

ACC

10000/142/682
(VOL. 3)

EXTRAORDINARY
OCT. 1945 - JUN. 19

10000/142/682
(VOL. 3)

EXTRAORDINARY COURTS OF ASSIZES (PEOPLES' COURTS)
OCT. 1945 - JUN. 1946

Chief Commissioner.

Attached is submitted for your ~~approval~~
signature
information

DW 1/4

98

APR 2 REED

1430

10/

C.C. / (Hays Ex. 100)

- Prime Minister's letter is at 1A.
- Mr. Hopkinson was consulted in Mr. Jones's absence - opinion of SLO Verneque Giulie is at 2A.
- Does C.C. agree with draft answer at 3A.
- 8420 final copy will be submitted for signature forthwith.

Legal S/C
30 Mar 46
G. S. Harrison
Hue

96

C.C. - ^{am impressed}
I ~~agree~~ with the legal views and
consequently concur in the draft
for your signature.
J. M. Jones. Pres. (4)
Apr 2/46

Legal

... 34 no final copy will be submitted for signature
forthwith.

Legal S/C

30 Mar 46

G. G. Hammer for
Hick

CC-

in impression

I agree with the legal views and
consequently concur in the draft
for your signature.

J. M. Jones. Pres. (H)
Apr 2/46

Legal

Letter signed. Copies have been withdrawn
for cc etc. files.

J. M. Jones

Ex Com8

Draft cables as requested & CC is
on opposite page for approval and
despatch & signal if so approved

Leque S/C
24 Dec 1915

T. M. M.
29/12

G. S. Humphrey
H. L. L.

9

Ex Com spoke C.S. who approved signal
at 202 A.

T. M. M.
29/12

10.

98

Chief Commissioner.

Ref 207A.

For your approval please.

CAN B RECD

1215

H. M. M.
C. L. L.
3/1/16

1.

TO: VP GA Sec

Herewith submitted order to be signed by the SAC delegating power to the Chief Commissioner to confirm or deny pardons in Italian Courts in AMG territory.

Also submitted covering letter to AMHQ which please sign (2 copies) if approved.

Signatures
JOHN K. WEBER,
Col., Inf.,
Chief Legal Advisor.

Legal S/C
3 Nov 45

2.

cc Legal

Letter for despatch please.

Heckman

CAS

5 Nov 45

C. A. Sec.

(3)

Please see 166A. Draft 2/4 submitted for signature of approved.

Signatures

9 Nov 45

93

ALLIED ~~CONFIDENTIAL~~ COMMISSION
INTER-OFFICE MEMORANDUM

SUBJECT:

TO Legal.

FILE NO. *gls*

194

(4)

Refer EX 53687.

Wording is not very satisfactory but it is considered that it may not be an advice of Min. Just.

Legal S/C
3 Nov 45

CC Legal

CITs

5 Nov 45

C. 4. Sec.

Plan see 1864. Disposition extended for signature of approved.

9 Nov 45

J. M. W. Weber
for file

y3

JOHN K. WEBER,
Col., Inf.,
Chief Legal Advisor.

Letter for despatch please.

Hestman III

(3)

ALLIED ~~CONFIDENTIAL~~ COMMISSION
INTER-OFFICE MEMORANDUM

SUBJECT:

TO Legal

FILE NO.

91

194

(4)

Refer FX 53687.

Wording is not very satisfactory but it is considered that para 1. implies that AC may act on advice of Min. Just and that para 2. implies that it will only not so act

if it knows of facts unknown to the Min of Justice and that a miscarriage of justice is likely to occur - not that a pardon could under the circumstances be desirable

You will note that para 1. uses the words "the policy of this HQ is to take no action" - not that AC should take no action except. ... the fact that AC is intended can only be deduced from the 2nd para - because cases do not go to AC HQ except under the special circumstances there mentioned. After telegram handy gives the authority which can issue such

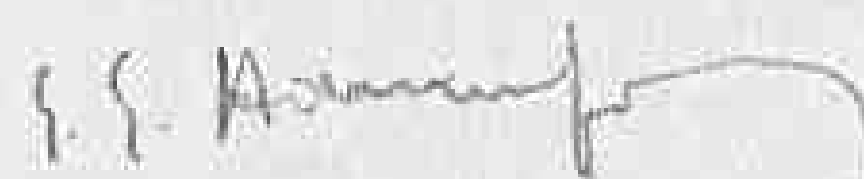
20 Nov 45

(5)

Chief Commissioner.

Enclosed you will find for your signature a letter to AFHQ on the subject of death sentences pronounced by Extraordinary Courts of Assize in AMG territory.

The letter sets out the points which were discussed at Saturday's meeting and not contained in our earlier recommendations.



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

Legal Sub-Commission.
17 Dec 45.

C.C.

A good letter.

(6)

718/18/XII.

DEC 18 RECD
1040

306

Legal Sec.

(7)

Letter signed & returned for dispatch.
cc. & b.c. copies have been withdrawn.

95



ALLIED ~~CONTROL~~ COMMISSION

INTER-OFFICE MEMORANDUM

ARCHIVES BRANCH

SUBJECT: *File* ~~WILSON~~ Achille Fu Indigi.

FILE No. 15/AB/LEGAL

TO : Legal S/C, Records Officer.

221A 22 June 1946

Reference your AC/8072/4/1 of 18 June.

After a careful search by your representative in the file of ~~WILSON~~ ~~SUBJECT~~, it is regretted that no trace of a document upon the above case can be found.

CJO

CJO

Chief Control

CJO

Italian Section

CL RKS

M. HARRISON
M. HARRISON,
MAJOR,
ARCHIVES BRANCH.

Dropica

92

23 June 46

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

AP/mda.

AC/4092/1/1.

21 June 1946.

SUBJECT : File in the case of MEANI Achille fu Luigi.

TO : Ministry of Pardon and Justice.

1. Reference your letter 504/45 of 7 May 1946, Uff. IV Grazie, addressed to "Capo del Pubblico Ministero" of PADOVA.

2. Please advise the above mentioned Pubblico Ministero that the file in the case of MEANI Achille was transmitted, together with the order commuting the sentence imposed by the Extraordinary Court of Assize, by this Sub-Commission to the Regional Legal Officer of VENEZIA Region on 14 Dec 45 who in turn should have forwarded it to the appropriate Procuratore Generale.

3. An accurate search through the files of VENEZIA Region, now being kept by the Archives Division of this Hq., has also been made but no trace of the record in question could be found.

91

G.C. HANNAFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

File

HEADQUARTERS UNITED STATES
A-10 794
LEGAL SUB-COMMISSION

221A

AP/ada.

12/1032/1/1.

12 June 1946.

SUBJECT : File in the case of MIRANT Achille fu Luigi.

TO : Archives Division, Hq. A.C.

1. It would be very much appreciated if a search be made through the documents of VENETIA Region in order to trace the file in the case of the above mentioned who was sentenced to death by an Extraordinary Court of Venice sitting at PADOVA on 26 July 1945.

2. Said file was transmitted to U.S.O. VENETIA Region on 14 December 1945 by this Sub-Commission for onward transmission to the Italian Authorities of that Region but it is presumed that through an oversight the file was retained by the U.S.O. and afterwards sent to your Division in view of the fact that the Italian Authorities did not receive it.

3. Please consider the matter as urgent.

90

DESTER C. REED,
Captain, Infantry,
for Chief Legal Advisor.

4071 File
 ON/LE LEGAL S/ C.A.C. ITALIAN BRANCH

ROMA

La sottoscritta Rampazzo Ida fu Angelo residen-

te a Ponte S. Nicolò (Padova) si permette rivolgere

a codesta On/le Commissione Alleata la presente do-
 manda:

il proprio marito MILANI ACHILLE fu Luigi è stato
 condannato alla pena di morte per reati politici con
 sentenza 26/7/45 della Corte d'Assise Straordinaria
 di Padova. Successivamente, sulla domanda di grazia,
 il Ministero della Giustizia, ordinò una nuova istrut-
 toria in seguito alla quale gli è stata concessa la
 grazia con provvedimento N.9337 della COMMISSIONE

ALLIATA A.M.G. in data 17.12.1945.

Dai documenti della istruttoria sulla domanda di gra-
 zia sono risultati elementi utilissimi a favore del
 condannato e sul modo con cui si svolse il processo
 contro di lui. Detti documenti sono di grande in-
 teresse per la scrivente che ha chiesto la revisione
 del processo.

Ha richiesto il Ministero di Grazia e Giustizia.

LEGAL SUB-COMMITTEE

220A

ITALIAN

CL. RES.

89

ROMA

La sottoscritta Rampazzo Ida fu Angelo residen-
te a Ponte S. Nicolò (Padova) si permette rivolgere
a codesta Gn/la Commissione Alleata la presente do-
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condannato e sul modo con cui si svolse il processo
contro di lui. Detti documenti sono di grande in-
teresse per la scrivente che ha chiesto la revisione
del processo.

Ma, richiesto, il Ministero di Grazia e Giustizia,
(allegata copia di lettera) ha risposto al Procura-
tore Generale della Corte d'Assise di Padova che det-
ti documenti sono in possesso di cotesta COMMISSIONE

ALLIATA perchè inviati col parere sulla domanda di
grazia e la scrivente rivolge quindi

viva preghiera

affinchè detti documenti siano restituiti al Procura-
tore Generale presso la Corte di Assise di Pado-
va.

Fiduciosa di essere esaudita, ringrazia e con
ogni ossequio, si segna.

Padova 9 giugno 1946

Dada Rampano

Copia

MINISTERO DI GRAZIA E GIUSTIZIA

Direz.Gen. degli Affari Penali delle Grazie e Casellario

Roma 7 maggio 1946

UFFICIO IV GRAZIE

Prot.N. 544/45

Risp.al f° N° del 24.4.46

N. 796/46

OGGETTO: MILANI ACHILLE = istanza trasmissione documenti.

AI CAPO DEL PUBBLICO MINISTERO presso la
Sezione Speciale di Corte di Assise diPADOVA

All.

Si restituisce la acclusa istanza con preghiera di comunicare agli interessati che il fascicolo relativo alla istruttoria per grazia in favore del Milani Achille non è più a disposizione di questo Ministero, dato che è stato a suo tempo trasmesso alla Commissione Alleata a corredo del parere sulla istanza  di grazia del Milani.

D'ORDINE DEL MINISTRO

F/to..illegibile.

88

87

41

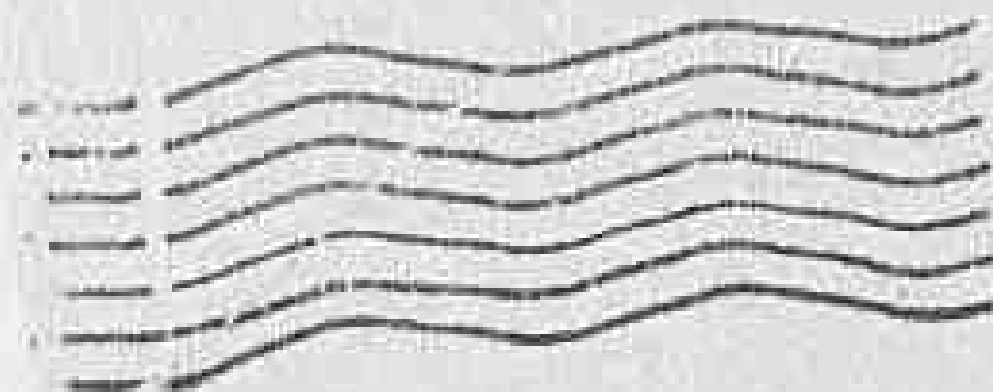
ON/LE COMMISSIONE ALLEATA

LEGAL S/ C.A.C. ITALIAN BRANCH



ROMA

Mittente: Rampazzo Ida
Ponte S. Nicolò (PADOVA)



HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

219A

AC/4092/1/L

AP/ns
14 June 1946

SUBJECT : Italian POWs - FILIA Francesco and
MORONI Francesco.

TO : War Disposal and Italian POW Sub Commission
Hq., AC.

1. The above mentioned Italian POWs are being requested by the Sardinia Assize Court to appear as Witnesses in a trial to be held during next month.
2. Any action you can take in regard to their timely repatriation would be very much appreciated.
3. Letter from Sardinia Court of Assize is enclosed herewith.

G.G. HANNAFORD,
LT. Colonel,
Deputy Chief Legal Advisor

86

Incls.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

21RA

MS/mda.

12/1092/1/1.

8 April 1946.

SUBJECT: . Demanda di grazia.

TO : Ben. Ferrari - Maranesi
Corso Marsili 42 - Brescia.

Con riferimento a una Sua domanda di grazia per i condannati Carlo e Gianni FERRARI questa Sottocommissione si pregia far notare che non ha nessuna competenza a trattare, sia in via di grazia che di giustizia, simili pratiche.

Ogni domanda dovrà perciò essere indirizzata alle competenti Autorità Italiane e cioè a S.A.R. il Luogotenente del Re, tramite il Ministero della Real Casa o il Ministero di Grazia e Giustizia.

La Sua domanda è stata inoltrata al Ministero di Grazia e Giustizia per la opportuna istruttoria e relativa copia ne è stata inviata al Ministero della Real Casa.

MCMURRAY THOMAS,
Italian Branch,
For Chief Legal Advisor 85

HEADQUARTERS ARMY COMMISSION
APO 394
LEGAL SUB-COMMISSION

217A

AD/4992/1/1.

MB/cda.

8 April 1946.

SUBJECT : Petition for pardon.
TO : Ministry of Pardon and Justice.

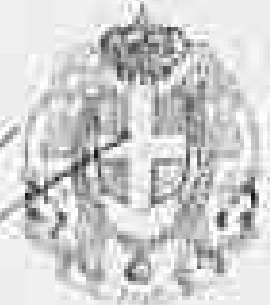
1. Herewith forwarded "per competenza" a petition for pardon in a case which has been heard by the Court of Assize of Genoa.
2. Please acknowledge receipt.

Encl.

REICHAUSE THOMAS,
Italian Branch,
for Chief Legal Advisor.

Copy: Ministry of Royal Household.

File



1397

Roma

3 APR 1946

Mod 402

M. 1016

Ministero di Giustizia

DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE E DEL CASELLARIO1a Commissione-Alleata
Sottocommissione Legale

ROMA

Ufficio IV^a SezioneProt. N^o 245/46

Ripetuto al f. del.

