

ACC

10000/142/985

CO
NO

10000/142/985

COURT OF APPEAL OF FOGGIA
NOV. 1943 - JAN. 1944

Ritenuta la opportunità che si svolgano senza ulteriore ritardo i processi in grado di appello sia penali che civili, relativi alle circoscrizioni territoriali dei Tribunali di Foggia e Lucera, compresi nella zona controllata dalle truppe dei governi alleati, si ordina quanto segue:

Art. 1

E' istituita temporaneamente in Foggia una Sezione Distaccata di Corte di Appello, avente giurisdizione sui Tribunali di Foggia e di Lucera, per la trattazione dei processi civili e penali decisi in primo grado con sentenza di data successiva al 30 settembre 1943.

La Sezione suddetta è competente a decidere anche quelle ~~magistrature del lavoro~~ in appello delle decisioni dei giudici di primo grado delle circoscrizioni dei soppressi Tribunali successivamente al 30 settembre 1943.

Gli appelli delle sentenze anteriori saranno decisi secondo la precedente giurisdizione.

Art. 2

Alla Sezione di Corte di Appello di cui all'art. 1 sono destinati un Consigliere di Cassazione con le funzioni di Presidente di Sezione di Corte di Appello e 5 Consiglieri di Corte di Appello di cui due possono essere giudici di Tribunale, e qui possono essere attribuite le funzioni del grado superiore secondo l'ordinamento giudiziario italiano.

Art. 3

All'ufficio del Pubblico Ministero è destinato un Sostituto

E' istituita temporaneamente in Foggia una Sezione Distaccata di Corte di Appello, avente giurisdizione sui Tribunali di Foggia e di Lusera, per la trattazione dei processi civili e penali decisi in primo grado con sentenza di data successiva al 30 settembre 1943.

La Sezione suddetta e competente a decidere anche sulle ingiustizie del tempo in appello delle decisioni dei giudici di primo grado delle circoscrizioni dei sudmenzionati Tribunali succedive al 30 settembre 1943.

Gli appelli delle sentenze anteriori saranno decisi secondo la precedente giurisdizione.

Art. 2

Alla Sezione di Corte di Appello di cui all'art. 1 sono destinati un Consigliere di Cassazione con le funzioni di Presidente di Sezione di Corte di Appello e 5 Consiglieri di Corte di Appello di cui due possono essere giudici di Tribunale, e cui possono essere attribuite le funzioni del grado superiore secondo l'ordinamento giudiziario italiano.

Art. 3

All'Ufficio del Pubblico Ministero e destinato un Sostituto Procuratore Generale di Cassazione con le funzioni di Avvocato Generale e può esservi addetto un Sostituto Procuratore del Re.

Art. 4

I Magistrati componenti la Sezione Distaccata di Corte di Appello e quelli del Pubblico Ministero saranno nominati di intesa con il Governo Italiano con decreto del Capo degli Affari Civili per i Magistrati in servizio o comunque presenti nelle circoscrizioni della Corte suddetta e di un'altra città della zona occupata od in mancanza designati dal Governo Italiano.

615
19

Enrollment

Considering it advisable that penal and civil proceedings of appeals originating from the territorial district of the Tribunals of Reggio and Lamezia, within the zone controlled by the Allied Forces, take place without further delay, it is ordered as follows:

Art. 1

A detached Section of the Court of Appeal with jurisdiction over the Tribunals of Reggio and Lamezia, is established temporarily at Reggio, in order to deal with civil and penal cases decided in the first instance by a judgment rendered subsequent to September 30, 1943.

The said Section functioning as Magistratura del Lavoro is also competent to decide all appeals against judgment of the judges of the first instance from the districts of the above stated Tribunals rendered subsequent to September 30, 1943.

The appeals against judgment rendered prior to this date will be decided in accordance with the former jurisdiction.

Art. 2

One Section of the Court of Appeal mentioned in Art. 1 above will consist of a Comptroller of Cassation with the function of a President of Section of Court of Appeal and of 5 Counselors of the Court of Appeal of whom two may be judges of Tribunals upon whom function of a superior grade may be conferred in accordance with the Italian judicial organic law.

Art. 3

A Deputy Procurator General of Cassation with functions of Advocate General will be attached to the Office of the Public Ministers. A Deputy Procurator will be attached to the same office.

Art. 4

The magistrates constituting the detached Section of the Court of Appeal and of the Office of the Public Ministers will be appointed in agreement with the Italian Government by a decree of the Chief Civil Affairs Officer from magistrates holding office or otherwise present within the district of the above mentioned Court or from magistrates residing in other localities within the occupied zone or if unavailable, from those designated by the Italian Government.

