your para.8 is wholly admirable and is entirely approved.
6. Your Regional Order not determining the moratorium even in respect of transactions in lands has been referred to the Finance Sub-Commission as it does not accord with their policy. This is of course a matter of financial policy and not for you or as as lawyers.
7. Referring to our meeting in Colonel Rowe's Office there appears to be some delay over the matter of your future which we then discussed, so you will remain until further order R.C.L.O. Region II.

GERALD HUGHES,
Colonel,
Deputy Chief Legal Officer.

Copies to:

File AMG/4009/L
AMG/4001/2/L.

HEADQUARTERS
ARMED MILITARY GOVERNMENT
A.P.O. 342
LEGAL SUB-COMMISSION

13th November 1943

AME/4089/1

Subject:- Powers of S.L.Os.

To: R.C.L.O. (thru S.C.A.O.) Region II.

With reference to your letter of 28th October 1943, the rule referred to in paragraph 3 therein is approved. However, as to the review of cases the following procedure is to take place pursuant to a new proclamation of which copies when printed will be sent to you.

All petitions may be filed with the trial Court or may be forwarded to the Regional Chief Legal Officer, but shall continue to be addressed to the Chief Civil Affairs Officer.

Every record shall be transmitted to the Regional Chief Legal Officer for examination and file.

Where there has been no petition of appeal under Proclamation No. 4, Article VII, Section 1 and the sentence does not exceed two years imprisonment or a fine of 50,000 lire, the Regional Civil Affairs Officer shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. Where cases are reviewed by the Chief Civil Affairs Officer, he may appoint a judicial officer not below the rank of Lieutenant Colonel for that purpose.

Richard H. Widmer

Lt. Col. C.A.O.,
Acting Chief Legal Officer.

Nella risposta citare il numero del protocollo

Subject: Status of Italian SoldiersTo: Chief Legal Officer
AMS HQ., Sicily11 November 1943
AMS HQ.
Region 2
Ref. 2201/14/11

4089

1. Enclosed herewith is a copy of a letter sent this day to the Legal Officer at Reggio. The problem which he has raised is perplexing, and quite possibly the solution which he has been directed to follow, should not become a regular procedure. It seemed important, however, to have the case disposed of quickly, and the instruction which has been given will serve to meet the immediate necessity without committing us too definitely.

2. Your advice as to a general rule for future application would be appreciated.

*Wm. D. Howe*Mark DeW. Howe, Major, AUS,
R.I.O., Region 2

Subject: Jurisdiction of Allied Military
Courts over Italian Soldiers

4 November 1943
AUG HQ.
Region 2
Ref. 2201/14/16

To: Legal Officer
AUG, Reggio-Calabria

1. You have raised the general question of whether Italian soldiers are subject to trial by Allied Military Courts for violations of our Proclamations. As I understand it the problem has been presented in Reggio-Calabria by reason of the arrest of an Italian soldier, who had recently rejoined his Regiment, was wearing a British battle blouse, and resisted arrest.

2. There is no question but that Italian military personnel are subject legally to our Proclamations. The competence of our Courts also extends to them. It may well be, however, that it would be inadvisable to bring certain types of offenses committed by Italian soldiers before our courts and that such cases had better be handled by disciplinary measures administered by Italian Military Courts.

3. A working rule which you should apply to the present case, and which I shall submit to AUG HQ. for approval will be for any charge possessing possibly serious aspects to be brought on for hearing by a Summary Military Court. That Court should hear sufficient evidence to determine the significance and seriousness of the alleged offense. If the charge, after this preliminary hearing appears to be trivial, in so far as Allied interests are concerned, the Court should terminate the hearing and refer the matter to the nearest appropriate Italian military authority for such disposition as that authority believes to be proper. If, on the other hand, the charges involve our interests at all substantially the case should be retained for final disposition, either in the Summary Court or in a Superior or General Court.

4. Because it is only proper for a charge of the sort now pending in Reggio-Calabria to be heard at the earliest possible time you are directed to handle the matter in the manner described above. In the meanwhile, and for the solution of the problem as it may arise in the future, I shall ask AUG HQ. for instructions.

Clark DeW. Howe

Clark DeW. Howe, Major, AUG
H.L.O., Region 2

Copies to: AUG HQ., Sicily
Procuratore Militare
Italian 7th Army, Martina Franca

Subject: Legal Section, Region 2

To: Chief Legal Officer
AMG HQ., Palermo

28 October 43
AMG HQ.
Region 2

(4)

1. The Legal Section in Region 2 is presently organized along the following lines:

Regional HQ: Major Howe, Regional Legal Officer
Capt. Backhouse, Legal Officer
Capt. Guthrie, " "

Lucania HQ: Capt. Paty, Senior Legal Officer
Capt. German, Legal Officer, Matera

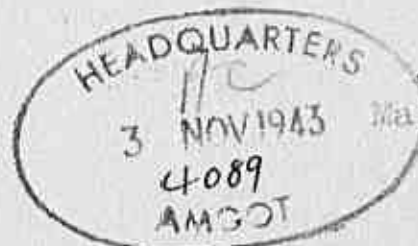
Calabria HQ: Major Franklin, Senior Legal Officer
Capt. Dreyfus, Legal Officer, Reggio
Capt. Little, " " Cosenza

It should be pointed out that although Captains Backhouse and Guthrie are carried on the HQ. strength, they will in fact be assigned out to different spots in the Region to deal with special problems as they arise from time to time.