Die 1^a 1^a 1^a

OGGETTO: PIRA Giulio. Provvedimento di Grazia.

Si comunica che, con Decreto Luogotenente-
riale del **26 MAR 1946** è stato concesso a PIRA
Giulio di Line II condono condizionale del re-
sto della pena di anni I e mesi 6 di reclusio-
ne, cui fu condannato dalla Corte Straordina-
ria di Assise di Vercelli, con sentenza in da-
ta 27. 8. 1946, per il reato previsto dallo
art. 271 S. 2.

LEG

CLO

DCLO

Chief Counsel

CJO

→ Italian Section

C. FKS

Per il MINISTRO

83



3 APR 1946

Roma

Ministero di Grazia e Giustizia

DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE E DEL CASELLARIOARM. COMMISSIONE ALL.ATA
SOTTOCOMMISSIONE PENALE

R. O. M. A.

Ufficio IV. GR.

Aut. V. 244/1946

Rapporto del F. del

Dir. Dir. N.

Oggetto: Provvedimento di grazia
PEZZOTTI Carlo fu Angelo.-

Si comunica che, con Decreto Luogotenenziale
in data 26.3.1946 a PEZZOTTI Carlo è stato conces-
so il condono condizionale del resto della pena di
anni due di reclusione cui fu condannato dalla Cor-
te straordinaria di Assise di CASALE MONFERRATO, con
sentenza 13 ottobre 1945, per appartenenza a bando
armato.

R. O. SUBCOMMISSION

CLO

DCLO

Chief Counsel

CJO

Italian

CLARKS

D'ORDINE DEL MINISTRO

L. 46

82

file

Ref: 10/1592/1/1

214A

4. April 1946.
March 1946

My dear Mr. Prime Minister:

I reply to your letter of 26th February last, No. 62382, with some delay as considerable time was required for the examination of the delicate point you submitted to me.

Your request has received my most careful attention and that of both my political and legal advisers. I regret to have to say that it has been found impossible to comply with your wishes. There is no doubt that in accordance with Italian Penal Procedure and ASG Orders now in force in Venezia Giulia the Court of Assize has full power to try the accused. The time limit of the jurisdiction of this Court has been extended in Trieste by General Order No. 41 for a further three months as from 8th February 1946.

May I point out, furthermore, that the transfer of this trial to an Italian Military Court sitting in Venezia Giulia is out of the question as Italian Military Courts not only have not been convened but lack jurisdiction in this territory.

Finally, the suggestion that General REPOSITO, General D'ARQUENO and others be tried by a Court sitting in territory already restored to Italian Administration cannot be accepted, considering the fact that all the alleged offences were committed in Venezia Giulia where the geographical jurisdiction lies and therefore this transfer would constitute a breach of Italian rules of Penal Procedure.

I would also like to draw your attention to the fact that there are more than a hundred witnesses in this case, whose transportation, billeting, feeding, etc., would cause a great deal of unnecessary expense.

Yours very truly,

M. S. CUSH

Brigadier
KILMER W. STONE
Rear Admiral, USNR
Chief Commissioner

Dr. Alcide de Gasperi,
President of the Council of Ministers,
Italian Government,
Rome.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

LEGAL DIVISION

TELEPHONE NO.

REFERENCE NO. 130/AMG/LD/13/7/2

SUBJECT

TO

Special Court of Inquiry

ALLIED COMMISSION (ATTORNEY GENERAL ADVISER)

Date 13 March 1946

MR. CARPENTO AND OTHERS

211A

1. Ref. your AC/4082/1,1 dated 4 Mar. 46.
2. The request of the Prime Minister for the transfer of the trial of the above to Italian Territory has been carefully considered.

3. All the alleged offenses were committed in Venezia Giulia and therefore the Court has jurisdiction. The Court is also governed by the Penal Code and Art. 39 confirms this fact.

4. There is no legal justification for a transfer and from the policy point of view it is felt that there would be extremely serious political repercussions if such a transfer took place. This trial will be one of the most important in the Territory and it is considered essential that it should take place here.

5. The suggestion that certain cases should be transferred to Military Courts by an amendment to Princ. No. 2 is not possible as the Italian Army has no jurisdiction in Venezia Giulia.

6. It is further pointed out that there are over 100 witnesses in this case and as has been stated before their transportation, billeting, feeding and expenses would have to be provided for by some authority and it is considered that the difficulties are too great to attempt such a course.

7. Finally the jurisdiction of the Court was extended for a further three months from 8 Feb. 46 by Gen. Order No. 41 published on 25 Jan. 1946.

LEGAL SUBCOMMISSION

UNITED STATES DEPARTMENT OF JUSTICE

GENERAL INFORMATION AND OTHERS

211A

1. Ref. your AG/4952/1/2 dated 7 Apr. 46.

2. The request of the Prime Minister for the transfer of the trial of the above to Italian territory has been carefully considered.

3. All the alleged offenses were committed in Venezia Giulia and therefore the Court has jurisdiction. The Court is also governed by the Penal Code and Art. 23 confirms this fact.

4. There is no legal justification for a transfer and from the point of view it is felt that there would be extremely serious political repercussions in such a transfer took place. This trial will be one of the most important in the history and it is considered essential that it should take place here.

5. The suggestion that certain cases should be transferred to military courts by an amendment to Decree No. 2 is not possible as the Italian Army has no jurisdiction in Venezia Giulia.

6. It is further pointed out that there are over 100 witnesses in this case and as has been stated before their transportation, billeting, feeding and expenses would have to be provided for by some authority and it is considered that the civil authorities are too great to attempt such a task.

7. Finally the jurisdiction of the Court was extended for a further three months from 8th Feb. 46 by Gen. Order No. 41 published on 25 Jan. 1946.

LEGAL COUNSEL COMMISSION

By Order of Col. Robertson.

CLO

DCLO

Chief Counsel

CLO

Italian Section

CL RK

16 March 46

J. B. Baylis Haynes

A.D. C. C. C.

Major, A.U.S.

CHIEF LEGAL COUNSEL

4092115

C.L.A.

E122

Please see the attached letter from Dott. Bonelli regarding the validity of sentences imposed by the Peoples Courts in the North during the first days of the liberation. He asks me to obtain your opinion on the matter.

16 Feb 64

Jmt.

LEGAL SUBCOM 150	
CLO	
DCLO	
Chief Counsel	
CJO	
Information Section	
CL RKS	

Red. 25 March 64
Cay RB.

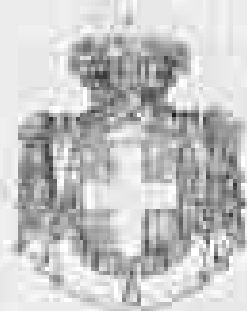
This is to inform you that the Ministry of Pardon and Justice has been asked to consider if and to what extent ^{on the first days of liberation} can the sentences imposed by the so-called Tribunals of the People in Northern Italy ~~the first days of liberation~~ be recognised.

As the question is very complex, an opinion of the Allied Commission would be very much appreciated also in view of the fact that such Tribunals were situated in territory administered by the Allies.

Would you be so kind to take the matter up with Col. Weber.

Best regards.

Ingrid Bondell



1945/11/9 2-45

Ministero di Grazia e Giustizia

GABINETTO DEL MINISTRO

Caro Giudice Thomas la
informo che è stata rivolta
a questo Ministero la questione
circa il valore da riconoscersi
alle condanne a morte inflitte
da certi detti Tribunali del
Popolo nell'Italia settentrionale
nei primi giorni dopo la liberazione
Trattandosi di problema assai
complesso sarebbe utile conoscere
il pensiero in proposito della
Commissione Alleata, in quanto

in quanto in quel tempo l'autorità
di governo emanava direttamente
e indirettamente dall' A.H.G.

La peso pertanto di sottoporre
la cosa al Col. Weber e di
farne conoscere in proposito il suo
parere.

Molti cordiali saluti

Paolo Bonelli

HEADQUARTERS ALLIED COMMISSION
APO 394
ITALIAN SUB-COMMISSION

/mda.

AG/4092/1/1.

4 March 1946.

SUBJECT : Extraordinary Court of Assize.

TO : SCAB, VENETIA GROSIA Region.

1. The enclosed translation of a letter just received from Prime Minister is forwarded to you for your comment.

2. No doubt it becomes more and more necessary to find a solution acceptable to all parties in this delicate matter.

3. I shall let you have the Minister of Justice's answer on the general question, as soon as I receive it.

4. I hope to be in TRIESTE myself on the 11th or 12th of this month.

By command of Rear Admiral SCONE.

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

Incl.

(Copy)

TRANSLATION

No. 62382

THE PRESIDENT OF THE COUNCIL OF MINISTERS

Rome, 28 February 1945

Dear Admiral,

According to General Alexander's Ban No. 5 published in the A.M.G. Gazette, dated 15 September, 1945 crimes of collaboration in the Venezia-Giulia territory occupied by the Allies, are judged by a Court of Assize, constituted by a judge and four lay-judges. The Ban which adopts judgement analogous to that in force in the Italian legislation, subjugates military men, as well as civilians to the Courts of Assizes.

General Giovanni ESPOSITO, (gold medal), and General D'ACQUINO, as well as several other officers are at present pending trial for collaboration in the Court of Assize of Trieste.

Justice must be done and officers judged severely for actions which may have been to the enemy's advantage yet the Government feels obliged to point out to the Allied Authorities the political aspect which the proceedings might assume if it took place in the Court of Assize in Trieste.

According to General Alexander's Ban, the jurisdiction of the special Court of Assize should come to an end on the 15 March, "save further orders from A.M.G.". If this exceptional regulation should be kept in vigor, I beg you to have the competent authorities in A.M.G. examine the possibility of inserting, in above mentioned Ban, a provision analogous to that in ART 3 of the D.L.L. 5/10/45. No. 625 on the Special Sessions of the Court of Assize, according to which the judgment of crimes pertaining to those courts, is transferred to the Military Tribunal when questions of a military character are implicated.

I have submitted this to your owing to its particular gravity, and in order that you may intervene opportunely, with the competent Allied Military Authorities.

With regards,

Yours truly,

De Gasperi.
(s) De Gasperi.

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission
R O M E

(MB)

EC DIST - 1 Nov

ACTION - CA Sec (2)
INFO - CC
- EC

Red 14 March 46

492/1 AC

210A
Legal

8/5.

CIPHER

6/9082

FEB 111730A

FEB 120900A

IMPORTANT

HQ, ARS 13 CORPS

ACTION AFHQ, ATTENTION 8-5

INFO: ALCOM ATTENTION CHIEF EDUCATION OFFICER

Confidential

SECRET.

THE FOLLOWING IS SENT FOR YOUR INFORMATION. PROFESSOR SPECRO BARAGA HAS BEEN
 SHOT TO DEATH IN HIS ABSENCE BY A PEOPLE'S COURT IN LJUBLJANA IN ACCORDANCE
 WITH A REPORT IN THE NEWSPAPER "IL LAVORATORE" OF THE 5TH FEBRUARY. PROFESSOR
 BARAGA IS AT PRESENT EMPLOYED IN THE EDUCATION DIVISION OF THIS HQ. IT IS NOT
 PROPOSED TO TAKE ANY ACTION AS YET UNLESS OFFICIAL COMMUNICATION IS RECEIVED
 EITHER THROUGH YOU OR DIPLOMATIC CHANNELS DEMANDING ACTION IF ANY SHOULD BE TAKEN.

DOWN GRADED
 TO
 UNCLASSIFIED

DRAFT

12 FEB 46

AC DIST

INFO ACTION: EDUCATION S/C

INFO: CHIEF COMMISSIONER

Get info
 Chief Judicial Officer,
 for Chief Civil Affairs Officer.

SECRET

LEGAL

CAS

FILE

SHREKON

LEG

CLO

DCLO

Chief Counsel 74

CJO

Italian Action

RKS

12.2.46

CIPHER TELEGRAM

This message will not be distributed outside
 British or Foreign Government Departments or
 Headquarters of the Commonwealth in Cipher
 without the necessary clearance marked
 O.T.P. (not to be passed on).

*file*HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

209A

AG/4092/1/L

F/es
15 January 1946

SUBJECT : Cappellini, Bottini and Sofia Sante.

TO : Minister of Royal Household.

1. The files of the a/m cases were sent to Your Excellency by error as a final decision had already been taken.

2. This Sub-Commission would be very grateful to your Excellency if the said files could be returned so that they may be forwarded to the proper authorities in order to give effect to the said decision.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
AND
LEGAL SUB-COMMISSION

(208A)

AC/4093/4/1.

3 January 1946.

SUBJECT: Legal opinions on cases of persons sentenced to death by Extraordinary Courts of Justice.

TO: Chief Commissioner.

Approval is requested for the payment of a fee of Lira 15,000 for professional services rendered by Professor Giuliano VASSALLI in examining the cases of 25 persons sentenced to death by Extraordinary Courts of Justice in Northern Italy who had submitted petitions for mercy. The work involved perusing the files and giving a formal opinion in each individual case to this Sub-Commission for the consideration of the C.P.A.C. In view of the amount of work involved and the responsibility entailed the above fee is considered reasonable.

JOHN K. WHEAT,
Colonel, Infantry,
Chief Legal Advisor.

207A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/ada.

AC/1092/1/L.

3 January 1946.

SUBJECT : Legal opinions on cases of persons sentenced to
death by Extraordinary Courts of Assize.

TO : Chief Commissioner.

Approval is requested for the payment of a fee of Lire 18,000 for professional services rendered by Professor Giuliano VASSALLI in examining the cases of 28 persons sentenced to death by Extraordinary Courts of Assize in Northern Italy who had submitted petitions for mercy. The work involved perusing the files and giving a formal opinion in each individual case to this Sub-Commission for the consideration of the C.C.A.O. In view of the amount of work involved and the responsibility entailed the above fee is considered reasonable.


JOHN R. WHEELER,
Colonel, Infantry,
Chief Legal Advisor.

Original with
Col. Signature.
Taken by Col. Hanningford

HEADQUARTERS ALLIED COMMISSION
APC 394
LEGAL SUB-COMMISSION

Ref: HQ/392/1/L.

2 January 1946.

SUBJECT: Petitions for mercy in death sentences pronounced by Extraordinary Courts of Assizes in AMG territory now restored to Italian administration.

TO : Ministro della Real Casa.

