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ACC

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JURISDICTION
ORDERS
MAY 194

10000/142/833

JURISDICTION OF ITALIAN COURTS OVER VIOLATION OF REGIONAL
ORDERS
MAY 1944

FILE CLOSED 11 May 1944

1 *File*

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REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

11, May, 1944.

REFERENCE : AGC/1212/L.
SUBJECT : Regional Orders.
TO : Regional Commissioner, Region III (Attention Regional
Legal Officer)

1. Your L.2071 dated 6 May 1944 is acknowledged and this letter confirms telephone conversation between Colonel Upjohn and Lieut. Colonel Chapman this afternoon.

2. This Sub-Commission has carefully considered the suggestions in your letter and has come to the conclusion that there is objection in principle to creating new offences which may be described as offences necessary for reasons of military necessity conferring upon the Italian Courts jurisdiction to deal with such new offences. It is possible that the Italian Courts may refuse to deal with them and in such case a more difficult question would arise as to how far they could be compelled to hear and determine such cases. In view, however, of the happy relationship between the Allies and the Italians I see no reason to think that such refusal is at all likely. Indeed the Minister of Justice has informed me that he will do all he can to assist in this matter.

3. Dealing with the Order in detail :-

(a) Article II.

Surely the concluding words should read "subject to the provisions of Article 3" and not "subject to the provisions of Section 2 of Article 3" because without a reference to section 1 of Article 3 conferring the power to impose certain sentences it leaves Article 2 conferring a most uncertain jurisdiction on the Italian Courts.

(b) I think it is desirable that instead of setting up special remedies of Article 3, Section 1 (b), to do so by reference to existing Italian legislation. An appropriate penalty is to be found in "Legge Penale Ammonaria No. 645" of 8 Jul 41 and subsequent legislation, which provides for penalties up to three years and 20,000 lire fine. In view of the power to imprison for three years I do not think that the notice of the maximum fine is any great drawback.

4. Will you please alter the draft accordingly.

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

GRU/ww.

4141

Segne SC
1237
6655HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

(1A)

L-2071

6 May 1944

Subject: Regional Orders.

To : CEC. Legsi Sub-Commission ACC. —

1. Arising out of the discussion which was held at this Headquarters recently, between Colonel Upjohn and Colonel Chapman, on the proposal that as many cases as possible should be handed over to the Italian Courts, consideration has been given to the powers of the Prefect to make decrees on the lines of Regional Orders.

2. It appears that the power of the Prefect to issue decrees is contained in Article 20 of the Nuova Legge Comunale e Provinciale. Although that Article enables the Prefects decrees to be enforced by the Italian Courts, the only penalty is imprisonment up to 10 days or a fine not exceeding 500 lire. It is felt that these penalties are entirely inadequate for the offences created by Regional Orders, particularly having regard to the altered value of money in recent times.

3. The problem can be dealt with in one of two ways; either by providing that the Prefects decrees shall carry greater penalties, or by including in Regional Orders an article conferring jurisdiction on the Italian Courts to try the offences created by the Orders. It is felt that the latter method is the better one because provision can then be made for A.M.C. Courts to have concurrent jurisdiction. Such concurrent jurisdiction might prove useful if a particularly glaring case of infringement arose.

4. There is attached a draft of a Regional Order which has been recently prepared. Article II of this Order is intended to confer jurisdiction on the Italian Courts but some doubts have been expressed whether Articles II and III are effective for that purpose.

5. It will be appreciated if this Headquarters may be advised on the policy of either increasing the penalties for infringement of prefectural decrees, or conferring jurisdiction on the Italian Courts by means of Regional Orders and, in the latter case, whether the form of the Regional Order sent herewith is sufficient.

For the Regional Commissioner

John W. Chapman

JOHN W. CHAPMAN
Lt. Col., J.A.G.D.
Reg. Legal Officer.

GAB/en.

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

Enc:

1. Draft Regional Order.

Copy to Administrative Section ACC (for information).

