

ACC

10000/142/903

COURT OF AS
APR. 1945 - JI

10000/142/903

COURT OF ASSIZES (VENEZIA GIULIA)
APR. 1945 - JUN. 1946

Ex. Comm.

Please see 18A.1920 A & 21A. I propose while in Trieste to have a draft order prepared on the lines suggested by CCAO a Minister of Justice. This draft should be submitted to the P.M. & Togliatti for approval. When we have agreed the text, the order should be issued under CCAO's signature and the preamble should set out the agreement of the Italian government "whenever the Italian government, in view of - - - has requested etc."

Do you agree?

Hayak etc.
9 Mar 46.

G. S. Humphreys

? agree. MS 9/3.

(3)

Legal Sub-Commission.

1. Lt. Col. Hannaford spoke to me in reference to AMG 13 Corps letter of 4 Feb on the question of the powers of the special court of assize in 13 Corps.

2. Whatever may be the opinion expressed in the press by the public in Zone "A" of Venezia Giulia, there can be no question in my mind that it would be quite wrong as well as illegal for the AMG in that zone, which is essentially an AMG to maintain law and order on a short term basis, to assume to itself judicial powers which should and can only be carried out by Italian courts. The trial of Fascists for offences committed before September 1943 is a domestic, or we may call it national, matter for the Italians and of the Italian courts. It would be quite improper and politically unwise and judicially impossible for any Allied Military Government court to deliberate upon the alleged crimes of Fascists committed before September 1943.

4. There should be no great difficulty in transferring Fascists who have been denounced for acts done before September 1943 to the Italian Assize Court in UDINE or perhaps in VENICE. The transport of accused and witnesses will present difficulties but these cannot be called insuperable.

3. The reply to AMG 13 Corps should be addressed to the SCAG and should be signed by the Chief Commissioner. A copy should be sent to BGS 13 Corps and to G-5 AFHQ.

M. S. [Signature]
Brigadier,
Acting Chief Commissioner.

13. Feb. 46.

(4)

Acty CC

Draft letter @ 13A for signature if approved.

G. S. Hannaford
[Signature]

14 Feb 46 -
Legal S/C

FEB 14 1946

1675

(5)

Legal S/C

Letter signed & returned for dispatch. Copies have been withdrawn for cc & cc files. [Signature]

59

V.P. C.A.S.

①

Ref folio 5A and proposed reply, herewith.

The matter is really entirely technical and so far as that part is concerned the reply is common form. However I would draw your attention to para 6, clause (a).

This feature was a very strong argument put forward by Col Bowman ~~and~~ why reviews in Army cases should be done in the Region. In this Special Court case the proclamation provides for reviews by CCAO. However I have no doubt that Col Bowman would say that the same position will develop, and even more strongly. I am, however, by no means sure that the CCAO agrees. I think that the directive should go as drafted, but if you would like to mention it to the CCAO before signature, you will no doubt do so.

If you wish sign either this, or a modified ^{or} directive, with sign the other letter about the technical details for the execution.

Legal Sec

24 Aug 45


C.A.

C.L.A.

1887

attention to para 6, clause (a).

This feature was a very strong argument put forward by Col Bowman
why revision in Army costs should be done in the Region. In
the Special Court case, the proclamation provides for revision by
CCAO. However I have no doubt that Col Bowman would say
that the same position will develop, and even more strongly. I am,
however, by no means sure that the CCAO agrees. I think that
the direction should go as drafted, but if you want like to
mention it to the CCAO before signature, you will no doubt
do so.

If you will sign either this, or a modifying directive, with
sign the above letter about the technical details for the operation.

Legal etc
24 Aug 41

C.L.A.

C.C. agreed to you letter and I have signed

29/8.

C.L.A.

M.C.V.P
C.A.S

HEADQUARTERS ALLIED COMMISSION
APO 734
LEGAL SUB COMMISSION

36A

AC/AIAB/2/L

MF/ns
27 June 1946

SUBJECT : BACCOLIS Giorgio.

TO : HQ. A.M.G. 13 Corps - Legal Division.

Reference your letter 13 c/AMG/LD/99/
1696 of 14 June 1946.

1. We are informed through diplomatic channels that the Sig. Luigi Fodesta, Arturo Bergera, Mario Pozzo are "unknown" to the Yugoslav Authorities.

2. Would you kindly advise the Procuratore Generale of the Court of Assize of Trieste accordingly.

By command of Rear Admiral STONE :

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

DATE 4/18/82
FILE
FILE

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS
LEGAL DIVISION

file
30A
Legal etc

TELEPHONE No.:

Date 24 June 1946

REFERENCE No.: 13^o/AMG/LD 109/1696

SUBJECT: BAUCLER GIORGIO.

TO: Headquarters, Allied Commission
A.P.O. 791 U.S. Army
(Attn. Legal Sub-Commission.)

Enclosed is a copy of a letter sent by the Procura Generale of Trieste to the Commanding General, Allied Forces. The correspondence did not pass through this office and so have no knowledge of where it was sent.

As the Procura Generale has received no answer to this letter, we are forwarding a copy for your action or for transmission to the proper authorities, at your discretion.

For the Senior Civil Affairs Officer.

John J. Hayes
Major U.S. Army
Chief Legal Officer

56

Enclosures: 1 letter of the Procura Generale, Trieste

PROCURA GENERALE DI STATO
PRINCESSA LA CONTESSA DI TRISTE
TRIESTE

796 com.

N° 492 Reg. Gen.

27 maggio 1946

31 MAY 1946
2/41

Risposta al foglio

Oggetto: procedimento penale contro Pascolis Giorgio e suppeni
Dott. Mario, imputati di intelligenza e corrispondenza
col nemico.

Allegati:

Alla Divisione Legale
del Governo Militare Alleato

Esiste

ANCORA nell'ottobre 1945 fu inoltrata da quest' Ufficio una richiesta al Comando Generale Militare delle Nazioni Unite, tramite il Ministero della Giustizia in Roma, per ottenere il rilascio del capitano di corvetta Luigi Fucetò, del capitano Arturo Bergera e del tenente colonnello del genio navale Mario Lonzo, i quali nel maggio 1945 furono arrestati assieme a Mario Suppeni dalla Guardia del popolo a Lubiana, in un ospedale psichiatrico adibito a carcere, persone queste che per esigenze inderogabili di giustizia dovrebbero deporre su circostanze influenti nella causa in oggetto.

Ma risulta che la richiesta fu dal Ministero della Marina inoltrata alla sottocommissione legale per la eventuale esecuzione, ma fino ad oggi purtroppo, a fonte di un sollecito fatto dal Ministero, non pervenne alcuna risposta.

Ma rivolgo pertanto a questa Divisione Legale perché interponga i suoi buoni uffici per una sollecita risposta, affermativa o negativa, alla mia richiesta e per acquisirle agli atti.

Ringraziando.

Il P. M. presso la C. S. A.:

Peruggi

N.º 422 Reg. Gen.

Il 27 maggio 1946

31 MAY 1946
2/41

Risposta al foglio

Oggetto: procedimento penale contro Baccolla Giorgio e Suppani
Dott. Mario, imputati di intelligenza e corrispondenza
col nemico.

Allegati:

Alla Divisione Legale
del Governo Militare Alleato
Praga

Anche nell'ottobre 1945 fu ~~controllata~~ da questo Ufficio una richiesta al Comando Generale Militare delle Nazioni Unite, tramite il Ministero della Giustizia in Roma, per ottenere il rilascio del capitano di corvetta Luigi Pedrotti, del capitano Arturo Bergera e del tenente colonnello del genio navale Mario Lonzo, i quali nel maggio 1945 furono arrestati assieme a Mario Suppani dalla guardia del popolo e consegnata ~~avanzata~~ poi alle truppe di Tito olandesi a Lubiana, in un ospedale psichiatrico adibito a carcere, persone queste che per esigenze indagherabili di giustizia dovrebbero deporre su circostanze influenti nella causa in oggetto.

Mi risulta che la richiesta fu dal Ministero della Marina inoltrata alla sottocommissione legale per la eventuale esecuzione, ma fino ad oggi purtroppo, ad/onta di un sollecito fatto dal Ministero, non pervenne alcuna risposta.

Mi rivolgo pertanto a questa Divisione Legale perché interponga i suoi buoni uffici per una sollecita risposta, affermativa o negativa, alla mia richiesta e per acquisirle agli atti.

Ringraziando.

55

Il P.M. presso la C.S.A.:

Reverendissimo

LEGAL DIVISION

31-5-46

*Please review
in this matter*

ALLIED MILITARY GOVERNMENT IS CORPS
Legal
Date: 31 MAY 1946

1682

4188
77

Translation

Legal s/c

39A

MINISTRY OF GRACE AND JUSTICE

TO: Allied Commission
Office of Executive
Commissioner

Ref. 283.32/966/46

Reply to your 2604/207/EC of 14.5.1946.

SUBJECT: Process against Baccolin Giorgio -
Application of Public Prosecutor's Office
with the extraordinary Court at Trieste.

We thank for your kind information and we beg the Allied
Commission to inform us about the decisions which should be taken by
the Council of Foreign Ministers in Paris, regarding the application
on the subject.

THE MINISTER

LEGAL SUB-COMMISSION	
TO	
CCO	
Chief Counsel	
CLD	
Italian Section	
CL RKS	
14 June 46	

EC DIST - 14 June
ACTION - EC 5/2
INFO - Legal s/c

4189/2

7

33A

HEADQUARTERS ALLIED COMMISSION

APO 394

Office of the Executive Commissioner

Ref. : 2604/207/EC

14 May 1946.

SUBJECT: Attach Proceedings of the Extraordinary Court of Assize, Trieste.

TO : The Ministry of Grace and Justice, Rome.

I have to acknowledge receipt of your letter No. 283,32/966/46 dated 9 April 1946 enclosing a copy of the proceedings of the Extraordinary Court of Assize of Trieste against BACCOLIS Giorgio and I have to inform you that the case has been referred to the Council of Foreign Ministers, Paris, in accordance with your request.

For the Chief Commissioner:

A. W. Knisely.

Brigadier,
Executive Commissioner.

Copy to:- Legal Sub-Commission.

LEGAL SUB-COMMISSION	
CLO	<input type="checkbox"/>
DCLO	<input checked="" type="checkbox"/>
Chief Counsel	<input type="checkbox"/>
CJO	<input type="checkbox"/>
Italian Section	<input type="checkbox"/>
CL RKS	<input type="checkbox"/>

15 May 46

For Inf.

1664

4188/2

32/A

Ref: AG/AC92/1/2.

4. April 1946
~~1946~~

My dear Mr. Prime Minister:

I reply to your letter of 28th 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 AMI 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 RUFFINO, General D'AGUIRO 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. LUSH
Brigadier
ELBERT W. STONE
Rear Admiral, USNR
Chief Commissioner

52

Dr. Alcide De Gasperi,
President of the Council of Ministers,
Italian Government,
ROME.

1645

~~SECRET~~
4188/2

31A

H. ALCOB

2 APRIL 1946

SCAG (ATTN C. H. O) VERONICA GIULIA

2237

UNCLASSIFIED

PARA ONE ID REFERENCE YOUR 193/459 OF FEBRUARY COLONNA WITORS
HAS BEEN ASSIGNED TO COURT OF APPEAL GENOVA ID
PARA TWO ID WE SHOULD BE TRANSMITTED AT ONCE

51

PRIORITY
LEGAL SUB COMMISSION

4188/2

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

30A
Legal

Originator's Reference:

Message Centre No: H/1402

Date/Time of Origin: 1 APR 1615

Date Time Rec'd: 2 APR 0900

Precedence: IMPORTANT

FROM: AMG 13 CORPS

TO : ALCON LEGAL SUB COMMISSION

UNCLASSIFIED.