1. Following the conversation which took place on Monday, 31st December, between Marchese LUCIFERO and Lt. Col. HAMMARFORD, you will find as agreed, and under separate cover, the files of cases where persons sentenced to death by the Extraordinary Courts of Assizes of Northern Italy have lodged petitions for mercy. The Chief Civil Affairs Officer has not taken any decision on these petitions.
2. The Chief Civil Affairs Officer, after obtaining the verbal agreement of the Minister of Justice has committed three sentences. They are those of ENZO CAZZULLINI of TRIESTE, GIUSEPPE LOTTRELLI of VIGEVANO, and EMMANO SONTIS of ASOL. The files of these cases are also forwarded to you under separate cover.
3. As explained to you by Colonel HAMMARFORD, the Chief Civil Affairs Officer believes that the powers of mercy being vested in the Sovereign under Article 8 of the Statute, it was the proper procedure to forward to the Sovereign who resumes his powers and functions, such cases as would normally under international law come within his jurisdiction.
4. The Chief Civil Affairs Officer did not feel that it fell within his province to ascertain whether or not under Italian constitutional practice, some other procedure should have been followed, especially in a case, which, as far as this Sub-Commission is aware, has no precedent in international law. Furthermore in view of the short time left there was no doubt that the decision taken was the most practical.
5. After discussing the matter with you Colonel HAMMARFORD called on Signor TOLLINI and explained the considerations which had prompted the Chief Civil Affairs Officer's action. The Minister of Justice has accepted the Chief Civil Affairs Officer's view as set out in the preceding paragraph.
6. A list of petitions and the opinion of the Legal Sub-Commission on each of them is also enclosed. As pointed out to Signor TOLLINI and yourself the Allied authorities do not consider such opinions as binding or either the Inopponents or the Minister of Justice.

TO : Ministro della Real Casa.

1. Following the conversation which took place on Monday, 31st December, between Marchese LAMARCA and Lt Col. HAMMARFORD, you will find as agreed, and under separate cover, the files of cases where persons sentenced to death by the Extraordinary Courts of Assizes of Northern Italy have lodged petitions for mercy. The Chief Civil Affairs Officer has not taken any decision on these petitions.
2. The Chief Civil Affairs Officer, after obtaining the verbal agreement of the Minister of Justice has submitted three sentences. They are those of BRUNO CAMPANELLI of TRIESTE, SUSANNE BOTTINI of VIGEVANO, and SAVERIO SERIO of AVELLO. The files of these cases are also forwarded to you under separate cover.
3. As explained to you by Colonel HAMMARFORD, the Chief Civil Affairs Officer believes that the powers of mercy being vested in the Sovereign under Article 8 of the Statute, it was the proper procedure to forward to the Sovereign who reserves his powers and functions, such cases as would normally under international law come within his jurisdiction.
4. The Chief Civil Affairs Officer did not feel that it fell within his province to ascertain whether or not under Italian constitutional practice, some other procedure should have been followed, especially in a case, which, as far as this Sub-Commission is aware, has no precedent in international law. Furthermore in view of the short time left there was no doubt that the decision taken was the most practical.
5. After discussing the matter with you Colonel HAMMARFORD called on Signor TOGLIATTI and explained the considerations which had prompted the Chief Civil Affairs Officer's action. The Minister of Justice has accepted the Chief Civil Affairs Officer's view as set out in the preceding paragraph.
6. A list of petitions and the opinion of the Legal Sub-Commission on each of them is also enclosed. As pointed out to Signor TOGLIATTI and yourself the Allied authorities do not consider such opinions as binding or either the Lugoburgers or the Minister of Justice.

G. G. Hammarford

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

Copies to:- Minister of Justice (With Legal opinions)

AFHQ. G-5.

Chief Commissioner.

Executive Commissioner.

Folios 'A' and (B).

for
4/29/61

205A

Sentenced	:	REVIK (see also THATCH, CRIVELLO and TROST). Member of the THATCH band, sentenced to death with 7 other persons. The Minister of Justice suggests the commutation into 30 years imprisonment for four of them.
Guilt of	:	Heads of parties, aiding the enemy, the most refined execution in prisoners.
Trial	:	Very difficult atmosphere at Saigon because REVIK and others sentenced to death.
Attorneys circumstances	:	Lead out almost entirely inactive band
Attorneys circumstances	:	None
Opinion of the Attorney General	:	Attorney General says the opinion of the U.S. which is favorable.
Opinion of the Legal Attorney	:	Responsible on account of the important activity inside the band in the opinion of the U.S. of Saigon, who considers that REVIK and THATCH had only a minor part in the crime.

Prisoner : HIZPANI (see also REVELLI)
 Coming from Germany where he had been in captivity
 for some months.
 One of the 10 persons accused in a trial in which
 the Court of Cassation affirmed 4 death sentences
 (including HIZPANI and two women, MARCHI and GABRIEL
 in whose favor the Minister of Justice proposed the
 commutation).

Guilty of : Espionage, acts of police against persons, raids,
 seizures and captures with the purpose of killing.

Trial : In normal conditions

Motivating
 circumstances : None

Aggravating
 circumstances : Three of the persons arrested by him were killed
 by Germans.

Opinion of the
 local
 authorities : Contrary to pardon

Opinion of
 the Italian
 Commission : Favorable to commutation into life imprisonment
 considering that he had not personally murdered
 anybody, but was only instrumental in such murders.

Sentenced: COASEIN (see also BOTTEN and DAL COL)
Unmarried with his mother and 5 sisters - Medical
statements filed after the trial proving that he
was wounded on the head during the 1940-43 war.

Guilty of: 4 murders.

Trial: Simultaneous.

Mitigating circumstances: Probably minor capacity of understanding
as account of the wounds on his head.

Opinions of the
Local authorities: Contrary to pardon - Petition by several fellow-citizens.

Opinion of
the Legal S/O: Contrary, considering that he and BOTTEN were the most savage
members of a gang which committed many murders and other
crimes: all the other members who were tried had their
death sentence commuted.

(See also case of SPIOTTA and PODESTA')

Sentenced person:	RIGHI
Age:	48 years, father of two children of minor age old time fascist.
Found guilty of:	Hopping up and aid to the enemy. 2 homicides. Assistant to SPIOTTA. Driver in the service of the Black Brigades Hq.
Circumstances of Trial:	Most excited atmosphere but the proceeding was very accurate and complete.
Judgement:	Juridically perfect in every sense.
Aggravating circumstances:	Cruelty or insensibility.
Extenuating circumstances:	Performing activity of minor importance (Driver).
Opinions of authorities:	Contrary to pardon.
Opinion of Legal S/C:	Favourable to the commutation of sentence to life imprisonment due to the minor importance of activity performed in comparison with his accomplice, SPIOTTA.

Sentenced : GIL GUOLA (see also FRANGI, SEVERI and TROVATI)
member of the FRANGI band sentenced to death with
7 other persons.
The Minister of Justice suggests the commutation into
30 years imprisonment for four of them.
The fiercest of the band after DI LUIGI for whom
pardon was proposed in consideration of his 8 sons.

Guilty of : The most dreadful tortures against prisoners, horrible
and refined cruelties, binding with bone breaking
handcuffs, hanging and plunging in boiling water, some
murders, whipping.

Trial : A very excited atmosphere because DI LUIGI was not
sentenced to death.

Extenuating
circumstances : None

Aggravating
circumstances : Ferocity and refinement in torturing - The criminal
is very dangerous.

Opinion of
authorities
concerned : All unfavourable

Opinion of
the Legal
C/Commission : Unfavourable because of the ferocity of the person
sentenced and the seriousness of the crimes.

FRANCHI, CRISCUOLO and SEVIERI

Prisoner : TENCONI
Member of the band lead by FRANCHI; sentenced to death with other 7 for whom the Minister of Justice has recommended commutation to 30 years.

Guilty of : raids on patriots, assistance to enemy, torturing of detainees, espionage etc.

Circumstances of the trial : very excited atmosphere at Genova because no death sentence was passed against Basile.

Mitigating circumstances : Less important role in the band.

Aggravating circumstances : none.

Opinions of authorities : all contrary to pardon excepting opinion of the Prosecutor of Genova, attorney VISCONTI PRASCA.

Opinion of the Legal Sub-Commission : favourable to pardon in view of the less important activities and the view of the Prosecutor of Genova/^{who} considers that TENCONI only played a very minor part in the crimes for which the ^{all} gang was sentenced to death.

(see also Cricuolo, Sevieri and Tenconi)

Prisoner : FRANCHI

With criminal precedents, of very poor family, married, has a daughter of 16 years, Chief of a large band in the trial of which the court has rendered 8 death sentences 4 of which the Minister of Justice recommended for commutation to 30 years.

Guilty of: Most terrible tortures of detainees, monstrous and elaborate ill-treatments, binding with bone-breaking hand-cuffs, pretended hangings and executions by firearms, plunging in boiling water, beating, rapes on female detainees, numerous brutal homicides some by drowning.

Circumstances of trial : Most excited atmosphere at Genova because the court did not sentence Basile to death; some defense witnesses were not heard.

Mitigating circumstances : Loyal and human treatment of some political detainees.

Aggravating circumstances: Monstrous atrocity of crimes.

Opinions of local authorities: All contrary to pardon.

Opinion of Legal S/C : left to CCAO's decision. The Minister of Justice commuted the sentence of 4 out of the 8 members of the gang. Two more Sevieri and Tenconi could be pardoned under the existing Italian tradition. Cricuolo is definitely a monster. For Franchi, who was the Chief, there is only in his favour the fact that no defense witnesses were heard.

Sentenced

1943

Officer at the 1st September 1943 - he joined immediately the Germans. He was not married without parents nor sons.

Guilty of

He is guilty of the treatment of prisoners. He captured 50 partisans 5 of whom have been afterwards executed.

Trial

In normal conditions.

Mitigating circumstances

None

Aggravating circumstances

Antisocial and cowardly

Opinion of
Authority as
expressed

Author's, prefect's and S.I.'s unfavorable statement of S.I.'s favorable

Opinion of
the legal
S/Commission

Unfavorable because wide spread the knowledge of the horrors committed by him.

Sentenced person : VEDOVELLO

Age : 30 years, without morals, common criminal, fugitive.

Guilty of : Numerous brutal homicides and illtreatment of patriots.

Circumstances of trial: Normal.

Extenuating circumstances: None.

Aggravating circumstances : absence of political motives. Pure criminal politics. Very dangerous and ferocious criminal.

Opinions of authorities : All contrary to pardon.

Opinion of the Legal S/C : Contrary to pardon due to the seriousness and ferocity of the crime, the dangerous type of criminal and because he is a fugitive.

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1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

$\log_{10}(\text{mg kg}^{-1}) = 1.54 - 0.008 \times \text{days}$
 $r^2 = 0.99$

22. *Continued*
Algebraic Functions

operation of the
2000
American.

Prisoner	:	BCTER (See also Cossin and Dal Col Danilo)
Guilty of	:	Tortures and raids, three homicides.
Circumstances of trial	:	Rictous. No complete proof of material commission of homicides. Failure of defence witnesses to appear.
Aggravating circumstances	:	Factionousness and ferocity;
Mitigating circumstances	:	None.
Opinion of authorities	:	Contrary to Pardon.
Opinion of Legal S/C	:	A most savage murderer, a sadist although the legal evidence that he committed the three murders was not altogether satisfactory owing to the conditions under which the trial took place.

(See also case of
Mazzanti)

Sentenced person	: REVELLI
Found guilty of	: Political and military espionage in favour of the enemy. Sniping up, membership in antipartisan police, arrest and capture of patriots.
Circumstances of trial	: normal
Aggravating circumstances	: While detained as a common delinquent he did succeed in being released to serve the S.S. Very active in his antipartisan service. Treason and simulation. Most inferior moral character.
Opinion of the authorities	: Contrary to pardon
Opinion of Legal Sub Commission	: Contrary in view of his extremely bad antecedents. Was responsible for many murders of partisans.

Prisoner : SALVI

Former officer in R. Army married in 1945, pregnant wife. Disastrous economic condition. Had cerebro-spinal meningitis at the age of 5. Syphilitic. Stammers.

Guilty : 35 homicides some of which with public vilification of the corpses.

Conditions of trial : Excited atmosphere, due to the enormous number of relatives of the victims clamoring for death sentence (they still do so). Failure to obtain psychiatric expert opinion. Defence counsels complain of violation of defence privileges in respect of proves by witnesses and of failure to recognize mitigating circumstances.

Mitigating circumstances: Perhaps the mental condition.

Aggravating circumstances: number and serious character of crimes.

Opinions of authorities : All entirely and decisively contrary.

Opinion of the Legal S/C : May be irresponsible. The conditions in which the case was tried were definitely irregular; on the other hand there is no doubt that he murdered 35 persons, as he admitted himself.

Prisoner : BRANDI (See also Cappai)

Old time violent fascist - He was prisoner in Germany during the first months after the surrender - Large and poor family.

Guilty of : Three murders accomplished with other persons.

Trial : Normal .

Extenuating circumstances : None.

Aggravating circumstances : None.

Opinions of the Authorities : Contrary to pardon.

Opinion of the Legal S/C : Favourable to commutation into life imprisonment. owing to the terrible conditions under which he and his family lived and his terrible experiences in Germany. A man quasi illiterate.

(See also case of
Vedovello)

Sentenced person	:	PIRRO
Age	:	21 years, without morals, common criminal, fugitive.
Circumstances of trial	:	normal
Extenuating circumstances	:	none
Aggravating circumstances	:	Absence of political motives. Pure criminal politics. Very dangerous and ferocious criminal.
Opinions of authorities	:	All contrary to pardon.
Opinion of Legal Sub-Commission	:	Contrary to pardon due to the seriousness and ferocity of the crime, the dangerous type of criminal, and because he is a fugitive.

Prisoner	:	FRANZINI (see also SIMONETTI) 20 years old - 19 years old at the moment of the crime - son of unknown father - he had been partisan (see below).
Guilt of	:	officer of the BB. NN. - He committed 10 murders - he tortured his victims as a monster - terror of neighbours.
Trial	:	Normal, no mistake in the proceeding - Trial legally beyond any reproach.
Circumstances	:	Forcibly, violence, ambush. Very brave partisan during the first 10 months - captured by Germans during a fighting while his fellows were flying. After many ill-treatments by Germans and fascists he joined the enemy and distinguished himself in the struggle against the partisans - 20 years old without any education.
Opinion of Local Authorities	:	Contrary to pardon.
Opinion of the Legal Sub- Commission	:	Favourable to commutation into life imprisonment, in spite of his exceptional ferocity considering his youth and the fact that he was a good partisan until he was abandoned by his companions - in battle was taken prisoner by the Germans and believed that he had been betrayed.

