

ACC

10000/142/924

PROF. AV. V
SEPT. 1945

10000/142/924

PROF. AV. VASSALLI, CONFIDENTIAL REPORTS
SEPT. 1945

FILE CLOSED 26 September 1945



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URBE

IL COMMISSARIO FEDERALE

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

GGH/lo.
26 September 1945.

MEMORANDUM

SUBJECT : Prof. VASSALLI.

TO : Office of the Chief Commissioner.

1. Before leaving OIA informed Lt. Col. Hannaford that in all probability Admiral Stone would wish to write to the Prime Minister about Prof. Vassalli's case. Col. Behrens asked Lt. Col. Hannaford to remind the Chief Commissioner of this, if he did not hear from him in the course of the next few days.

2. Could this Sub-Commission be informed whether Admiral Stone wishes to write to Prof. Parri and whether a draft letter should be prepared for his signature.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
LEGAL SUBCOMMISSION
APO 394

AC/4395/L.

MEMORANDUM:

16 September 1945

SUBJECT: Avv. Prof. Vassalli.

TO : Chief Commissioner.

1. Following our conversation of Saturday, I spoke to Vassalli's son-in-law and explained to him the circumstances in which you would be willing to grant an interview. He fully understands this, but is anxious to have an interview on two grounds:-

a. General. He feels that the Allies should know officially what is happening in this matter in order that, if they think it desirable, they can take such notice as may be appropriate in bringing the facts to the knowledge of their respective governments.

b. Personal. Prof. Vassalli believes that he is too well-known to be actually struck off the rolls. On the other hand he considers it quite possible that he may be put in prison and he would like this to be avoided, if necessary by an approach through the embassies.

2. Since speaking to you I have read the argument prepared by Prof. Vassalli for the Court of Cassation. I find that the Senators concerned are not, as I thought when I spoke to you this morning, from the recent group of 70 Senators whose cases have not yet been heard, but are a number of those whose cases were heard and who were dismissed from the Senate in January of this year. The principal, however, is of course entirely the same.

3. The position is that, when the Senators were dismissed in the early part of this year, a small group of them approached Vassalli on the question of an appeal. They did not wish to appeal at that time because they thought that with the war still in progress an attack on the constitutional validity of the High Court of Justice might afford scope for German propaganda. This situation having changed, they requested Vassalli to take the necessary action. He thereupon filed an appeal in the case of two Senators and had prepared an appeal in the case of three or four others.

4. Upon hearing that these appeals had been filed Marone, President of the High Court of Justice, wrote to the High Commissioner for Sanctions requesting that Vassalli be struck off the rolls "because the appeal is obviously groundless since the law prevents an appeal, and therefore the appeal is a political act directed against the government."

5. In point of fact the appeal is based upon the following purely legal grounds:-

a. It is argued that insofar as DLL 159 provides that there is no appeal from the High Court of Justice, this is unconstitutional under general law. It is specifically unconstitutional under DLL 151 which preserves the existing constitution until the formation of the Constituents. DLL 159 attacks the Senate and therefore breaks the spirit of DLL 151.

b. Upon the assumption, as argued in a. that an appeal lies, the decision of the High Court of Justice was wrong. It was based upon two grounds -- first, that the Senators in question were elected by an improper procedure; secondly, that they had not opposed the Fascist legislation of the Senate. The appeal contends that the first ground is entirely outside the scope of DLL 159 and no concern of the High Court of Justice. The second ground is a misapplication of DLL 159 which required active support of the Fascist regime.

6. It is not for me to express an opinion on whether or not these arguments are sound law, but as you will see they are purely legal arguments. It cannot be said to be a political act directed against the government to argue that a court set up by a decree of that government is unconstitutional because the decree is contrary to existing law. I therefore think that to suggest that a lawyer who puts forward an appeal of this kind on behalf of his client deserves to be struck off the rolls or imprisoned is behavior of a most dictatorial and undemocratic kind.

W. E. HENRIS
Colonel
Chief Legal Adviser

1 2 8 4