Tribunals of Puglia and Lucania, is established temporarily at Foggia, in order to deal with civil and penal cases decided in the first instance by a judgment rendered subsequent to September 30, 1943.

The said Section functioning as Magistratura del Lavoro is also competent to decide all appeals against judgments of the judges of the first instance from the districts of the above stated Tribunals rendered since said to September 30, 1943.

The appeals against judgments rendered prior to this date will be decided in accordance with the former jurisdiction.

Art. 2

One Section of the Court of Appeal mentioned in Art. 1 above will consist of a Counselor of Cassation with the function of a President of Section of Court of Appeal and of 5 Counselors of the Court of Appeal of whom two may be judges of Tribunale upon whom functions of a superior grade may be conferred in accordance with the Italian judicial organic law.

Art. 3

A Deputy Procurator General of Cassation with functions of Advocate General will be attached to the Office of the Public Ministero. A Deputy Procuratore del Re may be attached to the same office.

Art. 4

The magistrates constituting the detached Section of the Court of Appeal and of the Office of the Public Ministero will be appointed in agreement with the Italian Government by a decree of the Chief Civil Affairs Officer from magistrates holding office or otherwise present within the district of the above mentioned Court or from magistrates residing in other localities within the occupied zone or if unavailable, from those designated by the Italian Government.

16

303
Subject:- Detached Section of Court of Appeal of Bari.

AMG Hq.,
15 Army Group,
C.M.F.

Ref. AMG/206/132.
5 January 44.

Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission,
BRINDISI.

Further to our letter of 1 Jan to the R.C.L.O. of Region IV, AMG/206/113, a copy of which was sent to you, there is enclosed herewith the copy of a proposed Provincial Notice to be published in the Province of Foggia after appropriate action has been taken by the Italian Government.

2. You will notice that this order embraces all the terms of the Decree which it is considered that the Italian government should publish. There are some changes in this Decree as compared with the draft which you submitted to us recently. In Article One provision is made for the hearing of all appeals from the Foggia Courts, not merely of the appeals from judgments entered since 30 Sept 1943. The second paragraph of this Article has been omitted because of the fact that the Magistratura del Lavoro is not permitted to exercise any powers in occupied territory. Articles 2 and 3 have not been altered. Article 4 makes slight changes in the procedure to be followed for the appointment of the officials of the Detached Section.

3. It would be much appreciated if you would submit this revised text to the Ministry of Justice. It's early enactment by the Italian government will make possible the immediate publication of the Provincial Notice and the consequent early hearing and disposition of pending appeals.

Ward HWR

Major, A.U.S.,
Chief Legal Officer.

385

2221

ALLIED MILITARY GOVERNMENT.

Province of Foggia

NOTICE.

Whereas it has been deemed expedient that appeals from the decisions of the Italian Courts in the Province of Foggia, in both civil and criminal cases, should be heard without delay, and

Whereas a Decree has been enacted and published by the Italian Government authorizing the establishment of a detached section of the Court of Appeal of Bari for the purpose of hearing such appeals,

Now, therefore, the provisions of the said Decree are with the consent and approval of Clive E. Temperley, O.B.E., M.C., Lieutenant Colonel, Senior Civil Affairs Officer of the Province of Foggia, hereby adopted and published as under :

"Considering it advisable that penal and civil proceedings of appeals originating from the territorial district of the Tribunals of Foggia and Lucera, within the zone occupied by the Allied Forces, take place without further delay, it is ordered as follows :

Article One.

A detached section of the Court of Appeals with jurisdiction over the Tribunals of Foggia and Lucera, is established temporarily within the Province of Foggia in order to deal with civil and penal cases which are now or may hereafter be the subject of appeal.

Article Two.

One section of the Court of Appeal mentioned in Article One above will consist of a Counsellor of Cassation with the function of a President of Section of the Court of Appeal and of five Councilors of the Court of Appeal of whom two may be judges of the Tribunale upon whom functions of a superior grade may be conferred in accordance with the Italian judicial

Whereas a Decree has been enacted, and published by Government authorizing the establishment of a detached section of the Court of Appeal of Bari for the purpose of hearing such appeals,

Now, therefore, the provisions of the said Decree are with the consent and approval of Clive E. Temperley, O.B.E., M.C., Lieutenant Colonel, Senior Civil Affairs Officer of the Province of Foggia, hereby adopted and published as under :

"Considering it advisable that penal and civil proceedings of appeals originating from the territorial district of the Tribunals of Foggia and Lucera, within the zone occupied by the Allied Forces, take place without further delay, it is ordered as follows :

Article One.