(See also case of
Latter and Coassin)

Sentenced person	: Dkt COL Danilo young son of Del Col Emilio, sentenced to 30 years imprisonment in the same trial.
Found guilty of	: Kidding up. Espionage and murder of a 12 year old girl.
Circumstances of the trial	: Most excited atmosphere. Failure of witnesses for the defense to appear.
Aggravating circumstances:	Indifferent feelings for the act committed.
Extenuating circumstances:	Obedied to orders and suggestions of his father who was sentenced only to 30 years imprisonment because he did not materially carry out the murder. Very young age.
Opinions of the Authorities	: Contrary to pardon.
Opinion of Legal Sub Commission	: Favourable to a commutation of sentence to 30 years imprisonment, in view of the fact that he is very young (20 years) and has always obeyed his father's orders who was himself sentenced to 30 years in the same case.

Prisoner : SALLUSTI (and Revel and Damasso)
Veteran of World War I - with three sons
one of whom is 18 years old. Member of the
X Mas Fascist - Fugitive from justice.

Guilty of : Beating and illtreatments of prisoners.
Member of the Extraordinary Tribunal which
sentenced to death 4 patriots by order of
the Chief of the Province .

Trial : Normal.

Mitigating circum- : Moderating influence in the Tribunal of
stances which he was a member.

Aggravating circum- : None.
stances

Opinion of the local : Favourable to pardon also for Revel and
authorities Damasso. The Minister of Justice suggests
that the sentence be commuted only in
respect of the last two.

Opinion of the : Favourable to the commutation into life
Legal S/C imprisonment as the Minister has commuted
the sentences of his accomplices Revel and
Damasso and Sallusti does not appear to have
been more guilty than they were. Has also
tried to save partisans.

Prisoner : PODESTA' (see also Spiotta and Righi)

66 years of age, morphinist, addict to women and any kind of vices.

Lover of the wife of another man sentenced to death with him (Spiotta).

Guilty of : Collaboration, raids, espionage, torturing detainees,
Repeated instigation to homicides, 2 homicides.
Accomplice in terroristic activities (of Spiotta).

Mitigating circumstances : none

Aggravating circumstances: ruthlessness and serious character of crimes.

Circumstances of trial : took place in extreme excitement of people but after a very long, accurate and complete pretrial proceeding; sentence beyond any reproach in all respect.

Opinions of authorities : all contrary to pardon.

Opinion of Legal S/O : No legal grounds for commutation. Has actually perpetrated murders. His responsibility at his age being a drug addict may be questioned.

Prisoner : CONTINI

31 years of age. Educated person. Poet. Illegitimate father of a baby girl.

Guilty of : Espionage, collaboration, 4 homicides one of which a priest.

Circumstances of trial : Tortured in prison by partisan police; declares to have confessed in such circumstances facts against himself which were not true; otherwise trial regular.

Circumstances

: Served as officer of the Black Brigades for 30 days only and it was during this short period that he committed the horrible acts of which he is charged, including 4 homicides and numerous robberies.
Deceitful, ferocious, intelligent.

Opinions of authorities : all contrary to pardon despite intervention of the Archbishop of Milan and Holy See.

Opinion of Legal S/C : There is no legal ground on which to recommend a commutation. The murder of a priest being altogether repugnant to the Italian mind. However the Vatican has intervened in his favour.

Identity : CAPPAI Pietro (see also BRANDI)
Father of 4 sons one of whom is a brave partisan,
sentenced to death by the Fascists and is now member
of the partisans police of Verona.
CAPPAI is very poor.

Found guilty of : 2 executions, effected with other members of the
gang - one of the persons shot was arrested while
committing an act of sabotage.

Condition in
which the case
was tried : Satisfactory.

Aggravating
circumstances : None

Mitigating
circumstances : None

Opinion of
local
Authorities : Contrary

Opinion of
legal
S/Commission : Would recommend a commutation to 30 years because
his sons, all partisans have testified in his favour.
His living conditions before joining the Bande Noire
were appalling.

Prisoner : DI GIACOMO

Father of two children.

mean and ruthless; the only motive: profit.

Guilty of: Espionage against patriots and detainees, for profit;
false promises to relatives of victims, always for
gain.

Circumstances of trial : Psychiatric examination denied by the
Court of Assize; appeal rejected by
Court of Cassation because of an error in
appointment of lawyer not qualified to
represent the prisoner.

Mitigating circumstances: none

Aggravating " " : Important activity of espionage against
patriots; mean and ruthless; cashed in
numerous rewards; many persons arrested
on his denunciation were massacred.

Opinions of authorities : Prefect and Carabinieri contrary, Pro-
curatore Generale favorable to commutation
to life imprisonment with hard labor.

Opinion of Legal S/C : Commutation to life imprisonment with hard
labor, in view of the nonadmission of the
appeal to the Court of Cassation and
denial of psychiatric opinion.
The man is obviously a great criminal,
but the procedure followed in the case
and the conditions in which it was tried
were altogether irregular. The P.G.
shares this opinion.

Sentenced person : SPICOTTA Vito
Habitual delinquent, no morality, father of
four sons, wife is the mistress of podesta'
also sentenced to death, was Chief fascist
of the Chiavari Zone.

Guilty of : 75 charges, including three murders, fires,
destruction of entire villages, with atrocious
ferocity killed 22 persons at Portofino (he
actually had them drowned by pushing them into
the sea tied with wire netting and heavy
stones).

Trial : Crowd in Court Room was extremely excited
however pre-trial investigations were
extremely thorough, the motivation of the
sentence was irrepressible.

Attigating circumstances : None

Aggravating circumstances : Cruelty and ferocity beyond description

Opinion of the local
authorities : All contrary

Opinion of the Legal
Sub Commission : Also contrary for the reasons stated above.

Prisoner	:	SIMONETTI (v. Brevinelli) he was partisan - (see below)
Guilt of	:	Officer of the BB.NN. - he committed 4 murders - tortured his victims as a monster - terror of neighbours.
Trial	:	Normal, no mistake in the proceeding - Trial legally beyond any reproach.
Circumstances	:	He had been partisan - Captured by Germans, after many ill-treatments joined the enemy and he distinguished himself in the struggle against the partisans.
Opinions of the local authorities :		Contrary to pardon
Opinion of the Legal Sub - Commission	:	Commutation into life imprisonment in case that pardon would be granted to his accomplice Brevinelli who had committed more murders. It is obvious that if the sentence of Brevinelli who killed 10 persons is commuted, his accomplice who only killed four should also be pardoned.

1939

*This was sent before
we could get a letter of 21st.**Headquarters agree to procedure suggested at*

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

*204A
this morning 31st*

G-5: 015

27 December 1945

SUBJECT: Power to pardon persons sentenced to death
by Italian Courts in AMG territory

TO : Headquarters, Allied Commission
(Attn: Chief Commissioner)
APO 394

1. Reference is made to your AC/4092/1/L of 22 December. In accordance with your request this entire matter has been fully reconsidered.

2. It is felt that at this time, in view of the impossibility of taking adequate action prior to the handback of the Northern provinces, it is inexpedient for Allied Authorities to take any steps which may be construed to constitute the exercise of rights amounting to increased intervention in the administration of Italian judicial procedures. This would appear to be especially so in legal proceedings which you state to involve political considerations.

3. It is noted that your reference letter indicates that the power of pardon is vested under Italian law in the Lieutenant General of the Realm. It is thought that the Lieutenant General's power in this respect will not be subject to any Allied review or inhibition after the handback. It is the opinion of this Headquarters that it is unwise for the Chief Civil Affairs Officer to grant a pardon now in any case in which the Lieutenant General would not be inclined to grant a pardon after 1 January, and that it is unnecessary for the Chief Civil Affairs Officer to grant a pardon now in any case in which the Lieutenant General would in any event grant a pardon later.

4. In view of the above considerations it is believed to be inadvisable to make any change in existing instructions.

5. It is thought to be appropriate to bring to your attention the series of letters emanating from your Headquarters on this subject, including AC/4030/1/L of 3 November, AC/4030/1/L of 5 November, AC/4092/1/L of 9 November, signal 8923 of 1 December, and AC/4092/1/L of 22 December to which reply is now made. Had all of the circumstances which you ultimately set forth been included in a single letter the fear which is expressed in your reference letter, that this Headquarters was under some misapprehension and without

full knowledge of the facts, would never have arisen.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:


A. L. HAMBLÉN
Brigadier General, GSC
Assistant Chief of Staff, G-5

REGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
31 DEC 1945	

44

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/pa.
29 Dec 45.

AC/4092/1/L.

SUBJECT : Petition for mercy in Extraordinary Courts of
Assize cases.

TO : AFHQ, G-5 Section.

Enclosed herewith as stated in our signal No. 9758 copy of
a letter of Minister of Justice together with translation.

For Chief Commissioner :

G. G. HAMMARFOLD,
Lt. Colonel,
Deputy Chief Legal Advisor.

Incl.

$$T \rightarrow T \rightarrow A \rightarrow T \rightarrow B \rightarrow T \rightarrow T \rightarrow T \rightarrow T$$

SUBJECT : Applications for pardon in Special Courts
of Assize cases.

THE MINISTERS
TOKIATTE

Mod. 462 MG

Roma, 22 dicembre 1945

MINISTRO DI GRAZIA E GIUSTIZIA

Alla Commissione Alleata
Sottocommissione Legale
R o m a

OGGETTO: Istanze di grazia per le condanne inflitte dalle Corti speciali d'Assise.

Con l'imminente restituzione dei territori settentrionali all'Amministrazione del governo italiano vengono a porsi alcuni problemi circa la competenza a decidere sulle istanze di grazia per le condanne capitali inflitte dalle Corti speciali d'Assise.

Si fa presente in proposito che la prassi sin qui adottata attribuisce al Ministero della Giustizia la sola competenza a formulare il parere circa le domande di grazia anzidette, qualora emanate dai tribunali ordinari italiani situati in territorio A.M.G., mentre la competenza a prendere la decisione spetta alla Commissione Alleata.

Tale sistema è pienamente aderente al principio universalmente riconosciuto dal diritto internazionale per il quale all'autorità occupante spetta il diritto di decidere tutte le istanze di grazia nell'ambito dei territori occupati.

Poiché è da ritenersi che con la cessazione di tale occupazione rientrino automaticamente nella competenza del governo italiano le facoltà sin qui in proposito esercitate dall'A.M.G., il sistema da adottare dovrà logicamente essere il seguente:

Tutte le decisioni di grazia anzidette esaminate dopo la restituzione dei territori settentrionali saranno esclusivamente di competenza del Governo italiano; tuttavia per quelle istanze di grazia relative a condanne inflitte dalle Corti speciali d'Assise del Nord durante l'occupazione militare Alleata, la decisione del governo italiano sarà comunicata alla Commissione Alleata e sarà resa esecutiva solo dopo che la Commissione anzidetta dichiarerà di non avere osservazioni da fare in proposito.

uc/1231-4

Alia Commissione Alleata
Sottocommissione Legale
R o m a

OCCETTO: Istanze di grazia per le condanne inflitte dalle Corti speciali d'Assise.

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Altro problema è quello delle istanze di grazia il cui parere sia già stato espresso dal Ministero sebbene non sia ancora intervenuta in proposito una decisione del Comando Al-

.../...

Mod. 462 MG



U. Guadagnigelli

MINISTRO DI GRAZIA E GIUSTIZIA

Roma

leato.
Per queste decisioni rimaste in sospenso sembra opportuno, allo scopo di evitare incertezze al riguardo, che codesta Sotto Commissione emetta le relative decisioni entro la data stabilita per la restituzione dei territori.
In attesa di ricevere il parere di codesta Commissione al riguardo si prega di aderire di massima a quanto sin qui proposto.

IL MINISTRO

Inghilterra

*THE SECRETARY OF STATE
FOR
FOREIGN AFFAIRS*

- 40 -

LEGAL SUB COMMISSION			
CLO			
DCLO			
Chief Counsel			
CJO			
Italian Section			
CL RKS			
27 DEC 1945			

202 A

HQ ALCOM

29

DEC 1945

AFHQ, G-5

9738

RESTRICTED

PARA ONE PD MATTER IS PETITION FOR MERCY IN DEATH SENTENCES OF EXTRAORDINARY COURTS OF ASSIZE PD IN A LETTER DATED TWENTYTWO DECEMBER COPY OF WHICH IS BEING FORWARDED TO YOU MINISTER OF JUSTICE EXPRESSES IDENTICAL VIEWS AS SET OUT IN LETTER ABLE CHARLIE SLANT FOUR ZERO NINE TWO SLANT ONE SLANT L OF TWENTYFIRST DECEMBER PD CONSIDERING ATTITUDE ADOPTED BY ITALIAN AUTHORITIES THEMSELVES IN THIS MATTER I PROPOSE TO EXERCISE FORTHWITH THE POWERS OF MERCY VESTED IN ME AS CHIEF CIVIL AFFAIRS OFFICER IN ALL EXTRAORDINARY COURTS OF ASSIZE CASES NOW PENDING EXACTLY AS IF SENTENCES HAD BEEN PRONOUNCED BY AMG COURTS PD AS YOU ARE AWARE THIS IS IN COMPLETE CONFORMITY WITH ACCEPTED INTERNATIONAL LAW ON WHICH MINISTER OPINION IS BASED

39

PRIORITY
Legal Sub Commission

Dispatched by
Gen. H. H. H.
Executive Commission
29/12/45

The Keeper of the Seal
Minister of Pardon and Justice

T-R-A-N-S-L-A-T-I-O-N

201A
Rome 22 December 1945

SUBJECT : Applications for pardon in Special Courts
of Assize cases.

In view of the imminent restoration of the Northern territory to the Italian Government some problems arise in regard to the powers of granting pardon in death sentences imposed by Special Courts of Assize.

It is brought to your attention that according to the practice followed up to present time it has been the province of the Ministry of Justice only to express its opinion in the a/s petitions for pardon on cases of sentences imposed by Italian Courts situated in A.M.G. territory while the Allied Commission takes the final decision.

This practice agrees with the well-known principle of International Law according to which powers of decision on petitions for pardon are vested in the occupant within the limits of the Occupied Territory.