14A

REFERENCE 193/459 OF FEBRUARY NO ORDERS FOR TRANSFER OF COLONNA ETTORE RECEIVED. HIS TRANSFER OF URGENT IMPORTANCE PLEASE EXPDITE.

AC DIST

ACTN: LEGAL SC
INFO: CHIEF COMMISSIONER
FILE 2
FLOAT

ACTION

HEADQUARTERS
2 APR 1946
A. I. C.

50

LEG. SUB. COMMISSION	
CLO	
DCLO	A
Chief Counsel	
CJO	
Italian Section	
CL RKS	
2 April 46	



29A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AP/nda.

AC/1408/2/L.

1 April 1946.

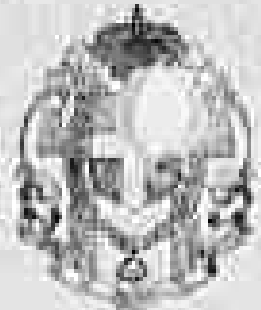
SUBJECT : Dr. Colonna ^{Etton} ~~Bianchi~~.
TO : SGAO (Attn: C.L.O.)
VENEZIA GIULIA.

1. Ref. your 13C/AMC/LE/193/472 of 18 February 1945.
2. Advice has now been received from the Ministry of Justice that the above mentioned Sostituto Generale has been assigned to Court of Appeal of Genoa.
3. The Ministry has also sent a signal to the Procuratore Generale of Genoa requesting him to invite Dr. Colonna to reach Genoa as quick as possible.

By Command of Rear Admiral STONE.

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

49



4700/2

Roma 29.3.46

Mod. 1545 MG

21814

Ministero di Giustizia
Uff. Sup. Personale
Ufficio 2°

Alla Commissione Allea-
ta - Sottocommissione Lega
le
Roma

Prot. N. 4313/2568

2137

Registra al fil. 15.3.1946

Dir. Tel. AG/4188/211

Oggetto Letter COLONNA Ettore

Con riferimento alla nota suindicata si comunica che con decreto in corso il dott. COLONNA Ettore, sostituto procuratore generale presso la Corte di Appello di Trieste, viene tramutato alla Procura Generale del Regno presso la Corte di Appello di Genova.

Si informa, altresì, che con telegramma in data 20 marzo 1946 si è autorizzato il Procuratore Generale di Genova ad invitare lo stesso magistrato a raggiungere nel più breve termine la nuova sede.

CLO

DCLO

Chief

CIO

Italian

Cl RK

Per il Ministro

Alfano

48

1 Aprile 46.

ATTUALITÀ - PIRELLA - ROMA

~~FILE~~

27A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AP/mda.

AC/4188/2/L.

21 March 1946.

SUBJECT : Court of Assize Trieste.

TO : Ministry of Pardon and Justice.

Herewith enclosed a report from Court of Assize
Trieste for your consideration.

Incls.

ANTHONY P. HUGENT,
Major, AUS,
Chief Counsel,
for Chief Legal Advisor.

File

4/85/2

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

Legal s/c
(LOA)

LEGAL DIVISION

Date 18 March 1946

FILE REF.: 13C/AMG/LD/ *94/744*

SUBJECT: Corps of Liaison at Trieste.

Location from 11 Feb. to 26 Feb. 1946.

TO: Allied Commission Headquarters
(Attn. Legal Sub-Commission)
A.P.O. 394

The attached correspondence is forwarded to you for
onward transmission to the Ministry of Grace and Justice.

For the Acting Senior Civil Affairs Officer.

R. H. Etheridge

Jan A. E. GOLD
Major U.S.A.
Chief Legal Officer

Secret

Enclosures

LEG. DIVISION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	<i>JP</i>
<i>2. RK5</i>	
<i>Jo March 46</i>	

→

[Handwritten scribble]

[Handwritten circled mark]

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/4188/2/L

AP/ns
15 March 1946.

SUBJECT : Transfer of Re. Proc. Ettore COLONNA
of Trieste.

TO : Ministry of Pardon and Justice.

1. Further telephone conversation (Dr. Bonelli - Mag. Pisapia) herewith enclosed copy of a letter received here from Lt. Col. Hannaford, on the above mentioned person.

2. Would you be kind enough to give the matter immediate consideration.

ANTHONY P. NUGENT,
Major, Aus.,
Chief Counsel,
for Chief Legal Advisor.

Incls.

45

1672

4/188/2
407
file

24A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS
LEGAL DIVISION

/28

Date 12 March 1946

TELEPHONE No.:

REFERENCE No. 13th AMG/LD/193/702

SUBJECT : Re. Proc. Ettore COLOMBA of Trieste.

TO :

Dear THOMAS,

Fisapia and Bonelli know all of this case.

Please see that the decree which the Minister of Justice is about to pass transferring Colonna to another seat in Italy, is published without further delay.

It would help if Colonna was called to the Ministry for consultation even before the decree was promulgated as A.M.G. Venezia Giulia is most anxious to have him out before the end of the month.

Yours *in sincerity*
Gay Harney

LEG. SUBCOMMISSION	
CLO	
DCLO	
Chief Counsel	
CLO	
Legal Section	<i>AP</i>
CLERKS	
<i>15 Mar 46</i>	

→

44

MINISTERO DI GIUSTIZIA

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

original letter to Trieste

23A

SUBJECT : Special Courts of Assize for Venezia Giulia.

TO : Allied Commission - Attn: Legal Sub-Commission.

Reference to the question submitted by letter AC/4138/2/L of 2 February 1946.

This Ministry though generally agreeing with your Sub-Commission points out the following considerations.

It is deemed that the present immunity from sanctions against Fascism on account of acts which occurred in Venezia Giulia, namely in that part which is now under A.M.G. administration, cannot decently be maintained though the Allied authorities in full accord with International Law did not mean to punish by Proclamation N. 5 any fascist activity prior to the date of the surrender because of the principle which limits the powers of the occupant.

On the other hand the transfer of the accused persons to the territory under Italian administration or to the province of Udine is, to the best of our knowledge, inadequate, both for legal and practical reasons.

First of all it is to be considered that this transfer would imply a manifest derogation to the territorial jurisdiction and furthermore that very often numerous witnesses, many of whom are Yugoslav nationals, would be obliged to proceed to the place of the trial.

The most appropriate solution in the opinion of this Ministry is that of enforcing - by means of a special Allied Order - all Italian legislation dealing with sanctions against Fascism. Said legislation could of course be modified according to necessities.

With regard to this question it is pointed out that - so far as the legal matters are concerned - no substantial

difference exists between Udine Province - which is under Allied control and where many Italian provisions have been enforced - and the territories of Venezia Giulia under Allied control.

There is no doubt, at least until the political question will be definitely settled by the Peace Treaty, that the Italian sovereignty in that Region, although suspended because of the military occupation, remains potentially at the same degree as in Udine province, notwithstanding the different "de facto" situation of the two territories.

The opportunity of extending Italian provisions is based on the above considerations though only in case of a manifest necessity.

It is understood however that the binding power of the expected provisions emanates only from Allied authorities as only the contents of the Italian rules is inserted in the Allied Order which enforces the said Italian provisions.

However, if your Sub-Commission does not think it advisable to accept the above, a secondary suggestion is made whereby the Allied authorities should themselves issue rules on sanctions against Fascism regarding any act occurred prior to 8 September 1947. The contents of these rules should be the same as those now in force in Italy.

This solution as well, besides safeguarding the neutral policy carried out by the Allied Command in Venezia Giulia while waiting for the future territorial settlement of the Region, would bring the advantage of a uniform treatment to all Italians guilty of fascist activity on the basis of substantially similar provisions.

As far as the execution of such provisions is concerned, it is pointed out that judicial offices composed by Italian officials and local Italian citizens in possession of all necessary requisites required by law could be formed. The difficulties which might arise in connection with possible appeals against such sentences, could be overcome by the Allied authorities by transmitting such appeals to the local Court of Appeal, which in accordance with Proclamation N. 5, acts as a Court of Cassation. 42

An analogous action could be entrusted to the local bodies with regard to the illicit fascist profits as the central bodies of the Italian Government cannot be utilized in Venezia Giulia.

Finally, in the case that such solution be accepted, it is pointed out that new rules will be issued by the Italian Government as to the reorganization of the functioning of special Courts of Assize and therefore it is suggested that such rules be included in the corresponding Allied provisions as soon as possible.

IL MINISTRO
signed: TOGHIANI)

1676

*Extra +
flora*

221A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

*file 155/2
AC/1092/1/1.*

/nda.

4 March 1946.

SUBJECT : Extraordinary Court of Assise.
TO : SCAO, VENETIA GIULIA 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.

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

Incl.

40

TRANSLATION

No. 62382.

THE PRESIDENT OF THE COUNCIL OF MINISTERS.

Rome, 28 February, 1946.

Dear Admiral,

2 MAR 1946

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 judgment 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'AQUINO, 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 proceeding 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 you 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.

39

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

(MB)



EC DIST - 1 Mor

ACTION - CASEC (2)

INFO - CC

- EC

Legal S/C in action
me

Section [unclear]

Fo.



N. 2382

Roma, 28 febbraio 1946

*Il Presidente
del Consiglio dei Ministri*

Caro Ammiraglio,

secondo il bando n.5 del Maresciallo Alexander pubblicato nella Gazzetta dell'A.M.G. in data 15 settembre 1945 i delitti di collaborazionismo sono giudicati, nel territorio della Venezia Giulia occupato dalle truppe alleate, da corti d'assise straordinarie costituite da un giudice togato e da quattro assessori popolari. Il bando, che adotta criteri di giudizio analoghi a quelli della vigente legislazione italiana in materia, sottopone però alle corti d'assise straordinarie, oltre ai civili, anche i militari.

Infatti presso la corte d'assise straordinaria di Trieste pende attualmente il processo per collaborazionismo a carico del generale Giovanni ESPOSITO, medaglia d'oro, del generale D'AQUINO e di altri ufficiali.

Il Governo italiano, pur col desiderio che la

.. 38

All'Ammiraglio Ellery W. STONE
Commissario Capo della Commissione Alleata
ROMA

giustizia segua il suo corso e che gli ufficiali siano giudicati con la necessaria severità per le azioni che possano aver compiuto a vantaggio del nemico, sente l'obbligo di richiamare l'attenzione delle Autorità Alleate sull'aspetto politico che il dibattito potrebbe assumere se avvenisse dinanzi alla Corte d'Assise straordinaria di Trieste.

Poichè secondo il bando del Maresciallo Alexander la giurisdizione della Corte speciale d'assise dovrebbe cessare con il giorno 15 marzo, "salvo ulteriori ordini dell'A.M.G." ogni preoccupazione verrebbe meno se la efficacia di tale bando non fosse ulteriormente prorogata. Qualora, invece, si ritenesse necessario mantenere in vigore l'eccezionale regolamentazione, La pregherei di far esaminare dal competente organo dell'A.M.G. la possibilità di inserire nel bando sopra detto una disposizione analoga a quella dell'art. 3 del D.L.L. 5-10-1945, n.625 sulle Sezioni Speciali di Corte di Assise, secondo la quale la cognizione dei reati di competenza di quelle Corti è devoluta al Tribunale Militare quando si presentino questioni implicanti un giudizio di carattere militare.

Ho voluto sottoporle direttamente la questione non solo per la sua particolare gravità, ma anche perchè - data la prossima scadenza del termine - Ella abbia modo di intervenire con la necessaria tempestività presso le competenti Autorità Militari Alleate.

Con viva cordialità, mi creda



file

20A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mda.

AC/4188/2/L.

2 March 1946.

SUBJECT : Special Courts Assize
VENEZIA GIULIA.