A detached section of the Court of Appeals with jurisdiction over the Tribunals of Foggia and Lucera, is established temporarily within the Province of Foggia in order to deal with civil and penal cases which are now or may hereafter be the subject of appeal.

Article Two.

One section of the Court of Appeal mentioned in Article One above will consist of a Counsellor of Cassation with the function of a President of Section of the Court of Appeal and of five Councilors of the Court of Appeal of whom two may be judges of the Tribunale upon whom functions of a superior grade may be conferred in accordance with the Italian judicial organic law.

Article Three.

A Deputy Procuratore Generale of Cassation with the functions of Advocate General will be attached to the office of the Pubblico Ministero. A Deputy Procuratore del Re may be attached to the same office.

...Article Four.....

Article Four.

The magistrates constituting the detached section of the Court of Appeal and of the Office of the Pubblico Ministero will be appointed by the Senior Civil Affairs Officer of the Province of Foggia from those magistrates holding office or otherwise present within the district of the Court of Appeal of Bari or from other magistrates whose names may be submitted by the Primo Presidente of the Court of Appeal of Bari.

Lieutenant Colonel,
Senior Civil Affairs Officer,
Province of Foggia.

HEADQUARTERS
ARMED CONTROL COMMISSION
Legal Subcommittee

GCH/ymf

9 January 1944.

In reply
refer to: ACC/1/303.

SUBJECT: Section of Court of Appeal in Foggia and Iacera.
TO : Chief Legal Officer, HQ AMG-15th Army Group.

Your draft notice has given rise to one or two observations which we should like to discuss with you at our next meeting. They are in short.

(a) Should not the document be an "order" and not a notice.

(b) Should not appeals now pending before the Court of Bari from Tribunali in Foggia Province be decided by that Court and not retransferred to the new Regione distaccata (detached section). Hence the necessity of an operative date or an article discriminating between cases.

(c) Question of the "Magistratura del Lavoro".

C. E. WATSON, Colonel
Chief Legal Officer, AMG.

436

303

Subject:- Italian Courts, Province of Foggia.

111/2

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/206/46
29 December 43.

Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission,
BRINDISI.

Enclosed herewith is a copy of a letter which we have just received from the R.C.A.O. Region IV.

The situation described in the letter would seem to make postponement of the normal operation of courts in the Foggia area inevitable.

Wm J. H. R.

Major, A.U.S.,
Chief Legal Officer,

11

417

COPY.

AMG REGION IV ADVANCED.
C/O HQ AMG 15 ARMY GROUP.

To:- AMG HQ., 15 Army Group, C.M.F.
From:- HQ REGION IV AMG Advanced.

SUBJECT:- Italian Courts - FOGGIA.

Ref. T/225/Fogg.

Date. 25 December 1943.

1. Reference your letter AMG/206/75 of 15 Dec 43.
2. The Tribunale building is earmarked for use by NAAFI, and there is no chance of its being used by the courts unless very high authority so ordered.
3. That without similar orders, living space would not be available in Foggia for the numerous court officials as required to man the courts.
4. The bringing of witnesses and litigants into Foggia would create a problem due to the existing situation in that town.
5. The building was recently inspected and it is evident that it has sustained extensive damage as a result of the bombing and could not be used as a courthouse without repairs being made thereto.
6. The Tribunale courts are at present functioning in Lucera where there is an adequate courthouse and jail. The jail of Foggia is also not useable due to the bombing.

(Signed)

A. H. CHOVIL.
Major,
For R.C.A.O., Reg. IV.

10

363

Subject: Detached Section of Court of Appeal for Foggia.

*no enclosures
found 87 111/2*

B. A. H.,
15 Army Group,
G.M.F.

Ref. A. H. 2-6/13
1 January 44.

S.C.I.O.,
A. H. H., Region 17 (Nab).

Enclosed herewith is a copy of the English and Italian texts of a decree which the Italian Government is considering adopting, in an attempt to deal with the problem of disposing of appeals in the Foggia area.

2. It is my view that the enactment by Italian authority of any such law for execution in occupied territory would be improper. It would seem advisable, however, for us to issue such an Order over the signature of the Provincial S.C. I.O., or of the A.C. A.O., if the jurisdiction of either of the Tribunali extends beyond the borders of the Province.