As it is understood that in consequence of the restoration of Occupied Territory the powers exercised up to the present by A.M.G. will be vested in Italian Government, the system to be adopted will be as follows:

After the restoration of the Northern territories the decision as to the a/s pardon will belong exclusively to the Italian Government; however with regard to petitions concerning sentences imposed by Northern Special Courts of Assize during the Allied Military occupation the decision of the Italian Government will be communicated to the Allied Commission and will be carried out only after the said Commission has declared that it has no objection.

Another problem is that of applications for pardon on which the opinion of the Ministry has already been expressed, while there has been no decision by the Allied Command.

Concerning the decisions still held in suspense it would seem proper in order to avoid uncertainty that your Sub-Commission should issue its decisions within the date fixed for the restoration of territory.

While awaiting your opinion on the matter we beg you to accept our proposal.

THE MINISTER
s/ TOULIATFI

File

200A

20/10/1945

MD 27/12

3A December 1945

Subject: Petition for change in South American
proposed by British Ministry of
Colonies in the territory.

To: Mr. (Mr.) [Name] [Address]

1. With reference to your letter of 20th November 1945 it appears that the instructions issued through my office have been received with some disappointment and probably without full knowledge of the present position.

2. Your letter that the power of petition is a privilege of the Head of the State and is at present vested in the Government. The role of the Minister of Colonies is to recommend that a petition for change be granted or denied. The decision of the Government is by no means automatic. It may vary with the opinion of the Minister's opinion, although, more often than not his opinion is followed.

3. Sir, Mr. [Name], the present Minister of Colonies takes the view that in the territory the powers and functions of the Crown are suspended and vested in the representative. Therefore, when a petition for change reaches his office, he studies the facts, makes up his mind and forwards the whole case with his opinion (either favourable or not) to the Minister of Colonies. Sir, Mr. [Name] considers that his role ends there.

4. In a number of instances, when there existed some doubt as to the regularity of the proceedings, and the legal authorities decided to refer the matter to the Minister, Sir, Mr. [Name] has answered his "I don't know" question by saying "I don't know" and then he has followed it up by saying "I don't know" again.

5. Therefore when considering a South American petition as an extraordinary case of change of territory, we are not receiving executive ministerial order, but are in fact taking an independent decision in each case. Furthermore by simply answering the Minister's "opinion" the Allied States are not acknowledging the fact of decision which the granting or denial of a petition is supposed to represent.

6. I should also like to indicate that my legal advisers after discussion with the Minister's opinion, as it appears to be based on political as well as on legal grounds. For instance the death sentences of late of 18 have been confirmed. The acknowledged fact that witnesses were prevented from appearing and evidence submitted could not even himself heard has not convinced the Minister of the desirability of a new trial. There is a case where the Methodist Church of America have requested the commutation of a sentence on grounds which my legal advisers consider relevant. There are other instances where the death penalty appears to be an excessive punishment for the offences committed, especially considering the general attitude adopted by the Italian authorities in similar cases where, however, no political questions are involved.

7. Finally I should like to make it clear that the Italian judicial authorities are never aware of the conditions in which trials take place. They are such as "in situ" with the circumstances of each case that we are. There is therefore no question of new elements being disclosed by us to the Minister in the hope that he may change his mind even after he has given his opinion.

8. In view of the above I should be grateful if the instructions contained in your 3 92207 of 1 December 1945 be revised and my recommendations mentioned in signal 8283 of 1 December 1945 given further consideration.

HENRY S. STONE,
Rear Admiral, RCNR,
Chief Commissioner.

36

Copies to : Executive Committee,
Vice Secy,
Secy (S),
Secy (A).

(198)

January 1949

100-100000-100000

100-100000-100000
 100-100000-100000
 100-100000-100000

100-100000-100000
 100-100000-100000

1. With reference to paragraph 2 of the letter of 10 November 1948 it appears that the instructions contained therein have been issued under some misapprehension and probably reflect the position of the present position.

2. Under Italian law the power of pardon is a privilege of the Head of the State and in accordance with the Constitution. The role of the Minister of Justice is to present a petition for pardon to the Head of the State. The decision of the Head of the State is final and the Minister of Justice is bound to follow it. It may very well be that the Minister's opinion, although, more often than not, his opinion is followed.

3. Sig. Togliatti, the present Minister of Justice, takes the view that in the case of the present case the power of pardon was exercised by the Head of the State and not by the Minister of Justice. Therefore, when a petition for pardon is presented to the Head of the State, the Minister of Justice is bound to follow his opinion (either favourable or not) to the Head of the State. Sig. Togliatti considers that his role ends there.

4. On a number of occasions, when there existed some doubt as to the regularity of the proceedings, and the legal sub-commission decided to refer the matter to the Minister, Sig. Togliatti's answer has invariably been "I have given my considered opinion, it is up to you to follow it or not. My function is purely advisory."

5. Therefore when considering a death sentence pronounced by an extraordinary court of justice in Northern Italy, we are not exercising executive or administrative functions but we are taking an independent decision in each case. Furthermore, the only way of giving the Minister's opinion is by the Minister's authority to the Head of the State which the Minister is bound to follow. The Minister of Justice is not bound to follow the opinion of the Minister of Justice.

35

6. I should also like to indicate that my legal advisers often disagree with the Minister's opinion, as it appears to be based on political as well as on legal grounds. For instance death sentences of less than 18 have been confirmed. The acknowledged fact that witnesses were prevented from appearing and defence counsel could not make himself heard has not convinced the Minister of the desirability of a new trial. There is a case where the Methodist Church of America have requested the commutation of a sentence on grounds which my legal advisers consider relevant. There are other instances where the death penalty appears to be an excessive punishment for the offence committed, especially considering the general attitude adopted by the Italian authorities in similar cases where, however, no political questions are involved.

7. Finally I should like to make it clear that the Italian judicial authorities are never unaware of the conditions in which trials take place. They are much more "au fait" with the circumstances of each case than we are. There is therefore no question of new elements being disclosed by us to the Minister in the hope that he may change his mind even after he has given his opinion.

8. In view of the above I should be grateful if the instructions contained in your 25307 of 3 December 1945 be revised and my recommendations contained in signal 2523 of 1 December 1945 given further consideration.

HARRY S. STONE,
 Your Official, USPO,
 Chief Commissioner.

34

Copies to : Executive Commission,
 WVA Doc.,
 Field (2),
 Field (3).

4092/1

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

198A

Originator's Reference: 1 481

Message Centre No: G. 5480

Date/Time of Origin: DEC. 121030A

Date Time Rec'd: DEC. 131200

Precedence: PRIORITY

FROM: AMG LIGURIA REGION SIGNED HETTFORD

TO : ALCOM CITE ACPSE

SECRET

Confidential

SECRET.

Information received that owing to delays in confirming death sentences on political prisoners condemned by ~~REUTERS~~ Courts of Assize strong attempts are likely to be made to ~~RE~~ enter the goals for the purpose of summarily executing such prisoners.

Considerable discontent expressed at delays.

Some cases sentenced in August? Precautions have been taken ³ but urgently request confirmation of sentence or otherwise by the Italian Government.

DOWN GRADED

TO

UNCLASSIFIED

AC DIST

ACTION : LEGAL SC
 INFO : CHIEF COMMISSIONER
 EXEC. COMM.
 C A SEC
 PUBLIC SAFETY SC
 FILE 2
 FLOAT

Chief Judicial Officer
 for Chief Civil Affairs Officer.

SECRET

LEG. SECTION
 CIO
 DCIO
 Chief Counsel
 CIO
 Italian Section
 CL RKS
 15 DEC 1980

197A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/ada.

AG/4022/1/L.

5 December 1945

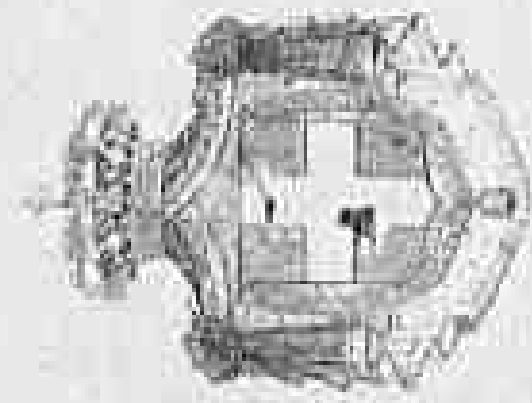
SUBJECT : Magistrati addetti alla Corte Straordinaria di Assise.

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

With reference to your letter No. PR/LE/428 of 30th August 1945 regarding the payment of allowances to Magistrates attached to the Special Courts of Assise I enclose copy of a letter received from the Ministry of Justice.

By Command of Rear Admiral STONE.

MURGRAVE THOMAS
Italian Branch,
For Chief Legal Advisor.



UFF. 2°

Prot. N. 2039 2/10698

Risp. a nota A.C./4093/1/L.
del 4.9.1945

Roma, 28-11-1945

Alla Commissione Alleata
Sottocommissione legale

e p. c.

Al Procuratore Generale di Appello

T O R I N O

OCCETTO: Magistrati addetti alle Corti Straordinarie di Assise.

In riscontro alla nota surrichiamata questo Ministero è di avviso - secondo le norme stabilite dalla Tabella Q annessa al Regio Decreto 30 Gennaio 1941 n. 12 sull'Ordinamento Giudiziario - che solamante ai Magistrati incaricati di presiedere le Corti di Assise straordinarie spetti l'indennità prevista dalla citata disposizione di legge attualmente elevata ad annue lire L. 3.400 e che invece nulla compete agli altri magistrati che fanno parte di quei Collegi giudicanti.

Nella lettera della procura del Regno di Asti n. 571 di prot. del 17 agosto 1945 diretta ad entrambi i Capi della Corte di Torino, ed alligata alla nota surrichiamata, si fa presente che ai magistrati addetti alle Corti straordinarie del Distretto di Genova fin dal 1° maggio u.s. viene corrisposto oltre alle normali retribuzioni, una indennità giornaliera:

- di L. 150 ai Capi di Ufficio in sede;
- di L. 100 ai magistrati in sottordine;
- di L. 50 ai cancellieri e segretari

e ai "magistrati in trasferta L. 300 giornaliera" oltre - in caso di trasferta fuori ufficio - il pagamento delle spese a piè di lista.

Nulla consta, in proposito, a questo Ministero e pertanto tale trattamento, che non è previsto dalle vigenti disposizioni in materia, dovrebbe essere stato disposto dalle autorità dell'A.M.C.

Si ritiene, pertanto, che essendo quelle regioni ancora sottoposte al Governo Militare Alleato, le contrarie disposizioni della legislazione italiana non sarebbero di ostacolo assoluto alla corresponsione del trattamento in parola.

Risp. a nota A.C./4092/1/L.
del 4.9.1945

Roma, 28-11-1945

Alla Commissione Alleata
Sottocommissione legale

e p. c.

Al Procuratore Generale di Appello

T O R I N O

OCCASIONE: Magistrati addetti alle Corti Straordinarie di Assise.

In riscontro alla nota surrichiamata, questo Ministero è di avviso - secondo le norme stabilite dalla Tabella Q annessa al Regio Decreto 30 gennaio 1941 n. 12 sull'Ordinamento Giudiziario - che solamente ai Magistrati incaricati di presiedere le Corti di Assise straordinarie spetti l'indennità prevista dalla citata disposizione di legge attualmente elevata ad annue lire L. 3.400 e che invece nulla compete agli altri magistrati che fanno parte di quei Collegi.

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di L. 150 ai Capi di Ufficio in sede;
di L. 100 ai magistrati in sottordine;
di L. 50 ai cancellieri e segretari

e ai "magistrati in trasferta L. 300 giornaliera" oltre - in caso di trasferta fuori ufficio - il pagamento delle spese a piè di lista.

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UO	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CU RKS	20 M

FEL MINISTRO

W. H. H. H.

*See file with Chief Commission but
Letter attached. It was approved
and does not go to the Commission*

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4092/1/L.

/lc.
4 september 1945.

SUBJECT : Magistrati addetti alle Corti Straordinarie di Assise.
TO : The Minister of Pardon and Justice.

1. I enclose herewith letter N° 125 from the Procuratore Generale of Torino forwarding a letter from the Procuratore del Regno of Asti regarding the payment of salary and allowances.

2. I should be glad to have your opinion on the questions raised which were the subject of certain recommendations contained in a letter N° 4726 of the Procuratore Generale, Venezia, forwarded to the Ministry on 30th June last.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

-30

1942

55307
DEC 04 1973

3/4621
DEC 040900A

REFERENCES

APR 21 1964 3 00 PM '64

ACTION: ALBION TONES

~~SECRET~~
Confidential

CONCLUSIONS

R012 3923.

Para 1. These special courts of Assize sanctioned by AMG in order to permit Italian law and Italian courts to handle cases of this type.

Part 2. Recommendation that handback to Italian jurisdiction of Northern
provinces be authorized on behalf of confidence in Italian administration.

Para 3. Consistent and forthright policy in accordance with purpose stated in Para 1 above believed less likely to result in placing Allies in bad light publicly than your proposed policy of intervention.

Para 4. There is no objection to advising Ministry of Justice in suitable case that not withstanding your policy of following their recommendations you wish to indicate that if the cases were for AGO determination a new trial would be ordered for stated reasons and requesting the Ministry to reconsider ²⁹ recommendations.

Para 5. It is not thought necessary to broaden our EX 53687 November 19.

DOWN GRADED
TO

Col. Inf.
Chief Judicial Officer.
Chief Civil Affairs Officer.