2. The organization of the Region, not being similar to that in Sicily, has made it difficult to give literal application to a number of the Directives and Instructions from Palermo. By those instructions certain powers and responsibilities are conferred upon "Senior Legal Officers", who there had provincial duties only. There was no echelon between the Province and Palermo HQ.; here, on the other hand, there are the Compartimenti HQ. and the Regional HQ. standing between the Province and Palermo.

3. The rule has been announced from this HQ. that the powers conferred on Senior Legal Officers by Sicilian directives are here to be exercised by the Legal Officers for the Compartimenti or by the Regional Legal Officer? That rule is more or less arbitrary, and it may involve some difficulties as a result of defective communications between the Compartimenti HQ. and Provincial offices. It would seem, however, that if the difference between the Legal Officers for Compartimenti and those working under their supervision in the Provinces is to mean anything the rule should be continued in force.

4. Your advice in this matter would be appreciated.



Ward of W. H. H. J.

Major, AUS, R.L.O., Region 2

Powers of Senior Legal Officer

R.S.L.O., Region I.

29th Oct.

3

In order to bring the procedure in Sicily into line with the proclamations as issued and to be issued in Italy will you please instruct your legal officers that where any person is detained under the powers given by Proclamation No. 2, Art VII, Section 2, the Regional Senior Legal Officer shall be so informed and he will review the circumstances under which the detention was made. This power of review is no longer to be exercised by Senior Legal Officers.

Wm. C. CHANLER.
Lt. Col. (AUS).
Chief Legal Officer.

File
AMCOT/4089/L

ALLIED MILITARY GOVERNMENT
SICILY REGION HEADQUARTERS

PL/26.011-2/TRJ
10/29/43

ADMINISTRATIVE INSTRUCTIONS NO. 2

SUBJECT: Duties of Legal Officers.

TO : All Legal Officers (through S.C.A.O.)

1. Duties of the Senior Legal Officer.

The duties of the Legal Officer assigned to each province fall into three general divisions:

- a. Supervision of, and assistance to all Italian Courts, operating within the Province.
- b. Supervision of all AMG Courts functioning within the Province, including the trial of the more important cases, maintaining the records thereof and forwarding the same to the Regional Headquarters, processing appeals, and in general taking such steps as are necessary to insure a fair and effective enforcement of the Proclamations.

- c. The rendering of such opinions and advice to the S.C.A.O. and subordinate departments, as may be required, and acting as counsel for the Provincial Military Government.

2. Procedure

- a. The supervision of all Summary Courts in the province, most of which will be conducted by C.A.O.s, is a matter of primary responsibility. The C.A.O.s are not usually lawyers and constant and careful instruction will aid them in the discharge of their duties.
- b. Superior Courts should be organized, with the Provincial Legal Officer assuming an active part, utilizing line officers from neighboring provinces whenever possible.
- c. The Summary Court Docket should be kept by each Summary Court Officer and frequently inspected by the Senior Legal Officer. Reports, to this headquarters, should be made on the loose Summary Court Docket sheet.

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- b. Superior Courts should be organized, with the Provin-cial Legal Officer assuming an active part, utilizing line officers from neighboring provinces whenever possible.

- c. The Summary Court Docket should be kept by each Sum-mary Court Officer and frequently inspected by the Senior Legal Officer. Reports, to this headquarters, should be made on the loose Summary Court Docket sheets. Each Summary Court should keep notes of all cases but the form No. 8 reports are required in the following categories of cases, only:

- (1) When a sentence of 90 days or more, or a fine of 4,000 Lira or more is imposed.
- (2) When the case involves new or complicated ques-tions of law, without regard to the extent of the penalty imposed.

(3) When unusual leniency or severity in the sentence is deemed necessary.

(4) Where there is an indication that an application for review will be filed.

(5) When the Summary Court Judge feels that for any reason the full record should be submitted to this headquarters:

No regular report will be required by this headquarters, other than the forwarding of the Summary Court Docket sheets and the form No. 8 reports when required. Frequent, informal, letters are invited to keep this headquarters advised with reference to legal matters in each Province.

d. Appeals or applications for review should be made through the Senior Legal Officer, on form No. 11, in English, if practicable. These appeals should be forwarded promptly, with the form No. 8 report, if it has not already gone forward together with such comment as the Senior Legal Officer may care to make. The Appeals will normally communicate with this headquarters through S.L.O.

e. Senior Legal Officers will make an informal application to this headquarters for such forms as may be needed.