TO : Ministry of Pardon and Justice.

1. The enclosed correspondence from VENEZIA GIULIA speaks for itself.
2. This Sub-Commission would be very glad of any suggestions you may wish to make in order to speed up the solution of this delicate problem.
3. May be you would like to consult the Prime Minister on the matter.
4. In view of the inherent difficulties of the present situation would you be good enough to treat the question submitted to you as extremely urgent.
5. We hope therefore you will be able to let us have your suggestions before the end of the coming week.

G.G. HANNAFORD,
Lt.Col.,
Deputy Chief Legal Advisor.
37

HEAD QUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

19A

AC/4128/2/L.

/rn.
2 March 1946.

SUBJECT : Special Court of Assize.

TO : DEAN VENETIA GIULIA.

1. Contents of your 130/223/4/337 of 27 Feb. are noted.
2. This Sub-Commission has the following remarks to make

- a) Reference your para B, it will be impossible to try fascists in Venetia Giulia under legislation similar to that in force in Italy for the simple reason that the judicial system as exists now in that country cannot be created in Venetia Giulia, by AMB order. For instance neither the Court of Cassation, nor the Alta Corte can operate in Venetia Giulia.
- b) Furthermore the question of the confiscation in favour of the Italian State of profits made under the Fascist regime would no doubt raise problems the solution of which might be extremely delicate.
- c) There are other procedural objections which it would be too long and unnecessary to go into at present.

3. However, in order to give you all possible help in your difficult task your proposals have been submitted to the P.M. and the Minister of Justice requesting them to put forward suggestions as to the procedure which the Italian Government will be prepared to agree for Venetia Giulia.

4. These will be communicated to you as soon as received and if the Government proposals are acceptable to you there will be no objections to an AMB order being published as proposed by you.

By command of Rear Admiral STONE :

35

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

Copy to RLO Ven. Giulia

4/13/46
4396

sk
L. H. 18A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

13C/AMG/4/339

27 February 1946

SUBJECT: Special Courts of Assize.

TO : Headquarters,
Allied Commission.

ATTN : Acting Chief Commissioner.

13A

1. Reference AG/4/88/2/L dated 16 February 1946.

2. With reference to paras 2 & 3 of the above quoted letter, if reference is made to this H.Q. letter of 4 February, it will be seen that no suggestion was made for A.M.G. to set up a different procedure. The law would be similar to the Italian law and the courts composed of Italian officials and citizens of Venezia Giulia.

3. With reference to para 4 of your letter, the transfer of fascists who have been denounced for acts committed before September 1945 to Italy is not considered practicable for two reasons - legal and political.

4. With regard to the legal problem, the position is as follows:

(a) Persons denounced and accused in Italy for certain offences during the Fascist regime prior to 8 Sept 1945 are tried under laws of the Italian Government passed since 8 Sept 1945. These laws have no effect in Venezia Giulia, in consequence no one can be arrested for such offences nor can investigations be carried out, unless

- i. A.M.G. gives authority, or
- ii. The Italian Government is given jurisdiction.

(b) With regard to i; as stated in this H.Q. letter of 4 February 1946, any extension of the law to cover "crimes" prior to 8 Sept 1945 can only be published by A.M.G. with the consent of the Italian Government. It is suggested that to extend the law in Venezia Giulia would be a violation of international law as beyond the powers of an occupying force. It is considered that this difficulty ceased to have effect, if Italy the sovereign power, Italian Government had adopted

1. Reference AC/1486/2/I. dated 16 February 1946.
2. With reference to paras 2 & 3 of the above quoted letter, if reference is made to this H.Q. letter of 4 February, it will be seen that no suggestion was made for A.M.G. to set up a different procedure. The law would be similar to the Italian law and the courts composed of Italian officials and citizens of Venezia Giulia.
3. With reference to para 4 of your letter, the transfer of fascists who have been denounced for acts committed before September 1943 to Italy is not considered practicable for two reasons - legal and political.
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 - i. A.M.G. gives authority, or
 - ii. The Italian Government is given jurisdiction.
 - (b) With regard to i; as stated in this H.Q. letter of 4 February 1946, any extension of the law to cover "crimes" prior to 8 Sept 1943 can only be published by A.M.G. with the consent of the Italian Government. It is suggested that to extend the law in Venezia Giulia would be a violation of international law as beyond the powers of an occupying force. It is considered that this difficulty ceases to have effect, if Italy the sovereign power, consents. And as the Italian Government had adopted legislation in Italy covering pre 8 Sept 1943 Fascists, it is hard to believe that the Government would refuse its consent for similar legislation in Venezia Giulia.
 - (c) With regard to ii; the Italian Government cannot be given jurisdiction for such offences during the continuance of Allied Military Government.
 - (d) Finally, it is a general principle of law common to most civilized states that an accused is tried in the area where the alleged crime was committed.
5. With regard to the political problem, assuming that the legal situation permitted transfer to Italy, it is extremely doubtful whether it would be good policy to try such offences outside Venezia Giulia. For example, General ESPINOSA the late Commander of Italian

over/

- 2 -

Forces in Venezia Giulia is to be tried before the Special Court of Assize in March for offences under Proclamation No. 5. It is understood that over 100 witnesses will appear before the Court. Assuming that his offences took place prior to 8 Sept 1943 and the case were to be transferred to Italy, it is possible for at least 50% or more of the witnesses to be Slovene. Quite apart from the transportation and billeting, feeding and expense problems, it is possible that the safety of such witnesses might be endangered. Furthermore, any leniency or acquittal might and almost certainly would give rise to serious political repercussions and could easily bring about disturbances in Venezia Giulia in view of the very tense situation.

6. Because of the urgency of this matter it is requested that further consideration be given to the arguments set out in this H.Q. letter of 4 February 1946, as elaborated above.

H.F.P. Robertson
Col.

H.F.P. ROBERTSON,
Colonel,
Acting S.G.A.O.

LEGAL SUB COMMSO
CLO
DCLO
Chief Counsel
CJO
Italian Section



34

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6. Because of the urgency of this matter it is requested that further consideration be given to the arguments set out in this H.Q. letter of 4 February 1946, as elaborated above.

*H.P.P. Robertson
Col.*

H.P.P. ROBERTSON,
Colonel,
Acting S.O.A.O.

LEGAL SUB COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CLERKS
<i>1 March 46</i>



HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

17A

AP/mda.

AC/4188/2/L.

28 February 1946.

SUBJECT : Special Court of Assise -
Transfer of Dr. COLOMBA.

TO : Ministry of Pardon and Justice.

1. Herewith enclosed copy of letter received from
VANESSIA GIULIA and relating to the above mentioned judicial
official.

2. This Sub-Commission concurs with the opinion
expressed by the Chief Legal Officer.

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

Incls.

Copy to File 4039/L.

VA/FO

16A

File 81987

Ministry of Justice

(Ministero di Grazia e Giustizia)

General Office for personnel and general affairs.

Office II

File: No. 2039 c/731

Reply to note dated 11/I/1946

Rome, 26th January 1946

To the

Chief Public Prosecutor
at the Special Court of Assise

T R I E S T E.

Subject: Administration of Justice in Venezia-Vulizia

With reference to the above report as to the administration of Justice in Venezia-Vulizia, the work accomplished by you in your capacity as Chief Public Prosecutor at the Special Court of Assise, has been duly acknowledged.

Concerning the efficiency of some magistrates attached to the Court of the Laws, the application of which has been authorized, this Ministry cannot interfere because of the ^{fact} that regards a territory which does not form part of the Administration of the Italian Government.

As regards the operation proceedings of the magistrates and the other officials - as you have correctly stated - the ~~responsibility~~ **32**

procedures, inasmuch as they concern personnel included in the Rolls of this Administration, should be determined by the Commission constituted by this Ministry and functioning, in accordance with the Allied Authorities, at the Court of Appeal of Milan.

Reply to note dated 11/1/1946

Rome, 25th January 1946

To the

Chief Public Prosecutor

at the Special Court of Assize

U. P. I. E. C. A. T.

Subject: Administration of Justice in Venezia-Giulia

With reference to the above report as to the administration of Justice in Venezia-Giulia, the work accomplished by you in your capacity as Chief Public Prosecutor at the Special Court of Assize, has been fully acknowledged.

Concerning the efficiency of some registrars attached to the Court or the Laws, the replication of which has been authorized, this Ministry cannot interfere because of the fact^{that} it regards a territory which does not form part of the Administration of the Italian Government.

As regards the estimation proceedings of the registrars and the other officials - as you have correctly stated - the aforementioned procedures, inasmuch as they concern personnel included in the Rolls of this Administration, should be determined by the Commission constituted by this Ministry and functioning, in accordance with the Allied Authorities, at the Court of Appeal of Milan.

All communications and notes concerning execution ought, therefore, to be forwarded with greatest care and expediency to the aforesaid Commission.

For the Minister:
(Signed A. Manes)

Copy authenticated by the Secretary
(S.O. signature illegible)

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

157A
R/25
Date 18 FEBRUARY 1946

LEGAL DIVISION

FILE REF.: 13C/AMG/IDI 193/472

SUBJECT:

TO: H.Q. ALLIED COMMISSION (Attn: Chief Legal Advisor)

Copy to 13 Corps Liaison Officer A.G.

1. Ref. this office letter ID/193/459.
2. Enclosed please find copy of letter from Minister of Justice to Chief Public Prosecutor of the Special Court of Assize Trieste.
3. This letter is in reply to a letter written by Dr. Colonna direct without the knowledge of his superiors or A.M.G.
4. The Minister's references to separation are of course not correct. All officials here are separated by the Commissions set up by A.M.G.
5. It is requested that the Minister be informed of the correct position and every effort made to transfer Dr. Colonna immediately.

By Order of Acting Senior Civil Affairs Officer

ALLIED MILITARY GOVERNMENT

CLO

DCLO

Chief Counsel

CJO

Relation

CL RKS

21.2.46

Seen

J. F. S. Baylis Hyslop
J. F. S. BOLD
Major, A.U.S.
CHIEF LEGAL OFFICER

39787 14A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

Date 12 NOV 1945

Tel. 27794 ex. 1

LEGAL DIVISION
FILE REF. 13CIAMG/ID/ 193/459

SUBJECT: Special Court of Honor

TO: A.C.R.C. (Att. Chief Legal Adviser) ✓
Copy to 13 Corps Liaison Officer A.C.R.C.

1. As you are aware attempts are being made here to improve the working of the Court of Honor, which is receiving more and more criticism each day.
2. In the office of the Public Relations, a certain Dr. COLICHA there has recently become prominent. He presented in a report in which case and in consequence of inadequate investigation the accused was acquitted. Since then he has continued writing articles to the press, and to his criticism of the Court and its officials in very strong terms.
3. Dr. COLICHA in the Substitute Procurements to the Special Court of Honor and in many respects a very able man. He is at present however suffering from an excessive opinion of his own importance and it is deemed advisable for him to be transferred.
4. It would be possible to suggest him or take other disciplinary action in view of his criticism of his superiors, but it is felt that from a policy point of view this would be unwise.
5. It is understood that Dr. COLICHA has applied direct to the Minister of Justice (in itself another breach of discipline) asking for a transfer.
6. This request is endorsed by this Division and supported by the Procurement Committee as per letter of the Minister of Justice enclosed herewith.
7. It is requested that steps be taken to arrange for the immediate transfer of Dr. COLICHA to Italy, in view of the participation of the Court of Honor can be recorded at.

By Order of Acting Chief Civil Affairs Officer

1. At 7:00 the evening attempts are being made here to improve the working of the Court of Justice, which is receiving more and more criticism each day.
2. In the office of the Public Ministry, a certain Sr. COLUNA there has recently become prominent. He has been in a very important case and in consequence of inadequate investigation the case was postponed. Since then he has commenced writing articles to the press, and he has criticized the Court and its officials in very strong terms.

