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KILLING OF ALLIED SOLDIER BY (4) CARABINIERI, (REGION 3)
MAY 1944

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/ap

ACC/4129/4/L

17 May 1944

SUBJECT : Case referred to Italian Military Tribunal.
TO : Regional Legal Officer (thru RO), Region III.

1. Reference is made to your letter L-3055 dated 16 May 1944.

2. From the short statement contained in your monthly report to which reference was made in my letter of 8 May 1944 it appeared that the case involving the death of an Allied soldier might fall within the second paragraph of Article 4, Section 1 c. Under the circumstances involved in the particular case I approve entirely of your action. However, cases involving deaths of Allied soldiers do present certain questions of policy with relation to the Allied Military authorities and such a case I think it could be best to consider as falling within the special type of case mentioned in the above paragraph.

G. R. UPJOHN,
Colonel,
Chief Legal Officer.

4429/4 ✓
HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

L-3055

16 May 1944.

Subject: Case referred to Italian Military Tribunal.

To : C.I.O. Legal Sub-Commission, A.C.C. (1)

1. Reference is made to your letter ACC/4129/4/L dated 8 May, 1944, subject, Report of Legal Division Region 3 for April 1944.

2. The facts of the case, briefly, are as follows. On 13 February, 1944, at San Andrea, Guardsman Flannigan R., 2696592, 2nd Bn., Scots Guards, was found dead, having been shot. The bullet with which he was killed and a pistol shell were found. The case was investigated by 68th Section, Special Investigation Branch, Corps of Military Police, Central Mediterranean Forces. There were no witnesses to the shooting. Suspicion fell upon four carabinieri, Grubisi, Matteo fu Antonio, 41 years, Torti, Michele fu Franco, 29 years, Foglietta, Benedetto di Biase, 26 years and Ferrara, Bruno di Guglielmo, 24 years. All four of these men produced alibis which the prosecutor reported to be unshakeable. The bullet, which had been recovered, together with the pistols of the suspects were submitted to the ballistics expert of the C.I.D. U.S. Army at Naples, who established that the bullet was not fired from those pistols. 2

3. After carefully considering the very excellent report of the investigators and after consultation with the prosecutor, who had conducted a supplemental investigation,

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I was firmly convinced that none of the four suspects could be convicted of the offense. Under such circumstances, the only result to be obtained by convening a General Military Court would be to exonerate the suspects and this I was not satisfied to permit. There was no doubt but that the case should be referred to the Italian Military Tribunal. If that Tribunal finds the accused "not guilty", the exoneration is theirs and not that of Allied Military Government. If, on the other hand, the Tribunal, through its system of procedure, finds any one, or all, of the accused "guilty", it will have done what we were not in position to do. Finally, should any additional evidence be developed in the future on which a conviction might be predicated, we are still in position to try these men of the Proclamation offense.

4. I am surprised at the statement in your letter that "A case of this kind involves policy and it is important that the Legal Sub-Commission should be consulted in advance of any such action being taken". As I read your statement of policy as contained in your AGC/4027/L, dated 29 February 1944, subject "Construction of Phrase 'Allied Forces' ", there is authority to hand cases over to Italian Military Courts in which Italian soldiers are involved. There is no mention of referring the cases to Legal Sub-Commission. The new instructions (effective to-day) are couched in even stronger language. It states "but in the absence of some very special reason to the contrary this jurisdiction (i.e. of Allied Military Courts), will NOT be exercised and they (Italian soldiers) will be handed over to their own military courts for trial." I have sent several cases to the Italian Military Tribunal believing that I had the authority. Now, frankly, I am considerably confused.

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For the Regional Commissioner

John W. Chapman

JOHN W. CHAPMAN,
Lt.Col., JAGD,
Reg. Legal Officer.

JWC/mo

4129/4

HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

L-3055

11 May 1944

Subject: Transfer of Case to Italian Military Tribunal.

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

1. Reference is made to your letter ACC/4129/4/L dated 8 May 1944, subject Report of Legal Division Region 3 for April, 1944.

2. Report on the transfer of the case of the four carabinieri charged with killing an Allied soldier which was transferred to the Italian Military Tribunal is being prepared and will be forwarded upon completion.

For the Regional Commissioner:

JWC/mo

John W. Chapman
JOHN W. CHAPMAN,
Lt.Col., JAGD,
Reg. Legal Officer.

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION

MTO 394-

8 May. 1944.

REFERENCE : ACC/4129/4/L.

SUBJECT : Report of Legal Division Region 3 for April 1944.

TO : Regional Legal Officer (thru Regional
Commissioner), Region 3.

1. In paragraph 11 reference is made to the transfer of case of four carabinieri charged with killing an Allied soldier, to the Italian Military Tribunal. I request a report on this. A case of this kind involves policy and it is important that the Legal Sub-Commission should be consulted in advance of any such action being taken.

2. In paragraph 24 it is stated that your office has given advice to the effect that the Controller of Property or at least the Regional Controller may be sued. Under no conditions may an Allied Officer be sued in any part of Italy in any capacity, representative or otherwise. The Property Controller is in no sense a representative of the owner. Please cancel your advice.

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

RHM/wcw.

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