~~SECRET~~



DISCUSSION

ASSIGN: HARC COMMISSIONER
CHIEF COMMISSIONER
LEGAL S/C
C & SECTION
FILE

Legal. It is noted that much is
 the advice of the CC, and particularly
 on the question of confirmation of matters
 - but the wording of the legal CC is of
 interest to C.A. Sec. At least C.A. Sec.
 should be kept informed. *2-1-41*

C.A. Sec. I agree SSH

3 DEC 1941

3 DEC 1941

SECRET

AFTR

3923

1 NOVEMBER 1945

PRIORITY

-2 DEC 1943

SECRET PD

YOUR FOR MAY FIVE THREE SIX EIGHT SEVEN OF NOVEMBER NOVEMBER CITY PD
PD

PARA TWO AFTR FROM HQ AFTR FROM ADMIRAL STONE WITH AGROC PARAG

I AM CONSIDERED ABOUT THESE CASES IN WHICH THERE IS EVIDENCE THAT DUE PROCESS
OF LAW IS NOT ALWAYS FOLLOWED IN ARMY COURTS PD BIRMINGHAM AND COULD. FOR
DETAINANTS HAVE ON OCCASION BEEN THREATENED AND DEPRIVED COUNSEL NOT PERMITTED
TO PRESENT THEIR CASE PD IN CASE OF THE MINISTERS OF JUSTICE VOLUNTARY HAS
NOT ALWAYS GIVEN SUFFICIENT WEIGHT TO THESE FACTS PD IN SOME CASES IT SEEMS TO
BE CLEAR THAT FOR TRIALS SHOULD BE ORDERED PD
PARA TWO PD BECAUSE SUCH CASES COULD NOT BE FORWARDED TO AFTR UNDER PARA TWO OF
YOUR FOR MAY FIVE THREE SIX EIGHT SEVEN BE CONSIDERED IN THAT AND AND ALLIES
WILL BE PLACED IN BAD LIGHT PUBLICLY FOR PERMITTING IN ANY TERRITORY THE
DETENTION OF PERSONS WHO HAVE NOT BY OUR STANDARDS HAD FAIR TRIALS PD
PARA THREE PD MAY PARA TWO OF YOUR FOR MAY FIVE THREE SIX EIGHT SEVEN
THEREFORE BE FORWARDED TO AUTHORITY AS YOUR CHIEF CIVIL AFFAIRS OFFICER
TO ORDER NEW TRIALS WHERE THERE IS REASONABLE DOUBT THAT DUE PROCESS OF LAW
HAS BEEN FOLLOWED

28

**DOWN GRADED
TO
UNCLASSIFIED**

Chief Commissioner

222

Col. Inf.

Chief Judicial Officer,

for Chief Civil Affairs Officer,

MILITARY W. STONE
Rear Admiral, USNR
Chief Commissioner

SECRET

DISTRIBUTION

Legal S/C ✓
Exec Comm
Ct Section
CC



H092/1
✓

193A

F 55307
DEC 031731A0/4821
DEC 010900A

PRIORITY

ADMIN SIGNED SIGNED WITH INDEX

ACTION: ALCON RESS

SECRET

Confidential

SECRET.

REUR 8923.

Para 1. These special courts of Assize sanctioned by AMG in order to permit Italian law and Italian courts to handle cases of this type.

Para 2. Recommendation that handback to Italian jurisdiction of Northern Provinces be authorized founded on confidence in Italian administration.

Para 3. Consistent and forthright policy in accordance with purpose stated in Para 1 above believed less likely to result in placing Allies in bad light publicly than your proposed policy of intervention.

Para 4. There is no objection to advising Ministry of Justice in suitable case that not withstanding your policy of following their recommendations you wish to indicate that if the cases were for AMG determination a new trial would be ordered for stated reasons and requesting the Ministry to reconsider its recommendations.

Para 5. It is not thought necessary to broaden our RA 53687 November 19.

AS
C/O
DCLO
Chief Counsel
C/O
Italian Section
CL NKS

DOWN GRADED
TO
UNCLASSIFIED

SECRET

Col. Inf. DIST
Chief Judicial Officer
for Chief Civil Affairs

RECORDS COMMISSIONER
CHIEF COMMISSIONER
LEGAL S/C
C A SECTION
FILE

27

14092/11
 DE 625 OF 3 OCT 1945

192A
 Codifying the Rules on Sanctions against Communism

The Italian version of this decree is the only authoritative text. This version is not a literal translation; its object is to inform officers conveniently of the provisions contained in the decree.

Officers are referred to the Italian text for all points of detail or matters of procedure or dispute.

Words in brackets are explanatory and not in the original text.

Change in Constitution and Powers

of Courts of Assize

Prosecutors Office

Procedure

Appeals

Amendment of DL 196

Amendments of DL 149

Interim Provisions

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"	17-25

PART I - GENERAL PROVISIONS

CHANGES IN CONSTITUTION AND POWERS OF COURTS OF ASSIZE

1 The agencies and the procedures for the punishment of those offences contemplated by Part I of DL No 159 of 27 July 44 and by DL No 142 of 22 Apr 45, and by DL No 195 of 26 Apr 45 are hereby united throughout the State.

The Special Courts of Assize and the temporary special section of the Court of Cassation, instituted by DL 142 of 22 Apr 45 are hereby dissolved.

The High Court of Justice, instituted by DL No 159 of 27 July 44, shall continue operating to complete proceedings for the removal of senators.

2 The Courts contemplated in Art 4 of DL 159 of 27 July 44 shall operate as special sections of the Courts of Assize in the provincial capitals. They shall be composed of a President and four members of the jury chosen by lot from special lists of citizens of age whose moral and political conduct is good.

3 The special sections of the Courts of Assize shall have jurisdiction to judge all those offences contemplated by Art 1 of DL 159 of 27 July 44, by Art 1 of DL No 142 of 22 Apr 45 (modified by Art 1 of DL No 166 of 2 Aug 45) and by DL No 195 of 26 Apr 45, and all offences which do not come under the jurisdiction of the tribunal or of the Pretore under the present regulations.

Should there be questions influencing the decision which call for a judgment of a military nature, the proceedings shall be referred to the military courts having jurisdiction.

4 For the purpose of compiling the lists contemplated by Art 2, the Committee of National Liberation of the provincial capital shall draw up a list of the names of 100 citizens who have the qualifications prescribed by the said article and lodge it with the President of the Tribunal of the provincial capital.

The Italian version of this decree is the only authoritative text. This version is not a literal translation; its object is to inform officers conveniently of the provisions contained in the decree. Officers are referred to the Italian text for all points of detail or matters of procedure or dispute.

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Change in Constitution and Powers

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PAGE 1 - GENERAL PROVISIONS

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Should there be questions influencing the decision which call for a judgment of a military nature, the proceedings shall be referred to the military courts having jurisdiction.

4 For the purpose of compiling the lists contemplated by Art 2, the Committees of National Liberation of the provincial capital shall draw up a list of the names of 100 citizens who have the qualifications prescribed by the said article and lodge it with the President of the Tribunal of the provincial capital.

The President of the Tribunal shall make a list of fifty members of the jury, choosing them from those selected by the Committees of National Liberation after ascertaining that the moral and political conduct of the persons in question is good.

- 2 -

Provinces having a population exceeding 1,000,000 inhabitants must have 100 members of the jury and the list contemplated by the first para must give the names of at least 200 persons.

5 The President of the special sections of the Courts of Assize shall be appointed by the First President of the Court of Appeal having jurisdiction, and selected from the magistrates of grade not lower than councillor of Court of Appeal or, if particular service exigencies make it necessary, from magistrates of 6th grade.

A substitute President may be appointed in the same manner.

6 More special sections of the Court of Assize may be instituted by decree of the First President of the Court of Appeal, and constituted in the manner specified in the preceding arts.

The above sections may hold office in other localities besides the provincial capital.

PROCEDURE

7 A "Public Ministry" office shall be instituted in the special sections of the Courts of Assize by order of the General Prosecutor in the Court of Appeal. The order shall state the number and grade of the magistrates assigned to the said office.

Lawyers may also be called to join the Public Ministry providing their conduct is stainless, their former political conduct is irreproachable and their capability has been proved. They shall be selected from the list of names given by the Committee of National Liberation.

The lawyers appointed by the Committee of National Liberation are called to hold the office of "Public Ministers" for such time as is strictly necessary to fulfil the duties pertaining to such office. They shall be paid the same wage as the magistrates of grade six.

Any lawyer who refuses to accept the above mentioned office shall be punished in accordance with Art 566 of the Penal Code.

PROCEDURE

8 The time limits for proceedings before the special sections of the Court of Assize are fixed at half those contemplated by the Code of Penal procedure for the pre-trial investigations and proceedings.

9 The proceedings in connection with offences under the jurisdiction of the special section of Court of Assize shall be carried out with a summary pre-trial investigation by the "Public Ministry" officials contemplated in Art 7.

The Public Ministry, whenever it deems there to be sufficient proof of the guiltiness of the accused, may order the proceedings by "directness", providing that the conditions contemplated in 2nd para of Art 502 C.P.P. exist.

The Public Ministry, whenever it should deem the report, the denunciation, the complaint or the appeal to be too unfounded to hold a proceeding, shall order the documents to be filed and notify the military or the administrative authorities, according to whether the case refers to a member of the armed forces or to a civilian, for such action as the said authorities may deem to

and should meet the magistrates of grade not lower than councillor of Court of Appeal or, if particular service exigencies make it necessary, from magistrates of 6th grade.

A substitute President may be appointed in the same manner.

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The above sections may hold office in other localities besides the provincial capital.

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7 A "Public Minister" office shall be instituted in the special sections of the Courts of Appeal by order of the General Prosecutor in the Court of Appeal. The order shall state the number and grade of the magistrates assigned to the said office.

Lawyers may also be called to join the Public Ministers providing their conduct is unblemished, their former political conduct is irreproachable and their capability has been proved. They shall be selected from the list of names given by the Committee of National Liberation.

The lawyers appointed by the Committee of National Liberation are called to hold the office of "Public Ministers" for such time as is strictly necessary to fulfill the duties pertaining to such office. They shall be paid the same wage as the magistrates of grade six.

Any lawyer who refuses to accept the above mentioned office shall be punished in accordance with Art 366 of the Penal Code.

PROCEDURE

8 The time limits for proceedings before the special sections of the Court of Appeal are fixed at half those contemplated by the Code of Penal procedure for the pre-trial investigations and proceedings.

9 The proceedings in connection with offenses under the jurisdiction of the special section of Court of Appeal shall be carried out with a summary pre-trial investigation by the "Public Ministers" offices contemplated in Art 7. The Public Minister, whenever it seems there to be sufficient proof of the guiltiness of the accused, may order the proceedings by "directness", providing that the conditions contemplated in 2nd para of Art 302 C.P.P. exist.

The Public Minister, whenever it should deem the report, the denunciation, the complaint or the appeal to be too unfounded to hold a proceeding, shall order the documents to be filed and rectify the military or the administrative authorities, according to whether the case refers to a member of the armed forces or to a civilian, for such action as the said authorities may deem to take.

10

As regards offenses contemplated by Art 3 of the present decree, the High Commissioner for Sentences against Assize may also propose penal action to be taken, with the powers contemplated by Arts 70, 77, 232, and 293 of the C.P.P.

11

The sentences of the special sections of the Courts of Appeal must be lodged within 10 days from when they are passed.

ARTICLE 148

12

The reasons for appeal to Cassation against the sentences of the special sections of the Courts of Assize must be presented within 10 days from that in which the sentence is lodged, or they will otherwise be rejected.

The time limit for the Publico Ministero to oppose the above sentences is fixed at five days.

With regard to appeals against a death sentence, the Court of Cassation must pass its judgment within 30 days from receiving the documents. The documents must be forwarded immediately, and in no case later than the day after the application is presented.

The application for revision of a death sentence shall not suspend the execution of the sentence if it is not lodged together with the reasons for appeal to cassation.

The Court of Cassation, if it should reject the appeal to Cassation, shall reject the application of revision with the same sentence.

Supplication for pardon, in the case of death sentence, must be lodged within the limit of three days from when the sentence is passed, or otherwise it shall be rejected. Should the accused not appear in court, the time limit shall date from the notification of the sentence.

If there is an appeal to Cassation the application for pardon must be lodged at the same time as the reasons for the application for revision.

ADDITIONAL OF DL 196

13

Art 1 of DL No 196 of 3 May 45 is hereby substituted by the following:
The councillor shall communicate all the pre-trial sentences of acquittal and sentences of both conviction and acquittal, passed in judgment of proceedings against the offences set out in Art 3 to the High Commission for Sentences against Fascism immediately after their deposit in the chancery.

The High Commissioner may propose re-examination of the sentence within thirty days from the communication of the sentence as prescribed by the preceding para, whatever may have been the conclusions of the Publico Ministero. He may also propose re-examination notwithstanding the opposition of the Publico Ministero.

ADDITIONAL OF DL 149

14

Art 5 of DL No 149 of 26 April 45 shall be substituted by the following:
The office of the Publico Ministero in the special sections of the Courts of Assize shall direct, coordinate and supervise the application of sanctions against politically dangerous fascists.

The provincial Commissions referred to in Art 2 and 3 shall decide autonomously on the communications which are transmitted to them both by the office of the Publico Ministero of the special sections of the Courts of Assize, the Procuratore of the Kingdom, and the police bodies.

Only the afore-said provincial Commissions, the offices of the Publico Ministero of the special sections of the Courts of Assize, the Procuratore of the Kingdom and the Questori may order the immediate arrest of those persons whose names have been submitted for the application of the sanctions indicated in the first para of Art 3.

With regard to appeals against a death sentence, the Court of Cassation must pass its judgment within 30 days from receiving the documents. The documents must be forwarded immediately, and in no case later than the day after the application is presented.

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AMENDMENT OF DL 149

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Art 5 of DL No 149 of 26 April 45 shall be substituted by the following:
The office of the Pubblico Ministero in the special sections of the Courts of Assize shall direct, coordinate and supervise the application of sanctions against politically dangerous fascists.

The provincial Commission referred to in Art 2 and 3 shall decide automatically on the denunciations which are transmitted to them both by the office of the Pubblico Ministero of the special sections of the Courts of Assize, the Procuratore of the Kingdom, and the police bodies.

Only the afore-said provincial Commissions, the offices of the Pubblico Ministero of the special sections of the Courts of Assize, the Procuratore of the Kingdom and the Questore may order the immediate arrest of those persons whose names have been submitted for the application of the sanctions indicated in the first para of Art 3.

The Provincial Commission having jurisdiction must be informed of the arrest within three days and must decide on the measure within the following thirty days.

15

Persons who in any way took part in the "hygiene work" must be denounced to the Provincial Commission referred to in Art 3 of DL No 149 of 26 April 1945, for the application of the sanctions contemplated therein providing there exist personal responsibilities for the facts constituting crimes.

16

The measures contemplated in Arts 1 and 3 of DL No 149 of 26 April 45 may be applied not later than one year from the effective date of the present decree.