3. Dr. COLUNA is the substitute procurator to the special Court of Justice and is in many respects a very able man. He is at present however suffering from an excessive opinion of his own importance and it is deemed advisable for him to be transferred.

4. It would be possible to suspend him or take other disciplinary action in view of his criticism of his superiors, but it is felt that from a policy point of view this would be unwise.

5. It is understood that Sr. COLUNA has applied direct to the Minister of Justice (in itself another breach of discipline) asking for a transfer.

This request is endorsed by this Division and supported by the procurators General as per letter of the Minister of Justice enclosed herewith.

30

6. It is requested that steps be taken to arrange for the immediate transfer of Sr. COLUNA to Italy, in order that the reorganization of the Court of Justice can be speeded up.

By Order of Acting Senior Master Attorney Officer

LEG. SUB-COMMISSIO	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
QL RKS	
Dr. 2.46.	

F. J. Day
 F. J. Day
 Chief Legal Officer

Ref: AC/418B/2/L.16 February 1946.

SUBJECT: Special Courts of Assize.

TO : SCAC, AMG 13 Corps.

1. Lt. Col. HANNABORD spoke to me in reference to your letter 130/AMG/LD/ of 4 Feb 46 on the question of the powers of the special court of assize in 13 Corps.

2. Whatever may be the opinion expressed in the press by the public in Zone "A" of Venezia Giulia, there can be no question in my mind that it would be quite wrong as well as illegal for the Allied Military Government in that Zone, which is essentially an Allied Military Government to maintain law and order on a short term basis, to assume to itself judicial powers which should and can only be carried out by Italian Courts. The trial of Fascists for offences committed before September 1943 is a domestic, or we may call it national, matter for the Italians and of the Italian Courts.

3. It would be undesirable to set up under AMG authority a procedure which would be different to that now in force in Italy. Furthermore, there is no doubt that the Italian Government would refuse to accept the jurisdiction of such courts and would insist on the alleged Fascists being tried in Italian courts situated in Italian territory.

4. There should be no great difficulty in transferring Fascists who have been denounced for acts done before September 1943 to the Italian Assize Court in UDINE or perhaps in VENICE. The transport of accused and witnesses will present difficulties but these cannot be called insuperable.

5. Therefore, I suggest that the procedure outlined in Lt. Col. HANNABORD's letter of 5 Nov 45 be put into practice as soon as practicable.

M. S. LUSH
Brigadier,
Acting Chief Commissioner.

29

Copy to: B(GS), 13 Corps.
G-5, AMG.
Ch. Com.
Ex. Com.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

12A

LEGAL DIVISION

FILE REF.: 13C/AMG/LD/

SUBJECT: Special Court of Assize

B/29

Date 4 February 1946

TO: ALLIED COMMISSION -
Legal Sub-Commission

1. For some considerable time there has been in Venezia Giulia a strong criticism of the terms of Proc. No. 5 and the interpretation thereof.

The complaints are now reaching serious proportions and are made by persons of all shades of political opinion:

2. The interpretation of Proc. 5 was first raised by the Legal Division in Oct. 1945 and correspondence (~~was~~) passed with the Legal Sub-Commission. [AC/4122/2/L] in consequence of the ruling of the Sub-Commission no fascists have been tried in V.G. for offences committed prior to 6 Sept. 43.

It is alleged by local press, political parties and organisations that with the connivance of A.M.G. the territory is becoming a "haven" for fascists and a powerful political weapon is being forged to the detriment of the Italian Govt. and the prestige of the British and American Forces. For example:

"BREMENSKA", Yugoslav Humorous Weekly, Zagreb, 27th Jan. 1946

1. Verdicts to AMG.

November 18, 1945, the Committee of Liberation of Trieste sent a note to Col. Bowman complaining of the execution

1. For some considerable time there has been in Venezia Giulia a strong criticism of the terms of Proc. No. 5 and the interpretation thereof.

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It is alleged by local Press, political parties and organisations that with the connivance of A.M.G. the territory is becoming a "haven" for Fascists and powerful political weapons is being forged to the detriment of the Italian Govt. and the prestige of the British and American Forces. For example:

"KEREMPUN, Yugoslav Humorous Weekly, Zagreb, 27th Jan. 48

1. Ordnids to AMG.

November 10, 1945, the Committee of Liberation of Trieste sent a note to Col. Bowman complaining of the epuration methods and advancing suggestions for modifying the laws of the High Court of Justice. Up to now, no answer has been received. Now this, says "Kerempun" will be clear if one understands the word, well-organised plan of AMG. It is absolutely vital that Trieste become the centre of Fascist refugees, Italian or otherwise. Thus, Fascists from all over the world will be concentrated in a small area and can all be caught in one "haul". Searching for individual criminals will no longer be necessary, because they'll all be in Trieste about to be seized by the long arm of Justice. "Kerempun" applauds with undising admiration this

inspired plan of AMG."

The critics are not slow to point out that in no other country is there delay in dealing with Nazi - Fascists and there are many suggestions that it is the policy of "reaction".

3. The ruling that only collaborators with the Germans since 8 Sept. 43 can be tried under the Proclamation is based on the principle that an occupying Army cannot legislate for offences committed prior to the occupation.

As a general principle this is correct, but it must be born in mind that the occupation of V.G. by the Allied Forces is not "occupation" in the normal sense.

V.G., is not "enemy territory" it was occupied by the Allied with the consent of the Italian Govt. to be administered by the Allies as trustees until the future of the Territory was settled.

Until such settlement it remains Italian Territory and the sovereign rights are rested in the Italian State but suspended by reason of the occupation.

4. Since the occupation by the Allied Forces, no Italian Legislation subsequent to 8 Sept. 1943 has been permitted to become effective as such in the "Territory" presumably for reasons of High Policy.

On the other hand A.M.G. has issued many Orders based on Italian legislation in Order to provide urgently

1698

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On the other hand A.M.G. has issued many Orders based on Italian Legislation in Order to provide urgently required Legislation.

5. In Italy proper, the Italian decrees dealing with the 8 Sept. Fascist crimes were from time to time implemented in A.M.G. Territory and in the trial of Fascists and collaborators proceeded either under the A.M.G. Proclamation or under Italian Law. But no similar arrangements have been made in V.G.

6. The Legal Sub-Commission proposed that to overcome this difficulty, arrangements should be made to try pre 6 Sept. Fascists either in A.M.G. Territory or in Kings Italy. The objections to this method are many including political aspect of removing Fascists from scene of their crimes. The difficulty of transporting hundreds of witnesses, many of whom would be Jugoslaves into Italy and the possible repercussions if acquittals were granted through difficulty in preparing the prosecutions case in consequence this suggestion could not be adopted.

7. It is now felt that to avoid serious political repercussions that some steps must be made to bring the Territory more into line with Italy than is at present the case.

8. It is submitted that it is not contrary to any principle of International Law for an occupying power, with the agreement of the State in whom is rested the sovereign rights, to issue such laws as are deemed necessary for the benefit of the Occupied Territory and the preservation of Law and Order.

Further more in view of the local unrest it is definitely in the interests of the Italian State and the Allies to remedy the present state of affairs.

9. The following recommendations are accordingly submitted for consideration:

political aspect of removing Fascists from scene of their crimes. The difficulty of transporting hundreds of witnesses, many of whom would be Jugoslaves into Italy and the possible repercussions if acquittals were granted through difficulty in preparing the prosecutions case in consequence this suggestion could not be adopted.

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8. It is submitted that it is not contrary to any principle of International Law for an occupying power, with the agreement of the State in whom is rested the sovereign rights, to issue such laws as are deemed necessary for the benefit of the Occupied Territory and the preservation of Law and Order.

Further more in view of the local unrest it is definitely in the interests of the Italian State and the Allies to remedy the present state of affairs.

26

9. The following recommendations are accordingly submitted for consideration:

(a) That the Italian Govt. be asked to agree to the Occupying Powers enacting such Laws as are necessary to enable pre. 8 Sept. Fascists to be tried in the Ordinary Courts and High Court of Justice.

It being clearly understood that such legislat-

4 - 4 -

ion would be patterned on existing Italian Legislation and would not under any circumstances go beyond it.

(b) That a proclamation be issued by A.M.G. containing (inter alia) provisions dealing with the limitations of time similar to Art. 6 of R.D.L. 159.

For the Senior Civil Affairs Officer

Robert M. Auld
A. M. G. OLD
Major, A.U.S.
CHIEF LEGAL OFFICER

Enclos.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUBCOMMISSION

11A

AC/4188/2/L.

GCH/10.
15 November 1945.

SUBJECT : Special Courts of Assize - Proclamation No 5.

TO : SCAO (Attn: Senior Legal Officer), VENEZIA GIULIA
Region.

1. I have found your letter of 25 Oct. on my return from United Kingdom last Saturday. Col. Weber is now on leave in Switzerland and therefore unable to answer the points raised therein.

2. I must state at once that Proclamation No 5 was not intended to cover the punishment of fascist criminals who organized "fascist squadre causing the insurrection of 28 Oct. 1922 etc.." At the time Col. Behrens tried to make it so, but he was overruled by Brig. Gen. Spofford and Brig. Upjohn for alleged policy reasons.

3. I quite appreciate the difficulties you stress in para 4 of your letter, and the fact that Venezia Giulia is becoming a "safe spot" for fascist criminals. I am also of your opinion that laws should be brought into effect at once to punish them.

4. Unfortunately the bringing into effect of such legislation through AFHQ, 13 Corps, after consulting the Italian Government (as is the present wont) etc. would take considerable time and I therefore, believe that the best solution would be to put into practice the suggestion contained in Col. Behrens's letter of 28 Aug.

5. I see no technical or practical objection to the arrest of all alleged fascist criminals in Venezia Giulia in order to try them before the nearest special courts of Assize in AMG territory.

-2-

7. I feel sure that an agreement on the procedure to be followed could easily be reached between yourself, RLO Venezia Region and the various Italian judicial authorities concerned.

8. After the hand over of AMG territory to the Italian Government, I see no reason why such practice should not be continued.

By command of Rear Admiral STONE:

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

4188/2

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

CCG/GB

10A

LEGAL DIVISION

FILE REF: 13c(AMG)LD/193/387

SUBJECT: Special Courts of Assize, Proclamation No. 5.

Date: 25 October 1945.

TO: Legal Sub-Commission, Col. John WEBER.

9 OCT 1945

1. On going through the files of this office I find that letters were exchanged by Major I.I. Cox of this office and Col. W.D. Behrens Legal S.C. in regard to the above.

2. Major Cox felt that one of the intentions of the proclamation was the prosecution of fascist criminals; but Col. Behrens by his reply of the 28th day of Aug. 45 stated that no fascist criminals could be prosecuted under this proclamation.

7A

3. I have studied both letters and the law involved. I am unable to agree with Col. Behrens findings, for the reason that the proclamation while ambiguous in its terms, does in Art. 2 Sec. 4 state "quote sec. 4": "Anyone who has committed other crimes for Fascist reasons or has profited from the actual political circumstances created by Fascism, shall be punished according to the laws in force at the date of the crime". "Shall be punished according to the law in force at that time", clearly and unequivocally presses the thought that the intent of the proclamation was to punish fascist criminals who organized "fascist squadre" causing insurrection of October 28, 1922; those who led the Coup d'Etat on January 3, 1925; and all others crimes for fascist reasons etc. It would appear from this phraseology that it was the intent of Proclamation 5 to give the Special Court of Assize jurisdiction over all fascist crimes.