3. If the publication of such an Order would seem to you to be desirable I suggest that the second paragraph of Article One should be omitted and that Article 4 should be amended to exclude any reference to the participation of the Italian Government in the choice of necessary personnel. Doubtless we may find it useful to obtain their suggestions as to appointment, but the authority to choose being ours no inconsistent implication should be made.

4. I should appreciate it if you would let me have your views on this matter before any definite steps are taken.

Rec'd Jan. 3.

W. A. H.

Major, A.S.S.,
Chief Legal Officer.

Copy to: S.C.I.O. Foggia.
S.C.I.O. Legal Sub-Commission, A.C.C. (for information).

SCHEMA DI ORDINE GENERALE

Esperimento di nuovo ordinamento delle Corti di Assise nel Circolo di
Assise di Foggia.

Poiché è comunemente riconosciuto, che l'ordinamento attuale delle Corti di Assise tracciato sulle linee degli ordinamenti coloniali, crea difficoltà all'amministrazione della Giustizia, non avendo corrisposta alle esigenze di questa, la fusione, in un unico collegio giudicante, di due magistrati e di cinque assessori, i quali uniti mi possono col loro giudizio, fondato spesso e nella migliore della ipotesi su semplici impressioni di udienza prevalere, per numero dei componenti ~~tre o quattro~~ ^{tre o quattro} sul giudizio tecnico dei magistrati tagati. *x tratta sulla lista degli assessori.*

Poiché è anacronistico affermare ancor oggi la necessità che nel collegio giudicante, attraverso gli assessori, subentri l'uso della esperienza pubblica offesa dal delitto o preoccupata dell'accusa.

Poiché è urgente portare anche in questo campo una riforma che porti la Corte di Assisi all'altezza a cui deve essere per la gravità dei giudizi che sono ad essa rimessi e per la inappellabilità della sua pronunzia.

Poiché è opportuno limitare il provvedimento ad uno solo circolo di Corte di Assisi onde se ne possa sperimentare la bontà.

Poiché è conveniente adottare tale provvedimento nel Circolo di Corte di Assisi di Foggia;

Si ordina quanto segue:

Art. I

disposta
In luogo dell'art. 2° del R.D.L. 23 marzo 1931 n. 249 relativo all'ordinamento delle Corti di Assise del Regno d'Italia, la Corte di Assise limitatamente al Circolo di Foggia è composta:

- a) di un presidente di Sezione di Corte di Appello che lo presiede
- b) di quattro Consiglieri di Corte di Appello, dei due dei quali in caso di mancanza di impedimento possono essere sostituiti da giudici di Tribunale.

In caso di mancanza o di impedimento il presidente è sostituito dal Consigliere di Appello più anziano, ed a integrare il Collegio subentrerà un giudice di Tribunale.

Il presidente e gli altri componenti del collegio compresi i giudici di Tribunale supplenti verranno nominati d'intesa col Governo, il quale fra i magistrati in servizio o comunque presenti nella circoscrizione della Corte suddetta e tra i tre ceti della sua controllata od in mancanza degli altri dal Governo Italiano con Decreto del Capo degli Affari Civili per

Due capitoli tratti e un cinque assommano, con l'ipotesi su come il migliore
dritto, fondato spesso e nella migliore delle ipotesi, sul piano
sioni di utilenza prevalere, per numero dei componenti Tratti sul piano
tratti tratti Tratti sulla lista degli assommi.

tecnico dei magistrati togati. *X* *tralle* sono cose di
 Poiché è anacronistico affermare ancor oggi la necessità che nel col-
 legio giuridicante, attraverso gli assessori, subentri l'uso della experien-

legio giudicante, attraverso gli avvocati, la pubblica offesa dal delitto o preoccupata dell'accusa. Poiché è urgente portare anche in questo campo una riforma che porti la corte di Assisi all'altezza a cui deve essere per la gravità dei giulisti la sua pronunzia.

Corte di Assisi a l'altezza a cui deve essere per la grandezza della sua pronunzia. che sono ad essa rimessi e per la inappellabilità della sua pronunzia. Potché è opportuno limitare il provvedimento ad uno solo articolo di dote.

Poiché è opportuno limitare il numero di corte di Assisi onde se ne possa esprimere la bontà, l'Amministrazione del Circolo di Corte

Corte di Assisi onde se ne possa
 essere rimandata la sentenza.
 Poiché è conveniente adottare
 tale provvedimento nel Circolo di Corte
 di Assisi di Poggia;

di Assisi di Foggia;
Si ordina quanto segue:

At 4.15

duoga
In luogo dell'art. 2° del R. D. L. 23 marzo 1937 n. 249 relativo all'ordinamento delle Corti di Assise del Regno d'Italia, la Corte di Assise limitatamente al Circolo di Foggia è composta:

- a) di un presidente di Sezione di Corte di Appello, del quale in caso di mancanza di impedimento possono essere sostituiti da giudici di Tribunale.