HEADQUARTERS
REGION 3, ALLIED MILITARY GOVERNMENT
APO 194, U.S. Army

Regional Order)

Number)

May 1944.

Considering the need of conserving food supplies and of protecting food imported into Italy by the Allied authorities from improper use:

I, CHARLES POLLETTI, Lieutenant Colonel, Regional Commissioner, Region 3, by virtue of power vested in me, hereby

O R D E R

Article I.

Restriction on sale etc. of sweetmeats

No person shall manufacture, sell, offer to sell, or expose for sale in any place any candy, chocolate, cake, pastry, ice-cream, non-alcoholic beverage, or sweetmeat, of whatever kind, in which any of the following ingredients are used, that is to say, sugar (including syrup, essence, fruit juice, or preserved fruit containing sugar), butter, milk in whatever form, eggs in whatever form, flour made from any cereal, cocoa, coffee, or chocolate.

Article II.

Jurisdiction of Courts.

Section 1. Any person charged with the violation of any of the provisions of this Order may be tried by an Allied Military Court or by an Italian Court having criminal jurisdiction. Every Italian Court having original jurisdiction shall have competence and jurisdiction to hear and determine, in accordance with Italian criminal procedure, all cases arising out of the violation of this Order.

I, CRISTINA TONINOTTI, Lieutenant Colonel, Regional Commissioner, Region 3, by virtue of power vested in me, hereby

Q R R A M

Article I.

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Section I. Any person charged with the violation of any of the provisions of this Order may be tried by an Allied Military Court or by an Italian Court having original criminal jurisdiction. Every Italian Court having original jurisdiction shall have competence and jurisdiction to hear and determine, in accordance with Italian criminal procedure, all cases in which a violation of any of the provisions of

this Order is charged and which have been referred to be tried by that Court but, subject to the provisions of Section 2 of Article III of this Order, that Court shall not have power to award any punishment greater than it can lawfully award under Italian law.

Article III.

Punishment

Section 1. Any person who violates any of the provisions of this Order shall -

- (a) upon conviction by an Allied Military Court be liable to imprisonment or fine, or both; or
- (b) upon conviction by an Italian Court having criminal jurisdiction to imprisonment for not less than seven days nor more than three years, or to a fine of not less than 300 lire nor more than 2,000,000 lire, or to both such imprisonment and such fine,

with or without other lawful punishment, as the Court may determine.

Section 2. In addition to inflicting either or both of the punishments mentioned in Section 1 of this Article, or in lieu thereof, an Allied Military Court or (notwithstanding anything contained in Article II of this Order or in Italian law) an Italian Court having criminal jurisdiction may order -

- (a) the forfeiture to the Allied Military Government of any article; or
- (b) the closing of any shop

in respect of which a violation of any of the provisions of this Order has been committed, or both such forfeiture and such closing.

(a) upon conviction by an Allied Military Court be liable to imprisonment or fine, or both; or

(b) upon conviction by an Italian Court having criminal jurisdiction to imprisonment for not less than seven days nor more than three years, or to a fine of not less than 500 lire nor more than 2,000,000 lire, or to both such imprisonment and such fine,

with or without other lawful punishment, as the Court may determine.

Section 2. In addition to inflicting either or both of the punishments mentioned in Section 1 of this Article, or in lieu thereof, an Allied Military Court or (notwithstanding anything contained in Article II of this Order or in Italian law) an Italian Court having criminal jurisdiction may order -

(a) the forfeiture to the Allied Military Government of any article; or

(b) the closing of any shop

in respect of which a violation of any of the provisions of this Order has been committed, or both such forfeiture and such closing.

(16)

Article IV.

Extent of Order and Effective Date.

This Order shall extend to the Provinces of Naples, Avellino and Benevento, and shall be effective on, from and after 15 May 1944.

GAH/mo

L-2071/38.

CHARLES POLETTI,
Lieut. Colonel
Regional Commissioner.



CHARLES POINTELLI,
Lieut. Colonel
Regional Commissioner.

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1-2071/38.