4. In view of the fact that we are not punishing fascist criminals this territory has become the "safe spot" for these criminals. I strongly urge that you reconsider the position taken by the Legal Sub-Commission and to interpret Proclamation N. 5 in the

1. On going through the files of this office I find that letters were exchanged by Major I.I.Cox of this office and Col.W.E. Behrens Legal S.C. in regard to the above.

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7A

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4. In view of the fact that we are not punishing fascist criminals this territory has become the "safe spot" for these criminals. I strongly urge that you reconsider the position taken by the Legal Sub-Commission and to interpret Proclamation II.5 in the light in which it was written - to establish the Special Court of Assize for the punishment of fascist criminals.

5. If you can not agree that Proclamation 5 covers the situation I very strongly urge that we bring into effect at once laws that will punish these fascist criminals.

For the Senior Civil Affairs Officer.

W. C. P. Genua
W. C. P. Genua
Major AUS
Chief Legal Officer

→CLD

Chief
C/O

Italian
PKS

29 OCT 1945

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AG/4186/2/L.

29 /rly.
August 1945.

SUBJECT : Special Court of Assise of Venezia Giulia - Proceedings in death sentence cases.

TO : Regional Commissioner, VENEZIA GIULIA Region.

1. Paragraph 3 of Article XVI of Proclamation No. 5 provides that no sentence of death shall be executed unless and until confirmed by SACMED or the COAO acting on his behalf or by a specified officer not below the rank of Brigadier General or Brigadier to whom SAC may have delegated such power in writing.

2. In order to reduce to a minimum the delays in carrying out executions once a death sentence has been confirmed by the Court of Appeal, it is proposed that the following procedure be adopted in such cases.

3. Petitions for mercy must be lodged with the Procuratore Generale or AGO not later than forty eight (48) hours from the day the death sentence has been confirmed on appeal. The President of the Special Court of Assise must notify the accused's lawyer of this fact when passing sentence upon the accused.

A petition for mercy may be lodged by (amongst other persons) the accused himself, by his lawyer or by any member of his family.

4. As soon as a death sentence has been affirmed by the Court of Appeal of Trieste, the Procuratore Generale must forward to the Regional Legal Officer a copy of the "sentence" of the Court of Appeal together with the "sentence" of the Special Court of Assise and all relevant documents. The Procuratore Generale after making the usual enquiries required under Italian law must add his personal recommendation on the advisability of granting a pardon or of commuting the death sentence to one of imprisonment.

5. The Procuratore Generale must follow this procedure whether a petition for mercy has been lodged or not. In the Court of Appeal when an appeal is dismissed the President or Pubblico Ministero should again warn the accused's lawyer of the need for immediate action should he desire to submit a petition.

6. Upon receipt of the above mentioned documents from the Procuratore Generale the Regional Legal Officer must immediately forward them to the

Legal Sub-Commission, Hq Allied Commission.

In forwarding the documents the RLO should specifically add, in every case in which it is considered that the judgment of the CCAO might be affected thereby, the following information:

a. The opinion of the CCAO as to the desirability of confirmation or commutation from a local political point of view.

b. Any specific fact which suggests that the trial was unsatisfactory or the sentence unjust (e.g., that the hostility of the crowd prevented the defence being heard or frightened the judges).

c. Any other facts which it is considered desirable to report.

7. The CCAO will take such legal advice as he considers necessary and will then give his decision which will be notified to the RLO immediately by signal and confirmed as soon as possible by letter.

8. When the death sentence is confirmed by the CCAO the RLO will make the necessary arrangements for the execution to be carried out forthwith.

By command of Rear Admiral STONE:

M. Gahr

M. GAHR, Brig.
VP CA Sec, Hq AC.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

SA

AC/4188/2/L.

/rlp.
29 August 1945.

SUBJECT : Execution of persons sentenced to death by Special Courts of Assize of Venezia Giulia.

TO : Regional Commissioner (Attn: Regional Legal Officer),
VENEZIA GIULIA Region.

1. The usual Italian procedure for the carrying out of death sentences is as follows:

"The Pubblico Ministero upon receipt of the decision of the Minister of Justice that a petition for mercy has been denied and the sentence is now final, fixes the date and place of the execution and informs immediately the 'questore' and the Director of the Prison. The 'questore' gives instructions to the police under his command or the local Carabinieri to supply the firing squad. The execution then takes place as directed by the PM in the presence of a representative of the Pubblico Ministero, the PM secretary, a doctor and a priest if the sentenced person expresses the wish to be assisted by a minister of his own religion (Art. 980, CPP)."

2. It is not known whether you consider that in existing conditions this procedure can be satisfactorily applied in Venezia Giulia.

3. If not, it might be desirable to have the death sentence carried out by a firing party supplied from the local Allied troops. In such case it is suggested that a procedure, modelled on the existing procedure in AMG Court cases, be arranged whereby Commander 13 Corps shall detail a local military unit to carry out an execution immediately the death sentence is confirmed.

4. Will you let us have your views.

By command of Rear Admiral STONE:

W. E. REINHENS,
Colonel,
Chief Legal Advisor.

19

Copy to: AFHQ, G-5.

LEGAL SUB-COMMISSION

AC/4188/2/L.

28 Aug 45.

SUBJECT : Special Courts of Assize - Proclamation No.5.
 TO : SCAC (Attn: S.L.O.), VENEZIA GIULIA Region.

1. In reply to your 130/AMG/LD/33 of 22 Aug 45 it is felt that the position should be clarified.

2. DLL No.142, substantially reissued as AMG Proclamation No.5 for Venezia Giulia, was not intended as a decree for the general punishment of fascist crimes. It was intended to provide rapid punishment for persons who had recently excited local hostility by cooperating with the Germans. However it was obviously undesirable that persons who were charged with offences of this nature should have to submit to a further trial by a different court for other fascist crimes, and in such circumstances the Extraordinary Courts of Assize were invested with jurisdiction to hear the two sets of charges. Persons who have committed fascist crimes but have not cooperated with the Germans are, in the rest of Italy, subject to trial under DLL No.159 in the ordinary courts or the High Court of Justice.

3. It is appreciated that the present position in Venezia Giulia is in effect that DLL No.142 has been re-enacted while DLL No.159 has not. The apparent effect of this is that persons cannot be tried in Venezia Giulia under DLL No.159 for fascist crimes and that if there are two persons, both of whom committed the same fascist crime but only one of whom cooperated with the Germans, the cooperator can be tried by the Special Court of Assize both for his cooperation and his fascist crime but the non-cooperator cannot be tried for his fascist crime.

4. This is however not quite the position. Under Italian law crimes become extinguished by lapse of time and, in certain cases by amnesty or pardon. The provisions concerning lapse of time are contained in Art.91 of the Code of 1889 and Art.157 of the Code of 1931. This difficulty is remedied in the rest of Italy by Art.6 of DLL No.159 which specifies that none of these obstacles shall apply. This Article is not however law in Venezia Giulia. Substantially therefore the effect of Art.11 of Proclamation No.5 is that persons can only be punished if they collaborated with the Germans and committed fairly recently one of the offences referred to in Section (4) of that Article. It

1708

will be appreciated that if a person committed, within the time limits and without subsequent amnesty or pardon, one of those offences but did not cooperate with the Germans he can be punished for his offence in the ordinary courts under the ordinary law.

5. As this position seems somewhat unsatisfactory it is felt, in justice to the officers who reached the final decision that the matter should be explained in some detail.

6. At the time when the original issue of Proclamation No.5 was in contemplation the matter was considered, but several difficulties were found to exist.

7. A Military Government has not, in my opinion, jurisdiction to issue an order in the terms of Part I of DLL No.159. First, it is outside the scope of such Government to seek to punish crimes committed many years before the military occupation; secondly in many cases the crimes had already lapsed either by time or by amnesty or pardon. A Military Government cannot revive crimes which by municipal law are dead.

8. It is a borderline case whether there was jurisdiction to issue an order in the terms of DLL 142; I advised that there was (and Brig Gen SPOFFORD and Brig UPJOHN agreed) on the grounds that it was necessary for the maintenance of order and did not conflict with the existing Italian criminal law. I should have preferred, and suggested, that as a special case DLL 142 together with Part I of DLL No.159 be "implemented" according to current Italian procedure, but this was rejected on general policy at a discussion between Brig Gen SPOFFORD, Brig UPJOHN, Col MONFORT and Lt Col DAWSON .

9. There remained the question of whether to alter the form of DLL No.142 in the Proclamation and expressly limit the jurisdiction to cases of collaboration. It was decided to retain the form of the Italian decree so as to avoid criticism on the difference between the theoretical jurisdiction of the courts in Venezia Giulia and in Italy.

10. As a matter of practice it would appear desirable in these circumstances to recommend to the President of the

Court of Appeal that he confines the cases heard before the Special Courts of Assize to cases of collaboration. It might, in case of necessity, be considered possible and desirable to transfer some fascist criminal into Italian territory where he could be tried; this may well not be a happy solution but otherwise it seems to me that the punishment of fascist crimes can wait in all cases, as it must wait in most, for the time when Venezia Giulia is under a recognized civil administration.

11. If this is unsatisfactory no doubt you will submit an alternative solution.

By command of Rear Admiral STONE :

W. E. BEHRENS,
Colonel,
Chief Legal Advisor.

copy to : AFHQ, G-5 .

4188/20 ✓
LEGAL DIVISION
FILE REF: 13c/AMG/LD/ 33
SUBJECT: Special Court of Assize (Proc.No.5)

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

LEGAL S/C
GA

Date 22 August 1945

✓ TO : Chief Legal Adviser, Legal Sub-Commission, H.Q., A.C.

1. Our attention has been called to the fact that a serious doubt exists as to whether or not the Special Court of Assize of Trieste has jurisdiction to try a person who is accused of having committed an offence prior to 8 September 1943.
2. The President of said Court and other officials are of the opinion that Paragraph 1 of Article II of Proclamation No.5 is so worded that only persons charged with any of the crimes described in Article I of said Proclamation can be charged with the crimes in Article II. Such construction would allow those who had committed offences prior to 8 September 1943 and done nothing since unpunished.
3. It is doubtful if that is what the Proclamation intended as that would allow a large number of Fascist to go free.
4. Attached you will please find copy of statement written by the Public Prosecutor of the Special Court of Assize and we will appreciate if you will let us have your views on the subject.

For the Senior Civil Affairs Officer

Felix J. Aulini, Major
Louis I. Cox
Major, AUS
Chief Legal Officer

US-AMG/COM	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
25 AUG 1945	

Copy to:
Col. Hammond, G-5 AFHQ

L'interpretazione letterale dell'art. II. del Proclama No. 5 sulla istituzione di Corti straordinarie di Assise dà luogo a forti dubbi.

Questo articolo II al p.to 1. dice che le "Corti straordinarie sono competenti a giudicare anche dei reati a sensi del presente Articolo che siano commessi da persone imputate di reati previsti dall'Articolo precedente" e poi enumera al punto 2, 3, 4, delle figure di reati commessi con attività fascista. - Ciò farebbe comprendere che la pregiudiziale perché si possa procedere contro coloro che hanno commesso questo reato è che questi siano già imputati del reato di cui il precedente art. I cioè di collaborazionismo e che quindi per questi reati non si possa procedere contro individui che non siano di già sotto processo per i reati di collaborazionismo di cui l'art. I.

Per avere una spiegazione di questa apparente incongruenza bisogna ricorrere alla fonte di diritto per questo proclama e che sono le due leggi del Regno d'Italia e cioè:

- 1) Decreto-Legge luogotenenziale del 27 luglio 1944 No. 159 e
 - 2) Decreto-Legge luogotenenziale del 22 aprile 1945 No. 142
- sulla "istituzione di Corti straordinarie di Assise per i reati di collaborazionismo con i tedeschi".