In caso di mancanza o di impedimento il presidente è sostituito dal Collegio di Appello più anziano, ed a integrare il Collegio subentrerà un giudice di Tribunale.

Il presidente e gli altri componenti del Collegio compresi i giudici di Tribunale verranno nominati d'intesa col Governo alleato fra di Tribunale alle supplenti verranno presentati nella commissione della Corte suddelegati in servizio o comunque presenti nella commissione della Corte suddelegati o in altre città della zona controllata ed in mancanza designati dal Governo Italiano con Decreto del Capo degli Affari Civili per l'intero anno e possono essere gli stessi Magistrati componenti la sezione distaccata di Corte di Appello di Foggia.

Sept. 23

In deroga all'art. 3° del suddetto R.D. la Corte di Assisi suddetta è
avvocata in Foggia= ogni volta che è pronto per la discussione un
numero di processi che impegnano ~~per un numero di processi che~~
~~meno di 10 udienze.~~ ~~meno di 10 udienze.~~

Essa può essere convocata eccezionalmente anche per un solo processo in un'occasione.

Nella città in cui fu commesso il reato, ove il Presidente lo ritenga opportuno, può essere convocata anche per un solo processo in un'occasione.

I magistrati addetti alla Corte di Assisi possono, quando sono liberi, dal servizio di questa attendere ad altre funzioni giudiziarie.

Art. 3

Agli effetti del presente ordine non si applicano gli art. 4
a 19, 22 a 25 del suddetto R.D.

Art. 4

L'ultimo comma dell'art. 20 di tale R.D. così modificato:
la sentenza è compilata dal presidente o da altro magistrato o facente
parte del Collegio ed è tutta scritta dal Presidente e dal cancelliere

Translation

DRAFT OF A CRIMINAL CODE.

Experiment with a new organic law for Court of Appeals in Appeals Circuit
of 20512.

THUS it is generally recognized that the present organic law of the Courts of Appeal designed along the lines of colonial organic laws causes difficulties in the administration of Justice because, not corresponding to its objectives due to the merger into a single judicial body of 2 magistrates and 3 assessors of whom the latter with their judgments often, and under the most favorable hypothesis, based upon simple impressions obtained from the trial may provide more over the technical judgment of the learned magistrates.

THUS it would constitute an anachronism to claim that today it is still necessary to give expression in the judicial body to the public conscience afforded by the crime and interested in the charges by means of assessors.

THUS there is urgent need in this field to put into effect a reform which would elevate the Court of Appeal to the standard which it merits due to the gravity of cases referred to it and because there is no appeal against its pronouncements.

THUS it is advisable to limit this provision to a single circuit of the Court of Appeal where its verifiability could be tried out.

THUS it is convenient to adopt this provision in the Circuit of the Court of Appeal at Reggio.

It is ordered as follows:

ART. 1

In derogation of Art. 2 of R.L. 25 March 1931 No. 249 dealing with the organic law of the Courts of Appeal of the Kingdom of Italy, the Court of Appeal of Reggio is composed:

- (a) of a president of a Section of the Court of Appeal, residing
- (b) of four counselors of the Court of Appeal of whom two may be replaced by judges of the Tribunale in case of unavailability or in-ordinance.

The president and the other components of the Court including the substitute judges of the Tribunale will be appointed, in agreement with the Allied Government, from the magistrates in service or otherwise present in the circuit of the aforementioned court or in other towns of the controlled zone or if none are available the four (four) designated by the Italian Government, by a Decree of the Chief Civil Affairs Officer for an entire year, and they may be selected from the magistrates constituting the detached Section of the Court of Appeal of Reggio.

ART. 2

In derogation of Art. 3 of the above mentioned R.L. the above mentioned Court of Appeal will convene at Reggio whenever there is ready for trial a number of cases which presumably will not take up more than 10 hearings.