PART II - TRANSITION AND FINAL ARRANGEMENTS

TRANSITION PROVISIONS

- 17 The High Court of Justice shall complete all proceedings, the conclusion of which is in progress on the effective date of the present Decree.
- The proceedings pending before the High Court of Justice, other than those indicated in the preceding paragraph, shall be referred as they are, to the competent special section of the Court of Cassation or in the case contemplated in the last part of Art 5, to the competent military courts.
- The Court of Appeal of Rome shall have the jurisdiction of the executive measures regarding the decisions of the High Court of Justice.
- 18 The Special Court of Cassation and the offices of the Public Ministers in the same Courts which have already been instituted shall be transformed respectively into the special sections of the Court of Cassation and into the offices of the Public Ministers of the same sections.
- The President of the Tribunal of the provincial capitals in which special Courts of Cassation have been instituted shall in the case of the last part of Art 4, order the number of the members of the jury to be raised in accordance with the same article, requesting the Committee of National Liberation to provide the lists of names for the members required.
- 19 The provisional Special Section of the Court of Cassation, instituted in accordance with Art 16, second part, of R.D. No 152 of 22 Apr 45, shall cease to operate on the thirtieth day after the effective date of the present Decree.
- The sentences pending before the aforementioned section shall be referred, as they are, to the ordinary sections of the Supreme Court of Cassation.
- 20 The proceedings which are referred on the effective date of the present Decree, to the ordinary Courts of Cassation or the military tribunals, shall be completed by the same in accordance with the ordinary rules of procedure.
- The pre-trial investigations for offenses under the jurisdiction of the special sections of the Courts of Cassation, which are being carried out by the Public Ministers or investigation offices on the effective date of the present Decree, shall be continued by the same offices, saving the provisions of the present Decree regarding the sentences.
- The pre-trial investigations being made by the High Commissioner for emigration against fascism shall be entrusted to the offices of the Public Ministers referred to in Art 7.
- 21 The provisions of penal procedure at present in force shall control, wherever applicable, all matters not contemplated by the present Decree.
- 22 All provisions which are incompatible with the present Decree are hereby annulled.
- After one year from the effective date of the present Decree the special sections of the Courts of Cassation shall cease to operate and the offenses coming under the jurisdiction of the same sections shall be judged according to the normal rules controlling the procedure.
- 23 The present Decree shall become effective on the day following its publication in the Official Gazette of the Kingdom.

17 The High Court of Justice shall complete all proceedings, the discussion of which is in progress on the effective date of the present decree.

The proceedings pending before the High Court of Justice, other than those indicated in the preceding paragraph, shall be referred as they are, to the competent special section of the Court of Cassation or in the case contemplated in the last part of art 3, to the competent Military Courts.

The Court of Appeal of Rome shall have the jurisdiction of the executive measures regarding the decisions of the High Court of Justice.

18 The Special Courts of Cassation and the offices of the Public Ministers in the same Courts which have already been instituted shall be transferred respectively into the special sections of the Court of Cassation and into the offices of the Public Ministers of the same sections.

The President of the Tribunal of the provincial capitals in which special Courts of Cassation have been instituted shall in the case of the last part of art 3, order the number of the members of the jury to be raised in accordance with the same article, requesting the Committee of National Liberation to provide the lists of names for the members required.

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The sentence pending before the aforementioned section shall be referred, as they are, to the ordinary sections of the Supreme Court of Cassation.

20 The proceedings which are referred on the effective date of the present decree, to the ordinary Courts of Cassation or the Military Tribunals, shall be completed by the same in accordance with the ordinary rules of procedure.

The pre-trial investigations for offenses under the jurisdiction of the special sections of the Courts of Cassation, which are being carried out by the Public Ministers or investigation offices on the effective date of the present decree, shall be continued by the same offices, saving the provisions of the present decree regarding the sentences.

The pre-trial investigations being made by the High Commissioner for sentences against fascists shall be entrusted to the offices of the Public Ministers referred to in art 7.

21 The provisions of penal procedure at present in force shall continue, wherever applicable, all matters not contemplated by the present decree.

22 All provisions which are incompatible with the present decree are hereby annulled.

After one year from the effective date of the present decree the special sections of the Courts of Cassation shall cease to operate and the offenses dealing under the jurisdiction of the same sections shall be judged according to the normal rules controlling the procedure.

23 The present decree shall become effective on the day following its publication in the Official Gazette of the Kingdom.

In the territories not yet restored to the Italian administration it shall become effective on such day as the ASG will order.

As order that the present decree, bearing the State seal, be included in the official collection of the laws and decrees of the Kingdom of Italy, and that all persons concerned observe it and see that others observe it as law of the State.

4092/1
SECRET

191A

AFHQ

8923

1 DECEMBER 1945

PRIORITY

SECRET PD

Confidential

YOUR FOX XRAY FIVE THREE SIX EIGHT SEVEN OF TWENTY NOVEMBER CITE FROG

PD

PAREN TO AFHQ FROM JR. ALICE FROM ADMIRAL STONE CITE ACSCG PAREN

I AM CONCERNED ABOUT THOSE CASES IN WHICH THERE IS EVIDENCE THAT DUE PROCESS OF LAW IS NOT ALWAYS FOLLOWED IN ASSIZE COURTS PD WITNESSES AND COUNSEL FOR DEFENDANTS HAVE ON OCCASION BEEN THREATENED AND DEFENSE COUNSEL NOT PERMITTED TO PRESENT THEIR CASE PD IN OUR OPINION MINISTER OF JUSTICE TOULIATTE HAS NOT ALWAYS GIVEN ADEQUATE WEIGHT TO THESE FACTS PD IN SOME CASES IT SEEMS TO US CLEAR THAT NEW TRIALS SHOULD BE ORDERED PD

PARA TWO PD SINCE SUCH CASES COULD NOT BE FORWARDED TO AFHQ UNDER PARA TWO OF YOUR FOX XRAY FIVE THREE SIX EIGHT SEVEN MY CONCERN IS THAT ARE AND ALLIES WILL BE PLACED IN BAD LIGHT PUBLICLY FOR PERMITTING IN ARE TERRITORY THE EXECUTIONS OF PERSONS WHO HAVE NOT BY OUR STANDARDS HAD FAIR TRIALS PD PARA THREE PD MAY PARA TWO OF YOUR FOX XRAY FIVE THREE SIX EIGHT SEVEN THEREFORE WE BROUGHT TO ATTENTION HQ AS YOUR CHIEF CIVIL AFFAIRS OFFICER TO ORDER NEW TRIALS WHERE THERE IS REASONABLE DOUBT THAT DUE PROCESS OF LAW HAS BEEN FOLLOWED

DISTRIBUTION

 Legal S/C
 Exec Comm
 CA Section
 CC

Chief Commissioner

222

 ELLERY W. STONE
 Rear Admiral, USNR
 Chief Commissioner

SECRET

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190A

HEADQUARTERS
VENEZIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

7 November 1945

TO : Chief Legal Adviser, Hq. AC.
for attn O.I/c Italian Branch

SUBJECT : Execution of death sentences: Extraordinary
Court of Assize.

FILE : RXII/LE/Reg/3/93.1.

1. Ref your AC/4092/1/L. of 12 October 1945
all Provincial Commissioners of this Region consider
that the arrangements for executions should be placed
before them for approval. I agree.

C.L.P. Gilshenan
C.L.P. GILSHENAN, Major,
Regional Legal Officer,
Venezia Region.

INFO	
CLD	
DDO	H ←
Chief Clerk	
CIC	
Region	for
CL RKS	
1 NOV 1945	

No action is now called
for in this matter

30 NOV.

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SECRET

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20 NOV 1945

0/3931

Rev. 200900A

IMPORTANT

AFHQ SIGNED SACRED CITE PHGEG.

ALCOM ROME

Confide 182A

SECRET.

REF YOUR AC4030/1/L NOVEMBER 3. POWER TO PARDON PERSONS SENTENCED TO DEATH BY ITALIAN COURTS IN AME IS SUBJECT.

- 1°) EXCEPT IN CASES COVERED BY FOLLOWING PARAGRAPH THE POLICY OF THIS H.Q. IS TO TAKE NO ACTION EXCEPT ON ADVICE OF MINISTRY OF JUSTICE.
- 2°) WHERE ALLIED FORCES HAVE KNOWLEDGE OF FACTS NOT KNOWN TO ITALIAN COURT OR MINISTRY OF JUSTICE AND MISCARriage OF JUSTICE IS IMMINENT YOU WILL FORWARD THE APPEAL TO THIS H.Q. TOGETHER WITH THE VIEWS OF THE MINISTRY OF JUSTICE AND A STATEMENT OF THE FACTS NOT KNOWN ITALIAN AUTHORITIES AND YOUR RECOMMENDATIONS.

DOWN GRADED
TO
UNCLASSIFIED

A.C. DISTRIBUTION.
ACTION - LEGAL S/C
INFO - C. COMMISSIONER
EX. COMMISSIONER
C.A. SECTION
FILE

Col. Inf.
Chief Judicial Officer.
for Chief Civil Affairs Officer.

SECRET



188A

AFHQ 6-5 SECTION

8497

17 NOVEMBER 1945

PRIORITY

RESTRICTED PD

PARA ONE PD MAY A REPLY TO THIS HQ ABLE CHARLIE BLANT FOUR
DEMO NINE TWO BLANT ONE BLANT LOVE OF NINE NOVEMBER BE
EXPEDITED MURDER PD

PARA TWO ABLE FOX NOT QUEEN GEORGE FIVE SECTION FROM HQ
ALCOB SIX ACLED FARM

PARA TWO PD OVER A DOZEN CEMENTS DEATH ARE AWAITING ACTION
SOME OF WHICH HAVE BEEN WAITING SOME TIME PD REGIONS ARE
PRESSING FOR ACTION

18

LEGAL SUB-COMMISSION

302

187A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Ref: AC/4092/W/L.

9 Nov 45.

SUBJECT: Power to Pardon.

TO: AFHQ, G-5 Section.

- 1 Your letter 4-5: 015 dated 7 November is fully agreed.
- 2 The need for the delegation arises because the power to pardon is vested in the Supreme Allied Commander and a subordinate officer is not justified in refusing to grant a pardon on his own initiative and not forwarding the petition to the Supreme Allied Commander.
- 3 In order to justify such a course of action the specific power should be delegated to him.
- 4 If you agree, will you please telegraph to that effect and forward the Supreme Allied Commander's authority.

FOR THE CHIEF COMMISSIONER:


M. CARR, Brig.,
VI CA Section.

17

232 1792/1

LEGAL S/C

186A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 015

7 November 1945

SUBJECT: Special Courts of Assize: Power to Pardon.
TO : Headquarters, Allied Commission, APO 394.

182A

1. Reference is made to your AG/4030/1/L of 3 November, subject Pardons in Italian Courts in AMG territory and to your letter of 5 November same file and subject. This letter brings up for consideration a variety of problems, not all of which have been made explicit.

2. To consider first the situation in Venezia Giulia:

a. Proclamation Number 5 entitled "Establishment of Special Courts of Assize" contains the following provision:

ARTICLE XVI

*

*

*

*

"3. No sentence of death shall be executed unless and until confirmed in writing by me, by the Chief Civil Affairs Officer acting on my behalf, or by any other specified officer not below the rank of Brigadier General or Brigadier, to whom I may have delegated such power in writing."

This clause confers upon the Chief Civil Affairs Officer, Rear Admiral Stone, the specific power to confirm death sentences. The clause is similar, although not identical in form, to that contained in the AMG proclamations, and has heretofore been regarded as adequate in all cases involving confirmation of death sentences.

b. It is presumed that paragraph 6 of your reference letter of 3 November, in which you state that action upon petitions respecting death sentences is suspended, refers to death sentences made by Special Courts of Assize. In view of the provision quoted from Proclamation No. 5 in para 2 a. above, the suspension of action by your Headquarters appears to be unnecessary with respect to sentences originating in Venezia Giulia.

3. In AMG territory outside of Venezia Giulia the Italian Courts function pursuant to permission of AMG and death sentences do not require to be confirmed by you. The question therefore appears to relate solely to pardons or clemency after an appeal has been made to Rome and has been denied by the Italian Ministry of Justice. In paragraph 5 of your reference letter it is stated that you propose to continue present procedures, even if the delegation submitted with your letter were signed. It is also stated that present procedures are in effect the same as those which obtain in territory under Italian administration. As no similar delegation has heretofore been executed with respect to pardons or clemency in other areas, the need for such authority at present is not clear. Moreover the introduction of a new form of delegation at this time is viewed with some misgiving, particularly as it would authorize the overruling of the determinations of the Ministry of Justice. The procedure outlined in paragraph 3 of your letter appears to be satisfactory.

4. Until further clarification is received of the above points, no determination of the advisability of executing the proposed instrument can be made.



A. L. HAMBLEN
Brigadier General, G.S.C.
Assistant Chief of Staff, G-5.

LEGAL SUBCOMMISSION	
CIO	
DCIO	
Chief Counsel	
CIO	
Italian Section	
CL RKS	
9 NOV 1945	

15

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/es

AC/4092/1/L.

7 November 1945

SUBJECT : Death Sentences of Special Courts of Assise

TO : Regional Commissioner - LIGURIA Region.

1. Reference your No. Lig/H/ 19 of 19th October 1945 enclosing a letter from the A/Provincial Commissioner, Savona Province, pointing out that the failure to carry out the executions upon a number of persons sentenced to death by the Special Courts of Assise "is having a serious effect on our efforts to instil in the public confidence in the Court of Assise."

2. The question of the delay in carrying out death sentences has been the subject of strong representations from this Sub-Commission to the Minister of Justice calling attention to the unreasonable delay occurring in many cases before the Minister makes his recommendation. Further the Chief Commissioner has twice addressed the Prime Minister, the last occasion being the 20th September, on the question of unjustifiable delays in the carrying out of executions, and repeated his request that the Italian Government should devise a procedure that will avoid the delays that have occurred in nearly all cases of death sentences. 14

3. Recently delays have been occasioned in ordering executions in several cases pending the signing of a delegation by the newly-appointed Supreme Allied Commander to the Chief Commissioner to confirm death sentences.

4. The opinion expressed by the A/ Provincial Commissioner that failure to carry out the execution of a number of persons sentenced to death has had a serious effect on public opinion is correct, and this Sub-Commission will continue to press for a

procedure to be adopted that will avoid the altogether unjustifiable delays that have hitherto occurred in the carrying out of executions

By Command of Rear Admiral STONE :

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

23 OCT 1945

HEADQUARTERS
LIGURIA REGION
ALLIED MILITARY GOVERNMENT
A. P. O. 394

19 October 1945
25 OCT 1945

Ref: Lig/HQ/19

SUBJECT: Death Sentences of Special Court of Assize.