Il Proclama No. 5 del Maresciallo Alexander è una fedele copia di questo secondo decreto-legge luogotenenziale, tanto che anche ne segue la numerazione nei primi art.

Vediamo ora come è sorto questo decreto-legge, che in fondo è una completazione del primo. Vediamo perciò prima questo: Questo primo decreto legge invece, cioè il No. 159 del 1944 porta il titolo generico di "sanzioni contro il fascismo" e al titolo I crea i delitti per i quali retroattivamente dovrebbe la legge giudicare le azioni dei fondatori del fascismo, dei loro sostenitori e collaboratori. La definizione giuridica di questi reati è contenuta nell'articolo 3 di questo decreto-legge e la loro punizione è affidata, art. 4, alla Corte d'Assise, ai Tribunali e ai Pretori secondo delle rispettive competenze. (+) Le Corti d'Assise sono le normali, costituite colla legge attuale, cambiati solamente gli assessori coi giudici popolari.

In questo decreto-legge, poiché è posteriore all'8 settembre, è inclusa una disposizione relativa al collaborazionismo con i tedeschi all'art. 5 (++).

Successivamente quando l'Alta Italia cominciò ad essere liberata, si presentò la necessità, per l'aumentato lavoro, di creare delle Corti straordinarie e ciò fu fatto col secondo decreto legge cioè quello in data 22 aprile 1945 No. 142.

Questo decreto legge avrebbe dovuto essere esclusivamente una norma procedurale che regolasse la funzione delle Corti straordinarie d'Assise ma nel suo primo articolo ha ritenuto di modificare e ampliare l'art. 5 del precedente Decreto legge No. 159 del 1944. creando la figura del presunto reo di collaborazione rappresentata dagli uomini dirigenti della Repubblica sociale e dei suoi capi amministrativi e militari - e all'art. 2 demandava a questa Corte per connessione soggettiva a giudicare anche dei reati di cui l'art. 3 del precedente decreto legge (li chiameremo reati fascisti) quelle persone che erano imputate di già di reato di collaborazione con il tedesco, sottraendole al giudizio delle autorità giudiziarie comuni, come era disposto

all'art.4 del Decreto Legge No. 159/1944.

Ma i reati commessi da persone che non erano soggette a procedimento penale per collaborazionismo a sensi del decreto legge continuavano ad essere soggette alle autorità giudiziarie normali ?

Molti magistrati ritengono di si.

Se si ritiene di accedere a questa teoria si profila, qui nella Venezia Giulia la seguente situazione:

I due decreti legge italiani non sono in vigore. Supplisce la legge degli Alleati cioè il Proclama No.5, ma questo all'articolo II limita la competenza delle Corti straordinarie d'Assise ai reati di collaborazione con i tedeschi (art.1) e soltanto per connessione soggettiva si procederebbe per i reati di cui i punti 2. 3. 4. dell'art. II contro persone già sotto processo perché imputate a sensi dell'art.I per collaborazione con i tedeschi.

Conseguenza: i reati cosiddetti fascisti di cui l'art.3 del Decreto legge No.159 corrispondente ai numeri 2.3.4. dell'art.II del Proclama No.5 rimarrebbero impuniti se non commessi da persone già sotto processo per collaborazione con i tedeschi. Ciò che non poteva essere intenzione del legislatore.

Si fa perciò il seguente quesito:

L'art.II al p.to 1. è da interpretarsi letteralmente come è e quindi si deve ritenere che i reati di cui i punti 2.3.4. dello stesso art. siano punibili solamente (per connessione soggettiva) se commessi da persone che sono sotto processo per reato di collaborazione con i tedeschi; mentre gli stessi reati sono stati commessi da persone che non sono imputate di collaborazione restano impuniti nella Venezia Giulia ?

Annotazioni: + Sarebbero per i punti 2.3.4. dell'Art.II del Proclama No.5 del Mar.Alexander.

++ Corrisponde all'art.I del Proclama No.5 del Mar. Alexander.

The literal interpretation of art II of the Proclamation No. 5 about the institution of the Extraordinary Courts of Assize causes many doubts.

In this article it is said that "the Extraordinary Courts of Assize are competent to judge also crimes on the base of the present article which were committed by persons charged of the crimes foreseen in the preceeding article" and then enumerate at 2, 3, 4 figures of crimes committed by fascist activity. This would mean that the prejudicial question to make it possible to proceed against those who have committed this crime is that they must be already charged of the crime mentioned in the preceeding art. I, that is to say of collaboration and that therefore one could not proceed for this crime against persons who are not yet under accuse for crimes of collaboration on the base of art. I.

For having an explanation of this apparent incongruence one must return to the right-origin of this proclamation constituted by the two laws of the Kingdom of Italy, that is to say:

- 1) Decree-law of the Lieutenant General from 27 July 1944 No. 159 and
- 2) decree-law of the Lieutenant General from 22 April 1945 No. 142 on the institution of "Extraordinary Courts of Assize for crimes of collaboration with the Germans."

The Proclamation No. 5 of the Field Marshal Alexander is a true copy of this second decree-law of the Lieutenant General so far as it follows its numeration in the first articles.

Let us see how this decree-law, which in its substance is an accomplishment of the first, was created. Let us see foremost this.

The first decree-law, it is to say the one No. 159 from 1944 has the generic title of "sanctions against fascisme" and in his Part I creates the crimes for which the law retroactively judges the action of the founders of the fascisme, of their sustainers and collaborators.

The juridical definition of this crimes is contained in art. 3 of this decree-law and their punishment is entrusted (art. 4) to the Court of Assize, to the Tribunals and Preture according to their respective competence. X The Courts of Assize are the normal ones, constituted by the actual law, only the assessors are substituted with popular judges.

In this decree-law, because it is posterior to the 8th September, is included a disposition relativ at the collaboration with the Germans at art. 5. XX

Successively, when North-Italy begun to be liberated, the necessity arose with regard of the uncompleted work to create

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Successivly, when North-Italy begun to be liberated, the necessity arose, with regard of the augmented work, to create extra-ordinary Courts and this was made by the second decree-law that is to say that from 22 April 1945 No. 142.

Notice: X it would be for numbers 2, 3, 4 of article II of the Proclamation No. 5 of Marshal Alexander.

XX it corresponds to art. I of the Proclamation No. 5 of Marshal Alexander.

- 2 -

should have been

This decree-law ~~xxxxxxx~~ exclusively a proceeding-norm which should regulate the function of the Extraordinary Courts of Assize but in its first article it modifies and extends art. 5 of the preceding decree-law No. 159 from 1944 creating the figure of the presumed culprit of collaboration represented by the directors of the Social Republic and of its administrative and military heads and in its art. 2 transferred to this Court to judge for subjective connection also of the crimes of which the art. 3 of the preceding decree-law (we will call them fascist crimes) those persons who were accused already of the crime of collaboration with the Germans, subtracting them from the judgement of the common judiciary authorities, as it was disposed in art. 4 of the decree-law No. 159/1944.

But remain the crimes committed by persons, who were not subject to a penal proceeding for collaboration in the sense of the decree-law, subjected to the normal judiciary authorities?

Many magistrates think so.

If on thinks to follow this theory here in the Venezia-Giulia arises the following situation.:

The two Italian decree-laws are not in vigour. The Allied law that is Proclamation No 5 supplies them, but this Proclamation in art. II limits the competence of the Extraordinary Courts of Assize on the crimes of collaboration with the Germans (art. 1) and only for subjective connection on would proceed for the crimes numbers 2, 3, 4 of art. II against persons already under process because accused in the sense of art. I for collaboration with the Germans.

The consequence is: the so named fascist crimes of which art 3 of the decree-law No 159 corresponding to the numbers 2,3,4 of art. II of the Proclamation No 5 would remain unpunished if not committed by persons already under process for collaboration with the Germans. But this could not be the intention of the legislator.

On puts therefore the following question:

Is the art. II at point 1 to be interpreted literally as it is and must on therefore presume that the crimes of which the numbers 2,3, 4 of the same article are to be punished only (for subjective connection) if committed by persons who are under process for the crime of collaboration with the Germans, while the same crimes committed by persons who are not accused of collaboration remain unpunished in the Venezia Giulia?

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

LEGALS
SA

Date 16 August 1945

LEGAL DIVISION

FILE REF: 13C/AMG/ID/33.

SUBJECT: Special Court of Assize

TO: Chief Legal Adviser, Legal Sub-Commission, H.Q., A.C.

1. We are now ready to proceed with trials in the Special Court of Assize.
2. Paragraph 3 of Article XVI of Proclamation No. 5 provides that no sentence of death shall be executed unless and until confirmed in writing by the S.A.C., by the Chief Civil Affairs Officer acting on his behalf, or by any other specified officer not below the rank of Brigadier General or Brigadier to whom the S.A.C. may have delegated such power in writing.
3. It is thought that a drill should be laid out so that there will be no delay in carrying out the execution of death sentences once they have been confirmed by the Court of Appeal.
4. It will, therefore, be appreciated if you will advise us in this matter.

For the Senior Civil Affairs Officer.

For Felix L. Aulini, Major
L.F. DAWSON
Lt. Col.
Chief Legal Officer.

Copy to:-

Col. Hammond, Legal Adviser,
G - 5 Section, A F H Q.

Legal Sub-Commission
CLO
DCLO

TO Chief Legal Adviser, Legal Sub-Commission, H.Q., A.C.

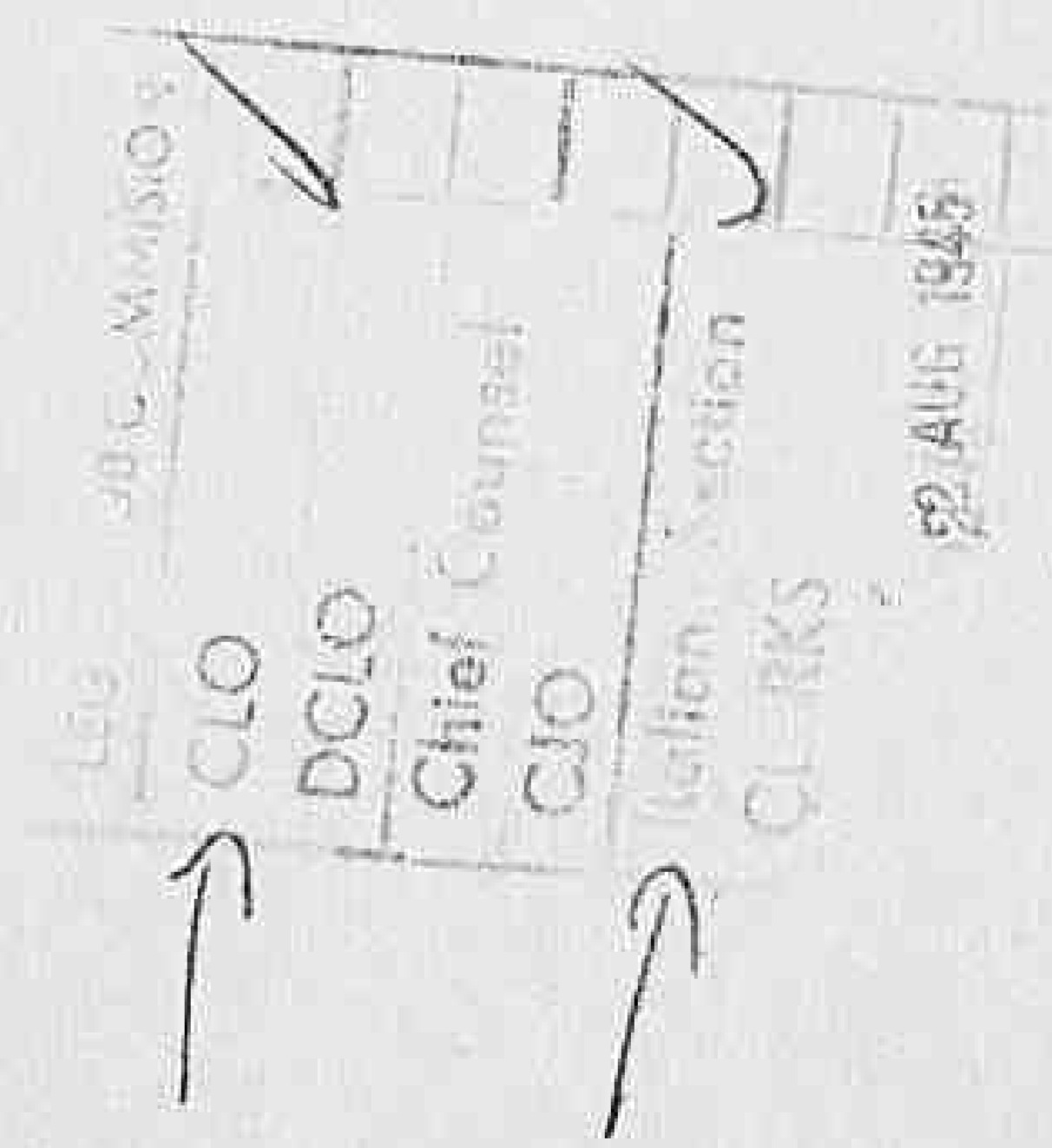
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For the Senior Civil Affairs Officer.