By way of exception it may be convened also for a single trial in a case

the judges of the Court of Cassation, and under the
and 5 assessors of whom the latter select their judgment often, and under the
most favorable hypothesis, based upon simple impressions obtained from the
trial may prevail upon the technical judgment of the learned magistrates,
which it would constitute an anomalous body to the public con-
science necessary to give expression in the judicial body to the public con-
science offended by the crime and intervened in the charges by means of
assessors;

WHEREAS there is urgent need in this field to put into effect a reform
which would elevate the Court of Cassation to the standard which it merits due to
the gravity of cases referred to it and because there is no appeal against
its pronouncements;

WHEREAS it is advisable to limit this provision to a single circuit of
the Court of Cassation where its verifiability could be tried out;

WHEREAS it is convenient to adopt this provision in the Circuit of the
Court of Cassation at Bologna;

It is ordered as follows:

ART. 1

In derogation of Art. 2 of R.D.L. 23 March 1931 No. 249 dealing with the
organic law of the Courts of Cassation of the Kingdom of Italy, the Court of Cassation
of Bologna is composed:

- (a) of a President of a Section of the Court of Appeal, providing
- (b) of four members of the Court of Appeal of whom two may be replaced
by judges of the Tribunale in case of unavailability or impediment.

The President and the other members of the Court including the
substitute judges of the Tribunale will be appointed, in agreement with the
Italian Government, from the magistrates in service or otherwise present in the
circuit of the above mentioned court or in other towns of the controlled zone
or if none are available the President and the other members of the Court
by a Decree of the Chief Civil Affairs Officer for an entire year, and they may
be selected from the magistrates constituting the detached Section of the Court
of Appeal of Bologna.

ART. 2

In derogation of Art. 3 of the above mentioned R.D., the above mentioned
Court of Cassation will convene at Bologna whenever there is need for trial a num-
ber of cases which presumably will not take up more than 10 hearings.

By way of exception it may be convened also for a single trial in a town
where the crime mentioned was committed, if the President deems it advisable due
to the seriousness of the facts.

The magistrates attached to the Court of Cassation may, if not occupied
at this Court, perform other judicial functions.

ART. 3

Arts. 4 to 19, 22 to 25 of the above stated R.D. do not apply to the
present decree.

ART. 4

as follows: The President of the Court of Cassation at Bologna is authorized to
of the Court and is written out by the President or receiver.

Translation

Considering it advisable that penal and civil proceedings of appeals originating from the territorial district of the Tribunals of Foggia and Lucera, within the zone controlled by the Allied Forces, take place without further delay, it is ordered as follows:

Art. 1

A detached Section of the Court of Appeal with jurisdiction over the Tribunals of Foggia and Lucera, is established temporarily at Foggia, in order to deal with civil and penal cases decided in the first instance by a judgement rendered subsequent to September 30, 1943.

The said Section functioning as Magistratura del Lavoro is also competent to decide all appeals against judgement of the judges of the first instance from the districts of the above stated Tribunals rendered subsequent to September 30, 1943.

The appeals against judgement rendered prior to this date will be decided in accordance with the former jurisdiction.

Art. 2

One Section of the Court of Appeal mentioned in Art. 1 above will consist of a Counselor of Cassation with the function of a President of Section of Court of Appeal and of 5 Counselors of the Court of Appeal of whom two may be judges of Tribunale upon whom functions of a superior grade may be conferred in accordance with the Italian judicial organic law.

Art. 3

A Deputy Procurator General of Cassation with functions of Advocate General will be attached to the Office of the Pubblico Ministero. A Deputy Procuratore del Re may be attached to the same office.

Art. 4

The magistrates constituting the detached Section of the Court of Appeal and of the Office of the Pubblico Ministero will be appointed in agreement with the Italian Government by a Decree of the Chief Civil Affairs Officer from magistrates holding office or otherwise present within the district of the above mentioned Court or from magistrates residing in other localities within the occupied zone or if unavailable, from those designated by the Italian Government.

The said Section functioning as Magistratura del Lavoro is also competent to decide all appeals against judgement of the judges of the first instance from the districts of the above stated Tribunals rendered subsequent to September 30, 1943.

The appeals against judgement rendered prior to this date will be decided in accordance with the former jurisdiction.

Art. 2

One Section of the Court of Appeal mentioned in Art. 1 above will consist of a Counselor of Cassation with the function of a President of Section of Court of Appeal and of 5 Counselors of the Court of Appeal of whom two may be judges of Tribunale upon whom functions of a superior grade may be conferred in accordance with the Italian judicial organic law.

Art. 3

A Deputy Procurator General of Cassation with functions of Advocate General will be attached to the Office of the Pubblico Ministero. A Deputy Procuratore del Re may be attached to the same office.