TO : Headquarters, Allied Commission, APO 394, Attention:
Vice President, Civil Affairs Section.

1. The attached letter from the Acting Provincial Commissioner, Savona Province, is forwarded.
2. I support the view of the Acting Provincial Commissioner that the Italian Government should take steps to have these sentences carried out.
3. May I please be informed what the policy is in this respect?

J. G. Selby
J. G. SELBY
Colonel
Regional Commissioner

DCLO	
Chief Counsel	
CJO	
Station Section	
CL RRS	
26 OCT 1945	
26 OCT 1945	

-12

5217

7459

HEADQUARTERS
SACRAMENTO REGION
MILITARY REGION
ALLIED MILITARY GOVERNMENT
APO 394

15 October 1945

SUBJECT : Death Sentences of Special Court of Assise.

TO : REGIONAL COMMISSIONER, LIGURIA

1. Attached hereto is a list of all death sentences passed by the Special Court of Assise, all but one of which have been confirmed by the Court of Cassation at Milan.

2. Except for the last sentence which was confirmed Sept. 19, 1945, all others were confirmed from two to four months ago. In not one case has a sentence been executed, because of the failure of the Italian Government, or of our own Headquarters, at Rome to approve the sentences.

3. This inexcusable neglect is having a serious effect on our efforts to instill in the public confidence in the Court of Assise. One incident in June, when an armed gang removed 12 prisoners from our custody, is, I believe, directly attributable to this growing lack of confidence. Present feeling in the province is that the work of the Court of Assise is a sham, since none of the sentences will be executed. If this feeling were to become strong enough, it would be impossible to conduct the proceedings of the Court in the proper atmosphere; and, further, there is the possibility of other incidents such as happened in June.

4. It is suggested that representations be made with respect to this problem.

1. Attached hereto is a list of all death sentences passed by the Special Court of Assise, all but one of which have been confirmed by the Court of Cassation at Milan.
2. Except for the last sentence which was confirmed Sept. 19, 1945, all others were confirmed from two to four months ago. In each case has a sentence been executed, because of the failure of the Italian Government, or of our own Headquarters, at Rome to approve the sentence.
3. This inexcusable neglect is having a serious effect on our efforts to instill in the public confidence in the Court of Assise. One incident in June, when an armed gang removed 12 prisoners from our custody, is, I believe, directly attributable to this growing lack of confidence. Present feeling in the province is that the work of the Court of Assise is a sham, since none of the sentences will be executed. If this feeling were to become strong enough, it would be impossible to conduct the proceedings of the Court in the proper atmosphere; and, further, there is the possibility of other incidents such as happened in June.
4. It is suggested that representations be made with respect to this problem.

B.D. CARR

Captain G. H.

A/PROVINCIAL COMMISSIONER

524

7458

Elenco degli imputati condannati alla pena capitale

No. Ordine	COGNOME	E	NOME	DATA DELLA SENTENZA	DATA DELLA
1.	POSSANTI		Luigi	23/5/1945	conferma
2.	GENOVESI		Giuseppe	23/5/1945	"
3.	ZUNINO		Alberto	23/5/45	"
4.	MAZZANTI		Mario	9/6/1945	"
5.	REVILLI		Carlo	9/6/1945	"
6.	GARRONE		Maria	9/6/1945	"
7.	AMADIO		Rosa	9/6/1945	"
8.	GHIRAUO		Antonio	12/6/1945	riforma
9.	CAVICLIA		Pilade	3/7/1945	conferma
10.	CONTINI		Ennio	11/7/1945	"
11.	ZAMBIANCHI		Rosario	20/8/1945	"

Elenco degli imputati condannati alla pena capitale

COGNOME	NOME	DATA DELLA SENTENZA	DATA DELLA SENTENZA DELLA CASSAZIONE
SENTI	Luigi	23/5/1945	conferma 13/6/45
VESI	Giuseppe	23/5/1945	" 13/6/45
INO	Alberto	23/5/45	" 13/6/45
CANTI	Mario	9/6/1945	" 20/7/45
ELLI	Carlo	9/6/1945	" 20/7/45
RCHE	Maria	9/6/1945	" 20/7/45
OIO	Rosa	9/6/1945	" 20/7/45
AUDO	Antonio	12/6/1945	riforma 11/7/45
GLIA	Filade	3/7/1945	conferma 6/8/45
FINI	Ennio	11/7/1945	" 14/8/45
BIANCHI	Rosario	20/8/1945	" 19/9/45

18313

HEADQUARTERS ALLIED COMMISSION
RFO 394
CIVIL AFFAIRS SECTION

AC/AD30/1/L

5 Nov 45

SUBJECT : Pardons in Italian Courts in ASD Territory

TO : AFIS, G-5 Section

Will you please substitute the attached proforma for that included
in 2 AC/AD30/1/L of 3 Nov.

FOR THE CHIEF COMMISSIONER:

M. CAER, Brig,
Vt CA Section

Copies to: Files: AC/AD22/1/L
AC/AD20/L

ALLIED FORCE HEADQUARTERS
Office of the Commander-in-Chief

183B

I, WILLIAM D. MORGAN, FSB, DSC, MC, Lieutenant General, Supreme Allied Commander Mediterranean Theatre of Operations and Military Governor of all Italian territory which is, or from time to time may become, subject to Allied Military Government, do hereby delegate to HENRY W. STONE, Rear Admiral, USNR, and to any Officer not below the rank of Colonel from time to time appointed by him in writing for that purpose, full power and authority to pardon persons sentenced to death by Italian Courts sitting in territory under Allied Military Government or to substitute for such sentence, such other sentence as may appear appropriate.

WILLIAM D. MORGAN
LIEUTENANT-GENERAL,
SUPREME ALLIED COMMANDER,
MEDITERRANEAN THEATRE.

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4030/1/L

3 November 1945

SUBJECT : Pardons in Italian Courts in AMG Territory

TO : AMHQ, G-5 Section

1. The present procedure with regard to the review of cases tried by Italian Courts in AMG territory is for the petitions to be submitted through the usual legal channels and ultimately to this Headquarters. The power of pardoning offences in occupied Italy vests, of course, in the Supreme Commander, and on his behalf the Chief Legal Advisor has been exercising the power of review.
2. As a practical expression of co-operation it has been the practice of the CIA to submit the petitions for clemency to the Minister of Justice, who is the normal authority for dealing with similar petitions arising from territory under Italian administration. The Minister of Justice then advises the CIA as to how he would deal with that particular petition if he had jurisdiction and in practice the CIA accepts that advice and gives directions accordingly. It is recognised by the Italian Government and this Headquarters that the opinion expressed by the Minister of Justice is purely advisory and that the CIA is not bound to accept such advice.
3. With the advent of the Special Court of Assize the death sentence, which was previously for all practical purposes non-existent, was restored for offences by collaborators in North Italy and a number of petitions against sentence of death are now being received. The established procedure has so far been followed and no clemency has as yet been exercised except in accordance with advice of the Minister of Justice. Sentences of death by the Italian Courts under Italian law have been carried out after an appeal has been dismissed by the Italian Courts and a subsequent petition has been "rejected" by the Minister of Justice.
4. In the case of AMG courts the Supreme Commander has restricted the power of confirming death sentences to such person as to whom he may delegate that power in writing.
5. If the Supreme Allied Commander desires to restrict the power of pardoning persons sentenced by Italian Courts by delegating the same, may the attached order please be signed. In this event it would be intended that the present procedure should continue, that being in effect the same as that which obtains in territory under Italian administration.
6. Action upon a number of petitions against the sentence of death is suspended pending decision as to the Supreme Commander's wishes upon this point.

Page - 2 -

7. May the matter please be treated as urgent as prolonged failure to carry out these sentences is likely to cause political comment in North Italy.

For the Chief Commissioner :

MD
M. DARR, Brig.,
VP OA Section.

Incl: Order of Delegation.

Copies to: Files - AC/4092/1/L

AC/4020/L

ALLIED FORCE HEADQUARTERS
Office of the Commander-in-Chief

I, WILLIAM D. MORGAN, K.C.B., D.S.O., M.C., Lieutenant-General, Supreme Allied Commander Mediterranean Theatre of Operations and Military Governor of all Italian territory which is, or from time to time may become, subject to Allied Military Government, do hereby delegate to ELLERY W. STONE, Rear Admiral, USNR, and to any officer not below the rank of Colonel from time to time appointed by him in writing for that purpose, full power and authority to pardon persons sentenced by Italian Courts ^{to death} in Allied Military Government territory or to commute, ^{to substitute the term of imprisonment} reduce or ^{in any other manner} remit sentences imposed by such courts.

WILLIAM D. MORGAN
LIEUTENANT-GENERAL,
SUPREME ALLIED COMMANDER,
MEDITERRANEAN THEATRE.

Cancelled
See 183B
Dated: November 1945

181A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4092/1/L.

29 October 1945

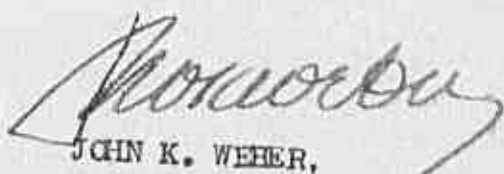
SUBJECT : Petitions for Pardon in cases tried
by Italian Courts in A.M.G. territory.

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

Ref folio 180A.

1. The power of clemency in above cases is vested in the Military Governor who for that purpose stands in the shoes of the Lieutenant-General.
2. In the past the Chief Legal Advisor has exercised this power for the Military Governor.
3. Before acting on a petition in any such case the Chief Legal Advisor has obtained the technical advice of the Minister of Pardon & Justice.
4. Such advice is attached to the file containing the petition with allied papers as are the recommendations of the local Procuratore del Re and Procuratore Generale.
5. In giving his advice the Minister is not expected to consult the Lieutenant General.
6. This procedure, whilst safeguarding the powers of the Military Governor, follows ^{closely} the regular Italian procedure in cases of pardon.
7. In file AC/4092/1/L, folio 126A (marked 1) you will find a directive setting forth in detail the procedure for dealing with petitions for pardon to be observed in cases of death sentences passed by Extraordinary Courts of Assize. In file AC/4030/1/L, folio 37A (marked 2) you will note a directive pertaining to all other cases tried in AMG territory. Both directives have been prepared in agreement with the Minister.
8. For the reasons I have mentioned I think the statements contained in the article in "L'Unita" are correct.

N. Sted. Harkyn
35/x
MQ


JOHN K. WEHER,
Colonel, Inf.,
Chief Legal Advisor.

27 OCT 1945

CIVIL AFFAIRS SECTION

INTER-OFFICE MEMO

TO: 330-C, Section.

in reference to the article which appeared in yesterday's issue of "L'Unita".

I think that this merits looking into immediately, as there has been a good deal of talk recently in the press about the Ministry for Grace and Justice not accepting petitions for pardon to the Magistrate.

So far as I know the attached article is entirely incorrect.

As regards the first reason given in my experience, all appropriate petitions used to be normally submitted to the Magistrate. But it is the second reason given which appears to be quite incorrect. If the power to grant pardon is the prerogative of the Allied Military Government, we should not submit these cases to the Minister for Justice and convey his decision or that of the Magistrate to the Italian authorities.

I think we should turn up the correspondence and find out what were the arrangements under which these petitions were submitted through AG/AG to the Minister for Justice. It seems to me we may have been wrong in relying on the ruling of the Minister for Justice if it was apparent that the matter had not been properly dealt with. But in any case we cannot let the Minister shelter behind these mis-statements, if they are such, and it may be a question of reminding him and ensuring that a press statement is made, correcting these inaccuracies or it may be a case of issuing a *dementi* ourselves.

22 Oct 45.

LEG. SUB COMMISSION

CLG

DOLO

Chief Counsel

CIO

Italian

CL 113

2-2007 1045

W. L. 312, 313, 314
W. CA Section.

180A

Extract from "L'UNITA'" of 21 Oct 45

180B

Anything will do

Now that the campaign on the allegedly illegal acts of the Minister of Justice has gone up into smoke, the organ of the Italian Democratic Party ("Lucus a non lucendo") accuses Minister Togliatti of another terrible illegal and unconstitutional act: of not informing the Lieutenant General of the petitions for pardon which he does not deem should be accepted. We must inform the organ of the Democratic Party that it has missed its mark once again, and for two reasons. In the first place, the procedure followed by the Keeper of the Seals is the same as the one that has always been followed since the existence of a constitutional right governing the relations among the different agencies of the executive power. Secondly, the Lieutenant General has nothing to do with the death sentences pronounced by the extraordinary Courts in the North and confirmed by the special Section of the Supreme Court of Milan (these include 99% of all the death sentences pronounced in Italy after the liberation of Rome). The power to grant pardon on all these sentences rests with the Allied Government to which the Minister gives his opinion. As can be seen, the organ of the Democratic Party ("lucus a non lucendo") could not be more wrong. But when a campaign has to be carried on, anything will do. Let us see what comes next.

Tutto fa brodo!

Finita in una volta di rapone la campagna circa i pretesi atti illegali del Ministro di Grazia e Giustizia, ecco l'ora del Partito democratico («lucus a non lucendo») italiano scoprire l'America di una nuova terribile illegalità, anzi, incostituzionalità, che il Ministro Fogliatti avrebbe commesso, non informando il Luogotenente del Regno delle grazie di grazia che egli non ritiene debbano essere accolte. Dobbiamo avvertire l'organo del partito democratico («lucus a non lucendo») italiano che anche questa volta ha fatto cieca. E ciò per due motivi. Perché, in primo luogo, la procedura che viene seguita dal Guardasigilli è quella che è sempre stata seguita, dacché esiste un diritto costituzionale che regola i rapporti tra i differenti organi del potere esecutivo. Ma il secondo motivo è il più bello. Ed è che per le sentenze di morte pronunciate dalle Corti straordinarie del Nord e confermate dalla Sezione speciale della Corte suprema con sede in Milano (e queste sentenze sono il 99 per 100 di tutte le sentenze di morte pronunciate in Italia dopo la liberazione di Roma) il Luogotenente non c'entra assolutamente per niente. Il potere di grazia per tutte queste sentenze rientra nelle prerogative del Governo alleato, ed è a questo che il Ministro trasmette il suo parere. Come si vede, l'organo del Partito democratico («lucus a non lucendo») non poteva prendere un granchio più colossale. Ma quando si deve fare una campagna, tutto fa brodo, non è vero? Aspettiamo la prossima.

1 2 1 8