For
Felix J. Andisi, Major
 L.F. DAWSON
 Lt. Col.
 Chief Legal Officer.

Copy to:-

Col. Hammond, Legal Adviser,
G - 5 Section, A T H Q.



AME 13 CORPS INFO AMHQ G-5

4188/2 ✓

LA

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30 JUNE 45

ROUTINE

IN CLEAR PD

PARA ONE PD YOUR SIGNAL OF TWO EIGHT JUNE ON SPECIAL COURT OF ASSIZE
PROCLAMATION IS SUBJECT PD

PARRY TO AME ONE THREE CORPS INFO AMHQ GEORGE FIVE FROM ALCON CITE ACCAS
PARRY

PARA TWO PD PROCLAMATION WAS DELIVERED AFTER ON WEDNESDAY TWO SEVEN JUNE

LEGAL STAFF COMMISSION
C/O
SECY
ASST. SECY
CLERK
CA Sec
437

INT DIST:-

Legal 5/3

A. D. BOCHAN CARTER Lt Col.

NICHOLAS POMBINO
CWO, USA
Asst. Adjutant

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4188 (E)

RESTRICTED

Legal 3A

JUN 281700B

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JUN 290830B
PRIORITY

AME 13 CORPS FROM MONFORT

AFHQ G-5 FOR SPOTFORD INFO HQ ALCOM FOR UPJOHN

RESTRICTED.

Demand for Peoples Court increasing daily. Urgently require your approval draft proclamation setting up Special Court of Assize. Signed MONFORT.

DIST

INFO-ACTION: CA Sec
INFO: Chief Commissioner
Legal S/C
File 2
Float

RECORDED
29 JUN 1945

DCIO	
Chief Counsel	
CIO	
Division of Law	
CL R/S	

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File 4188/2

2A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

10/12/45/L.

/rlp.
26 June 1945.

SUBJECT : Courts of Assize in Venezia Giulia.

TO : AFHQ.

1. This Commission has given careful consideration to the possibility of instituting, under AAG authority, Special Courts of Assize in Venezia Giulia.

2. According to international law an occupying power must take all steps to ensure public order, while respecting, unless absolutely prevented, the laws in force in the country; see Article 43 of Hague Regulations. For this purpose it would appear perfectly legal for the occupying power temporarily to alter the criminal law for the purpose of maintaining public order. See also Oppenheim's International Law, 6th Edition, Vol. II, p. 349.

3. It should further be stressed that the Special Courts of Assize as constituted by the Italian Government do not introduce new crimes. The crimes which they are authorized to try are certain crimes specifically defined in the Civil and Military Penal Codes. It should be mentioned that these crimes are made applicable to civilians as well as military personnel, but this can be justified on the basis of the mobilization arising from the state of war. The courts do apply to these crimes however punishments, by virtue of the Law on Sanctions against Pacifism, then those prescribed by the original code.

4. It is the view of the legal advisors to this Commission that S.A.C. is justified by the terms of the letter dated 18 June 1945 from G-10 8th Army of which you have a copy in establishing Special Courts of Assize in Venezia Giulia. It is considered however that this should be done by Proclamation and not by Regional Order.

5. So far as the actual drafting of the attached proclamation is concerned, it follows substantially the text of the Italian decree. In this connection also it is felt to be preferable to have one document establishing the courts and the procedure rather to establish the Courts and to allow the procedure to be settled by Regional Order.

6. The differences between the draft prepared by G-10 8th Army and that prepared by this Commission are:

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- a. Article I (2)
This Section defines exactly the jurisdiction of the courts. The effect is the same as in the Italian law.
- b. Article III
It is singular to refer directly to Trieste.
Article V. A Committee approved by AMG is substituted for the CLN
- c. Article VI (2)
It is desirable to have the appointment made by the President, subject to AMG approval.
- d. Article VIII
This is the official Italian oath.
- e. Article X (2)
Payment of lawyers was omitted from the Italian decree but was found necessary in practice and has been enforced by AMG order with the agreement of the Italian Government.
- f. Article XV
The addition in this article has been found necessary in practice.
- g. Article XVI
The appeals will be entirely technical under Italian Law. They must therefore go to an Italian court.
- h. Article XVII
It does not appear necessary to provide for pending cases.

7. It should be pointed out that under Italian Law there is always a petition to the King for a death sentence. This would normally go to the Military Government and it is suggested that power to decide such petitions be delegated to the local SCMO. There is no need to mention this in the Proclamation.

For the Chief Commissioner:

G. R. UFFICINI, Brig.
VP, SA Sec. Hq AC.

Incl: Proc. No. 5.

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SCMO AMG 5th Army.
SCMO AMG XIII Corps.

7

ALLIED MILITARY GOVERNMENT
OF VENEZUELA GUILLA

PROCLAMATION NO. 5

ESTABLISHMENT OF SPECIAL COURTS OF ASSISE

I, HAROLD R.L.S. ALEXANDER, G.C.B., C.S.I., D.S.O., M.C., A.D.C.,
Field Marshal, Supreme Allied Commander Mediterranean Theater of
Operations and Military Governor, hereby proclaims as follows:

ARTICLE I

(1) There are hereby constituted in those parts of the territory
of Venezuela which are occupied by the forces under my command
(hereinafter called the territory) Special Courts to be known as Special
Courts of Assise for the trial of the persons and offences hereinafter
specified.

(2) The Special Courts of Assise shall have jurisdiction to try
any person whether civilian or military who after the 8th of September
1943 and by means of any form of intelligence, correspondence or colla-
boration with the Germans or by having rendered to the Germans any help
or assistance has committed any of the offences set out in:

- Penal Code of 1930, Articles 211, 295 or 298;
- Military Penal Code of Peace, Book 2, Part 1;
- Military Penal Code of War, Book 3, Part 2.

Any person whether civilian or military who has committed any of
these crimes shall be punished therefor in accordance with the provi-
sions of the Military Penal Code of War.

(3) Any person who after the creation of the so-called Italian
Social Republic has held any of the following posts or exercised any of
the following functions shall be deemed without further proof to have
collaborated with the German invaders and to have given them help and
assistance:

(a) Minister or Under Secretary of State in the so-called
Government of the Italian Social Republic; or a national executive
office in the Republican Fascist Party;

(b) President or member of the Special Tribunal for the
Defence of the State or of any special tribunal set up by the said
Government, or public prosecutor before any such tribunal;

(c) Head of a Province, Federal Secretary or Commissioner or
any like office;

(d) Editor of any political newspaper;

1724

Operations and Military Governors, hereby provided as follows:

ARTICLE I

(1) There are hereby constituted in those parts of the territory of Venezia Giulia which are occupied by the forces under my command (hereinafter called the territory) Special Courts to be known as Special Courts of Justice for the trial of the persons and offenses hereinafter specified.

(2) The Special Courts of Justice shall have jurisdiction to try any person whether civilian or military who after the 8th of September 1943 and by means of any form of intelligence, correspondence or collaboration with the Germans or by having rendered to the Germans any help or assistance has committed any of the offenses set out in:

- penal Code of 1930, Articles 241, 285 or 288;
- Military Penal Code of Peace, Book 2, Part 1;
- Military Penal Code of War, Book 3, Part 2.

Any person whether civilian or military who has committed any of these crimes shall be punished therefor in accordance with the provisions of the Military Penal Code of War.

(3) Any person who after the creation of the so-called Italian Social Republic has held any of the following posts or exercised any of the following functions shall be deemed without further proof to have collaborated with the German invaders and to have given them help and assistance:

- (a) Minister or Under Secretary of State in the so-called Government of the Italian Social Republic; or a national executive office in the Republican Fascist Party;
- (b) President or member of the Special Tribunal for the Defense of the State or of any special tribunal set up by the said Government, or public prosecutor before any such tribunal;
- (c) Head of a Province, Federal Secretary or Commissioner of any like office;
- (d) Editor of any political newspaper;
- (e) Senior officer in any black shirt unit exercising any function of a politico-military nature;

(4) Any person who, in any of the said posts or in the exercise of any of the said functions has undertaken wider responsibilities and, any person who has held any post mentioned in Sections 3 (a) and (b) of this article shall be punishable under article 51 and 54 of the Military Penal Code for War, in other cases under article 58.

6

(5) Where any act is an offense under any other law, the penalty prescribed by the Military Penal Code for that shall remain applicable.

ARTICLE II

(1) The Special Courts of Assize shall have jurisdiction also to try an offense under this Article committed by any person who is accused of any crime described in the preceding Article.

(2) Those who have organized the Fascist "squads" which carried out the acts of violence or intimidation, and caused the insurrection of 28 October 1922, shall be punished according to Article 120 of the Penal Code of 1889.

(3) Those who promoted or led the "Coup d'Etat" on 3 January 1925, and those who then contributed by relevant acts to maintain the Fascist Regime, shall be punished according to Article 118 of the said law.

(4) Anyone who has committed other crimes for Fascist reasons or has profited from the actual political circumstances created by Fascism, shall be punished according to the laws in force at the date of the crime.

ARTICLE III

(1) A Special Court of Assize shall be established in Trieste.

(2) Sessions of the said Court which may sit elsewhere in the territory ~~and~~ may be set up by order of the Allied Military Government.

ARTICLE IV

When the Special Court of Assize or any section thereof is set up the time limits laid down in Articles 5, 6 and 10 shall run from the date of the setting up of such Court or section.

ARTICLE V

(1) Within seven days from the date of the publication of this Proclamation a committee appointed by the Allied Military Government shall make a list of not less than 150 persons of the age of 30 years or over and of accepted moral and political probity who are resident in the territory and submit the name to the President of the Tribunal of Trieste.

(2) Within the seven days next following, the President of the Tribunale shall, after having satisfied himself of the moral probity and irreproachable political antecedents of the said persons, select from the said list 75 persons as lay assessors.

(3) The qualifications for lay assessors herein prescribed shall be the only qualifications necessary, the provisions of any other law to the contrary notwithstanding.

ARTICLE VI

(1) The Special Courts of Assize shall have jurisdiction also to try an offense under this Article committed by any person who is accused of any crime described in the preceding Article.