Art. 4

The magistrates constituting the detached Section of the Court of Appeal and of the Office of the Pubblico Ministero will be appointed in agreement with the Italian Government by a Decree of the Chief Civil Affairs Officer from magistrates holding office or otherwise present within the district of the above mentioned Court or from magistrates residing in other localities within the occupied zone or if unavailable, from those designated by the Italian Government.

Ritenuta la opportunità che si evolvano senza *ulteriore* ritardo i processi in grado di appello sia penali che civili, relativi alle circoscrizioni territoriali dei tribunali di Foggia e Lucera, compresi nella zona controllata dalle truppe dei governi alleati, si ordina quanto segue:

Art. 1.

E' istituita temporaneamente in Foggia una Sezione distaccata di Corte di Appello, avente giurisdizione sui tribunali di Foggia e di Lucera, per la trattazione dei processi civili e penali decisi in primo grado con sentenza di data successiva al 30 settembre 1943.

La Sezione suddetta è competente a decidere anche *quelle* Magistratura del Lavoro in appello delle decisioni dei giudici di primo grado delle circoscrizioni dei summenzionati tribunali successive al 30 settembre 1943.

Gli appelli delle sentenze anteriori daranno decisa *la* secondo la precedente giurisdizione.

Art. 2.

Alla Sezione di Corte di Appello di cui all'art. 1 sono destinati un Consigliere di Cassazione con le funzioni di Presidente di Sezione di Corte di Appello e 5 Consiglieri di Corte di Appello di cui due possono essere giudici di *tribunale*, e qui possono essere attribuite le funzioni del grado superiore secondo l'ordinamento giudiziario italiano.

Art. 3.

All'Ufficio del Pubblico Ministero è destinato un Sostituto Procuratore Generale di Cassazione con le funzioni di Avvocato Generale.

Art. 1.

E' istituita temporaneamente in Foggia una Sezione Distaccata di Corte di Appello, avente giurisdizione sui Tribunali di Foggia e di Lucera, per la trattazione dei processi civili e penali decisi in primo grado con sentenza di data successiva al 30 settembre 1943.

La Sezione suddetta è competente a decidere anche *quelle* Magistrature del Lavoro in appello delle decisioni dei giudici di primo grado delle circoscrizioni dei summenzionati Tribunali, successivamente al 30 settembre 1943.

Gli appelli delle sentenze anteriori saranno decisi secondo la precedente giurisdizione.

Art. 2.

Alla Sezione di Corte di Appello di cui all'art. 1 sono destinati un Consigliere di Cassazione con le funzioni di Presidente di Sezione di Corte di Appello e 5 Consiglieri di Corte di Appello di cui due possono essere giudici di Tribunale, a cui possono essere attribuite le funzioni del grado superiore secondo l'ordinamento giudiziario italiano.

Art. 3.

All'Ufficio del Pubblico Ministero è destinato un Sostituto Procuratore Generale di Cassazione con le funzioni di Avvocato Generale e può esservi addetto un Sostituto Procuratore del Re.

Art. 4.

I Magistrati componenti la Sezione Distaccata di Corte di Appello e quelle del Pubblico Ministero saranno nominati di intesa con il Governo Italiano con decreto del Capo *idegli* Affari Civili per i Magistrati in servizio o comunque presenti nella circoscrizione della Corte suddetta o di un'altra città della zona occupata od in mancanza designati dal Governo Italiano.

MEMORANDUM

The following are Lt. Col. Rowe's views on points raised in the interview with Maj. Thackeray, 29 Nov. 45.

1. Discriminatory Law.

a. The Italian argument for delaying the legislation because of fear of damage to the property restored to Jews, does not stand because in destroying such property the Fascists and Germans would admit effect of Badoglio law in German held territory.

b. The text of the Badoglio law should be published in occupied territory (simultaneously with its publication in King's Italy).

(i) either by an ARMY Proclamation

(ii) or by an Italian provision published under ARMY authority.

2. Roma Corte d'Appello. plan

a. Due to the present law for evacuation of the city, the question of admission of additional personnel into the Province would have to be taken up with the XV Army Group people.

b. If the city of Roma is to be evacuated, we cannot set up any court there. It might be located in another town.

c. Let's wait before we allow the setting up of such Court until the extent of evacuation is known.

3. Italian Military Tribunals.

Our control as per final draft directives is too close. It would involve day to day supervising, handling of appeals, etc. If civilians and carabinieri are excluded, right of confirmation of death sentences would be sufficient control.