3. Sentences.

a. Sentences have been entirely too light. A sentence is given to act as a deterrent to other wrongdoers as well as to punish one who has offended. It should not be harsh nor vindictive but neither should it be based upon sentimentality, undue leniency or expediency. The social implications caused to the family by imprisonment of the guilty should not be permitted to counterbalance the necessity of vigorous punishment for the crime committed.

(1) Offenses involving moral turpitude are offenses everywhere, and should be dealt with by a sentence sufficient to act as a deterrent to other offenders.

(2) Many offenses are made offenses by the Proclamation.

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(1) Offenses involving moral turpitude are offenses everywhere, and should be dealt with by a sentence sufficient to act as a deterrent to other offenders.

(2) Many offenses are made offenses by the Proclamations and do not involve an intent to commit wrong. The act is itself prohibited and therefore a violation should be punished.

b. An important function of Military Government is to control the civilian population of an area, so that the efforts of the Army will be expedited and not impeded. Certain offenses have peculiar significance to the Military, such as sabotage, in dealing with communication failing to surrender and sniping at soldiers,

thefts and the possession of Military property. These offenses should, generally, be dealt with by rendering a substantial sentence. Nominal fines, suspended sentences and undue leniency will not be sufficient to protect the Military Forces from the interference which these offenses cause. Every effort should be made by the Senior Legal Officer to co-ordinate his law enforcement program with the Military in his area as well as with Public Safety Division and with local police agencies.

c. Black Markets have a far reaching effect upon the people of Sicily, by rendering it difficult or impossible for great numbers of distressed people to obtain the necessities of life. This situation is exploited by selfish interests for their own gain. The food supply of this island must be used to give at least a minimum of food to the greatest number of inhabitants. Every effort must be made to eliminate the Black Market by careful preparation of the prosecutions, coordinating the work of all agencies and by a vigorous, swift and certain sentence to wrongdoers. As in paragraph 3b, fines, suspended sentences and undue leniency will not strike at the heart of the Black Market. Whenever practicable, the wrongdoer's right to do business (his license) should be rescinded as part of the punishment.

d. Suspension of penalties is a duty and an obligation in proper cases but care should be exercised that such suspensions do not nullify the program of law enforcement nor weaken the respect due the Court. If a case is worth bringing and the guilt of the accused is evident, a proper penalty should be imposed. If a series of cases merely result in suspended sentences, perhaps the cases should never have been instituted. Suspension of penalties should not be used as an expediency to compromise with crime.

e. Collection of fines is a means to an end, to secure proper respect for law, and is not, in itself, a proper end. Fines should be paid at the conclusion of the trial or the accused committed to prison. Fines should be remitted to the proper official without delay.

4. Supervision of Italian Courts will occupy an increasingly important place in the efforts of the Senior Legal Officer.

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4. Supervision of Italian Courts will occupy an increasingly important place in the efforts of the Senior Legal Officer. This supervision will include some of the following items:

a. Reliability, integrity and competency of the judicial personnel is of the highest importance. Recommendations for the removal from office of any person who is unworthy of his position should be made to Regional Headquarters when good reason therefor appears.

b. The Italian Courts normally function more leisurely than do Anglo-Saxon Courts. War and the interruption of the normal life of the people of Sicily, attendant upon war and invasion, have disrupted the normal judicial schedules. Difficulties of communication and transportation exist. These Courts, therefore, must have firm but sympathetic guidance to the end that in the shortest practicable time they can be made to function efficiently for the benefit of the people of Sicily.

c. Constant supervision, inspection and helpful advice is necessary.

5. All orders, instruction and directives, heretofore or hereafter issued by Headquarters AMGOT or the Chief Legal Officer, AMGOT, are and will remain in full force and effect, except as modified by orders and instructions from this headquarters under authority from higher headquarters, and full compliance therewith will be required by each Legal Officer.

6. The Senior Legal Officer must at all times hold himself in readiness to render full, complete and intelligent service to the Provincial Military Government of which he is a part.

By order of Lt. Col. Charles POLETTI, H.C.A.O.

WILLIAM R. JORDAN,
Lt. Col., H.C.A.O.,
Regional Chief,
Legal Officer.

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Distribution.

1 Each Staff Section Region I
10 Headquarters, C.L.O., AMGOT.

S.C.A.O.S

15 Palermo

10 Messina

10 Catania

10 Ragusa

10 Caltanissetta

10 Enna

15 Agrigento

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By order of Lt. Col. Charles POWELL, R.C.A.O.

WILLIAM R. JORDAN,
Lt. Col., C. A. C.
Regional Chief,
Postal Officer.

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