(2) Those who have organized the Fascist "squads" which carried out the acts of violence or devastation, and caused the inauguration of 28 October 1922, shall be punished according to Article 120 of the Penal Code of 1889.

(3) Those who promoted or led the "Coup d'Etat" on 3 January 1925, and those who then contributed by relevant acts to maintain the Fascist Regime, shall be punished according to Article 118 of the said law.

(4) Anyone who has committed other crimes for Fascist reasons or has profited from the actual political circumstances created by Fascism, shall be punished according to the laws in force at the date of the crime.

ARTICLE III

- (1) A Special Court of Assize shall be established in Trieste.
- (2) Sections of the said Court which may sit elsewhere in the Territory may be set up by order of the Allied Military Government.

ARTICLE IV

When the Special Court of Assize or any section thereof is set up the time limits laid down in Articles 5, 6 and 10 shall run from the date of the setting up of such Court or section.

ARTICLE V

(1) Within seven days from the date of the publication of this Proclamation a committee appointed by the Allied Military Government shall make a list of not less than 150 persons of the age of 30 years or over and of accepted moral and political probity who are resident in the territory and submit the name to the President of the Tribunal of Trieste.

(2) Within the seven days next following, the President of the Tribunal shall, after having satisfied himself of the moral probity and irreproachable political antecedents of the said persons, select from the said list 75 persons as lay assessors.

(3) The qualifications for lay assessors herein prescribed shall be the only qualifications necessary, the provisions of any other law to the contrary notwithstanding.

ARTICLE VI

- (1) A Special Court of Assize shall consist of a president and four lay assessors.

(2) The President shall be appointed, subject to the approval of the Allied Military Government, by the First President of the Court of Appeals of Trieste and shall be selected by him from magistrates of a grade not lower than Counsellor of the Court of Appeals unless the Allied Military Government shall otherwise order. The appointment shall be made within 10 days from the date of the publication of this Proclamation. The lay assessors shall be drawn from the list mentioned in the preceding Section.

(3) A Deputy President may be appointed by a similar procedure.

ARTICLE VII

A Section of the Special Court of Justice constituted in accordance with Article VII shall be composed as set out in Article VI.

ARTICLE VIII

In every case the President of the Court shall administer to each of the four lay assessors the following oath:

"With the firm intention of fulfilling as men of honor your full duty, and being conscious of the supreme moral and civil importance of the office which the law entrusts to you, do you swear and promise to listen with diligence and to examine with calmness in this proceeding the evidence and arguments of the prosecution and of the defence and weighing them with rectitude and impartiality to form your own opinion thereon and to keep far from your mind every feeling of prejudice or of favor so that as society demands, your judgment will constitute a sincere declaration of truth and justice."

ARTICLE IX

The consolidated text of the legislative provisions dealing with Courts of Appeal shall so far as the same is applicable and not in conflict with the provisions of this Proclamation or of any instructions issued from time to time by the Allied Military Government be observed and followed.

ARTICLE X

(1) Within 10 days from the date of the publication of this Proclamation, the Procurator General of the Court of Appeals of Trieste shall by order set up for each Special Court of Appeals or Section thereof a Public Prosecutor's Office. The number and grade of the judicial officials appointed to such office shall be stated in the order establishing the office.

(2) The office shall consist of magistrates, together with such experienced and able lawyers of spotless moral conduct and irrefragable political antecedents as may be selected from lists prepared by the

(3) A Deputy President may be appointed by a similar procedure.

ARTICLE VII

A Section of the Special Court of Assize constituted in accordance with Article III shall be composed as set out in Article VI.

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In every case the President of the Court shall administer to each of the four lay assessors the following oath:

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ARTICLE IX

The consolidated text of the Legislative provisions dealing with Courts of Assize shall so far as this same is applicable and not in conflict with the provisions of this proclamation or of any instructions issued from time to time by the Allied Military Government be observed and followed.

ARTICLE X

(1) Within 10 days from the date of the publication of this proclamation, the Procurator General of the Court of Appeal of Trieste shall by order set up for each Special Court of Assize or Section thereof a Public Prosecutor's Office. The number and grade of the judicial officials appointed to such office shall be stated in the order establishing the office.

(2) The office shall consist of magistrates, together with such experienced and able lawyers of spotless moral conduct and irrefragable political antecedents as may be selected from lists prepared by the ~~Committee mentioned in Article V~~ Lawyers appointed to such office shall be entitled to the pay and allowances of a Consiglio Procuratore del Regno of the sixth grade.

ARTICLE XI

No parent or relative of the third or nearer degree of any accused person shall sit as a lay assessor on any Special Court of Assize nor act as public prosecutor in any trial before such court.

Committee mentioned
in Article V

ARTICLE XIII

Claims for civil damages shall not be entertained by any Special Court of Assize.

ARTICLE XIII

The time limits established by the Code of Penal Procedure for the pre-trial investigation and for hearing are reduced by one-half.

ARTICLE XIV

(1) Any crime within the jurisdiction of a Special Court of Assize, shall be investigated by summary procedure in the offices of the Public Prosecutor referred to in Article 7.

(2) Whenever he is of the opinion that there is a prima facie case against the accused, the Public Prosecutor may, provided that the conditions set out in the second paragraph of Article 502 of the Code of Penal Procedure are observed, order that the trial shall proceed by "Giudizio direttissimo."

ARTICLE XV

Sentences of the Special Courts of Assize shall be filed within five days of their pronouncement and the accused or his advocate shall be notified within 24 hours of such filing.

ARTICLE XVI

(1) An appeal from the Special Court of Assize will lie to the Court of Appeal of Trieste on any ground on which under the Code of Penal Procedure an appeal lies from the Court of Assize to the Court of Cassation and the Court of Appeal of Trieste shall have such powers and such powers only for that purpose as the Court of Cassation would have had on the hearing of such an appeal.

(2) The grounds of appeal shall be lodged with the Court of Assize by the accused within three days and by the Public Prosecutor within five days after notification of the sentence.

(3) See *Giudizio*

has added

ARTICLE XVII

Subject to further order of the Allied Military Government, the jurisdiction of the Special Courts of Assize shall cease six months after the effective date of this proclamation and thereafter the offenses referred to in this proclamation shall be tried according to the normal rules of jurisdiction.

ARTICLE XVIII

For the purpose of this proclamation the expression "Allied Military Government" shall include any Civil Affairs Officer of the Allied Military Government who is duly authorized by me to act on my behalf.

1730

(1) Any crime within the jurisdiction of a special court shall be investigated by summary procedure in the offices of the Public Prosecutor referred to in article X.

(2) Whenever he is of the opinion that there is a prima facie case against the accused, the Public Prosecutor may, provided that the conditions set out in the second paragraph of Article 502 of the Code of Penal Procedure are observed, order that the trial shall proceed by "Giudizio direttissimo."

ARTICLE XV

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(1) An appeal from the Special Court of Assize will lie to the Court of Appeal of Trieste on any ground on which under the Code of Penal Procedure an appeal lies from the Court of Assize to the Court of Cassation and the Court of Appeal of Trieste shall have such powers and such powers only for that purpose as the Court of Cassation would have had on the hearing of such an appeal.

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ARTICLE XVIII

For the purpose of this proclamation the expression Allied Military Government shall include any Civil Affairs Officer of the Allied Military Government who is duly authorized by me to act on my behalf.

ARTICLE XIX

- (1) This Proclamation shall come into operation throughout the territory on the date of its first publication therein.
- (2) Nothing herein contained shall be deemed to confer any jurisdiction over US or British Military or civilian personnel.

Approved
in direct conf.
See [unclear]

Field Marshal,
 Supreme Allied Commander,
 Mediterranean Theater of Operations,
 and Military Governor.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
EIGHTH ARMY

18 June 1945

SUBJECT: Special Courts of Assize: VENEZIA GIULIA

TO: HQ Allied Commission
(Attn: Brig UPJOHN)

1. After fully discussing the situation now prevailing in those parts of VENEZIA GIULIA which are occupied by the Allied Forces with Brig Gen SPOFFORD, Brig UPJOHN, Col MONFORT, and Lt Col DAWSON, I am of opinion that it is vitally and imperatively necessary to set up in the occupied territory Special Courts of Assize to deal with collaborators with the late so-called Fascist Republic and with the Germans.

2. When Allied Military Government was set up in the occupied territory on 12 June 1945, it was found that the Yugoslav authorities had already constituted a so-called Peoples Tribunal to deal with the type of offenders aforementioned.

3. This tribunal had been constituted by a decree of the Council of Liberation and of the Council of the City of TRIESTE -- both apparently creatures of the previous Yugoslav regime -- dated the 21/23 May 1945.

4. The Peoples Tribunal actually assembled for the first time on the day preceding the commencement of our occupation, namely, on 11 June 1945, and had that day condemned at least one man to death. On 12 June 1945, on the instructions of Lt Col DAWSON, the sittings of this court together with those of all other courts set up by the Yugoslav authorities were suspended and the death sentence aforesaid was also likewise suspended. It is obvious that none of these courts can be allowed to function again. They are all extra-legal and the laws, decrees, etc., constituting them have by clear implication been repealed by Proclamation No. 1.

5. On the other hand, it must be recognized that the ordinary civil tribunals are incapable of dealing with the type of offender to punish whom the Yugoslav authorities set up their popular courts following in this respect in principle what has been done in France and indeed in Italy itself.

Handwritten: (7/10A)
Handwritten: Discuss at 7/10A
Handwritten: Today please!

Handwritten: (circled initials)

Handwritten: 4-188-12

Handwritten: It is however quite clear and generally accepted by

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5. On the other hand, it must be recognized that the ordinary civil tribunals are incapable of dealing with the type of offender to punish whom the Yugoslav authorities set up their popular courts following in this respect in principle, what has been done in France and indeed in Italy itself.
6. It is, however, quite clear and generally accepted by everybody here, including the officers above-mentioned, that grave public disorders which will inevitably lead to collisions with the Allied Forces in the occupied territory and to bloodshed will result if no court of any description is created to deal with Fascist and German collaborators for whose punishment daily events in the occupied territory prove that there is an insistent public demand. We are all clearly of opinion that the mere interment of such persons will not suffice and that only the creation of special machinery for the speedy trial of offenders will do anything to allay public indignation.

- 2 -

7. In this connection I can do no better than to refer to paragraph 2 of your DF/5.16/CA, dated 25 April 1945. There is little doubt in my mind that what applies to the rest of Italy applies with even greater force to this territory. Unless the populace are satisfied that their grievances against Fascist criminals and German collaborators will be speedily investigated and in appropriate cases severe punishments awarded disorder and bloodshed will follow and in the absence of official action the people here will certainly take the law into their own hands. This is in fact happening now.
8. It is for manifest political reasons quite out of the question to implement in the usual manner the Italian decree on the subject, notably No. 142 dated 24 April 1945, and this being so there remains only one course open and that is for the Military Governor of the territory to set up a Special Court of Assize by proclamation under his hand.
9. I accordingly attach hereto a draft proclamation setting forth broadly the lines along which the Special Courts of Assize for this territory should be constituted. This draft follows fairly closely Decree No. 142 of 1945 and I suggest that it be used as the basis for the preparation of any proclamation which may be presented to the Military Governor for his signature.
10. I stress the extreme urgency which exists for the creation of the legislative and judicial machinery described above and I shall accordingly be pleased if this matter may receive the earliest possible attention and if any communications in connection therewith may be made by signal.

Byrnes

Air Commodore,
Senior Civil Affairs Officer,
AMG Eighth Army.

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Air Commodore,
Senior Civil Affairs Officer,
AMG Eighth Army.

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LEGAL SUB-COMMISSION							
CLO	<i>None</i>						
DCLO							
Chief Counsel							
CJO							
Italian Liaison							
Other Staff							
27 JUN 1945							

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