4. Damage to Ortanova Procura.

1. Discriminatory Laws.
 - a. The Italian argument for delaying the legislation because of fear of damage to the property returned to Jews, does not stand because in destroying such property the Fascists and Germans would admit effect of Dadooglio Law in German held territory.
 - b. The text of the Dadooglio Law should be published in occupied territory (simultaneously with its publication in King's Italy),--
 - (1) either by an ANCOF Proclamation
 - (11) or by an Italian provision published under ANCOF authority.
2. Forza Corte d'Appello. Plan
 - a. Due to the present ~~law~~ for evacuation of the city, the question of admission of additional personnel into the Province would have to be taken up with the XV Army Group people.
 - b. If the city of Poggia is to be evacuated, we cannot set up any court there. It might be located in another town.
 - c. Let's wait before we allow the setting up of such Court until the extent of evacuation is known.
3. Italian Military Tribunals.

Our control as per final draft directives is too close. It would involve day to day supervising, handling of appeals, etc. If civilians and carabinieri are excluded, right of confirmation of death sentences would be sufficient control.
4. Response to Ottaviano Pretura.

Send translation of letter to Lt. Col. Howe.
5. Attachment of AGO Legal Officers to Courts of Appeal in restored territory.

A grand idea!

2239

ALLIED COMBAT COMMISSION
Legal Reorganization

24 November 1943.

SUBJECT: Italian Courts in XV Army Group Area.

My dear:

Enc

The Italian Government is very anxious to set up a section of the Bari Court of Appeal at Foggia because at present advocates, parties and witnesses have to go to Bari which means passing from occupied to unoccupied territory and gives rise to difficulties of persons and permits. It seems to me a very good idea and unless you have a reason to the contrary may I tell them to carry on with the establishment of their court at Foggia.

The Italian Government are also preparing a complete memorandum on the repeal of fascist and discriminatory legislation. Col. Scialoja has written to you (copy to us) about certain discriminatory laws causing difficulties in Naples. I am sure that it will be better to deal with the matter as a whole rather than piece meal and I suggest that when we receive this memorandum in a day or two we let you have it and that we incorporate the operative parts in a Proclamation No. 15.

Thank you for your letter. I hope to be able to get over to see you but I am only here for a day or two and may have to forego that pleasure. If I can not do so, I will brief Major Wadsworth fully on points on which I wish you to be advised.

Yours sincerely,

P. S. Sullivans Court.

2240

The Italian Government is very anxious to set up a section of the Earl Court of Appeal at Reggio because at present advocates, parties and witnesses have to go to Bari which means running from occupied to unoccupied territory and given rise to difficulties of persons and results. It seems to me a very good idea and unless you have a reason to the contrary may I tell them to carry on with the establishment of their court at Reggio.

The Italian Government are also preparing a complete memorandum on the repeal of fascist and discriminatory legislation. Col. Shields has written to you (copy to us) about certain discriminatory laws causing difficulties in Naples. I am sure that it will be better to deal with the matter as a whole rather than piece meal and I suggest that when we receive this memorandum in a day or two we let you have it and that we incorporate the operative parts in a Proclamation No. 15.

Thank you for your letter. I hope to be able to get over to see you but I am only here for a day or two and may have to forego that pleasure. If I can not do so, I will brief Major Mackenzie fully on points on which I wish you to be advised.

Yours sincerely,

P. S. Military Courts.
I understand from the Italian Govt that the 18/19 courts are sitting at Avellino and for Naples and possibly at Martins France. Please pass this to Shields as I expect he knows all about that.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

AMU/gmc

200/1303

9 December 1943.

111/2

In reply
refer to: AMU/100/1.

TO : Chief Legal Officer,
HQ AMC, XV Army Group.

SUBJECT: Italian Courts, Reggio.

For your information, the Italian Ministry of Justice reports that notification was received from the Procuratore del Re in Reggio, dated the 4th inst. that "the prohibition issued by the Anglo-American Command to hold ^{and Civil} hearings at the Tribunale di Reggio is still in effect." There may be nothing in this; but it is not possible to open the court?

Yours
Colonel
Chief Legal Officer.

2243

9 December 1943.

111/2

In reply
refer to: 100/109/24

TO : Chief Legal Officer,
HQ AFM, XV Army Group.
SUBJECT: Italian Courts, Foggia.

For your information, the Italian Ministry of Justice reports that notification was received from the Procureurs del Re in Foggia, dated the 4th inst, that "the prohibition issued by the Anglo-American Command to hold ^{and Civil} ~~Public~~ hearings at the Tribunale of Foggia is still in effect." There may be nothing in this, but it is not possible to open the court?

Yours
Colonel
Chief Legal Officer.

(35)

2 2 4 3