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COURT PROCEEDINGS, LEGAL
AUG. 1943

UNITED MILITARY GOVERNMENT
SICILY REGION HEADQUARTERS
RI/26.011-2/TRJ
10/29/43

ADMINISTRATIVE INSTRUCTIONS NO. 2

SUBJECT: Duties of Legal Officers.

TO : All Legal Officers (through S.C.A.O.)

1. Duties of the Senior Legal Officer.

The duties of the Legal Officer assigned to each province fall into three general divisions.

- a. Supervision of, and assistance to all Italian Courts, operating within the Province.
- b. Supervision of all AMG Courts functioning within the Province; including the trial of the more important cases, maintaining the records thereof and forwarding the same to the Regional Headquarters, processing appeals, and in general taking such steps as are necessary to insure a fair and effective enforcement of the Proclamations.
- c. The rendering of such opinions and advice to the S.C.A.O. and subordinate departments, as may be required, and acting as counsel for the Provincial Military Government.

2. Procedure

- a. The supervision of all Summary Courts in the province, most of which will be conducted by C.A.O.s, is a matter of primary responsibility. The C.A.O.s are not usually lawyers and constant and careful instruction will aid them in the discharge of their duties.
- b. Superior Courts should be organized, with the Provincial Legal Officer assuming an active part, utilizing line officers from neighboring provinces whenever possible.
- c. The Summary Court Docket should be kept by each Summary Court Officer and frequently inspected by the Senior Legal Officer. Reports, to this headquarters, should be made on the loose Summary Court Docket

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- a. The supervision of all Summary Courts in the province, most of which will be conducted by C.A.O.s, is a matter of primary responsibility. The C.A.O.s are not usually lawyers and constant and careful instruction will aid them in the discharge of their duties.
- b. Superior Courts should be organized, with the Provincial Legal Officer assuming an active part, utilizing line officers from neighboring provinces whenever possible.
- c. The Summary Court Docket should be kept by each Summary Court Officer and frequently inspected by the Senior Legal Officer. Reports, to this headquarters, should be made on the loose Summary Court Docket sheets. Each Summary Court should keep notes of all cases out the form of reports are required in the following categories of cases, only:

- (1) When a sentence of 90 days or more, or a fine of 4,000 Lire or more is imposed.
- (2) When the case involves new or complicated questions of law, without regard to the extent of the penalty imposed.

- (3) When unusual leniency or severity in the sentence is deemed necessary.
- (4) Where there is an indication that an application for review will be filed.
- (5) When the Summary Court Judge feels that for any reason the full record should be submitted to this headquarters:

No regular report will be required by this headquarters, other than the forwarding of the Summary Court Docket sheets and the form No. 8 reports when required. Frequent, informal, letters are invited to keep this headquarters advised with reference to legal matters in each Province.

d. Appeals or applications for review should be made through the Senior Legal Officer, on form No. 11, in English, if practicable. These appeals should be forwarded promptly, with the form No. 8 report, if it has not already gone forward together with such comment as the Senior Legal Officer may care to make. The Appeals will normally communicate with this headquarters through S.L.O.

e. Senior Legal Officers will make an informal application to this headquarters for such forms as may be needed.

3. Sentences.

a. Sentences have been entirely too light. A sentence is given to act as a deterrent to other wrongdoers as well as to punish one who has offended. It should not be harsh nor vindictive but neither should it be based upon sentimentality, undue leniency or expediency. The social implications caused to the family by imprisonment of the guilty should not be permitted to counterbalance the necessity of vigorous punishment for the crime committed.

- (1) Offenses involving moral turpitude are offenses everywhere, and should be dealt with by a sentence sufficient to act as a deterrent to other offenders.

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(1) Offenses involving moral turpitude are offenses everywhere, and should be dealt with by a sentence sufficient to act as a deterrent to other offenders.

(2) Many offenses are made offenses by the Proclamations and do not involve an intent to commit wrong. The act is itself prohibited and therefore a violation should be punished.

b. An important function of Military Government is to control the civilian population of an area, so that the efforts of the Army will be expedited and not impeded. Certain offenses have peculiar significance to the Military, such as sabotage, interfering with communications, failing to surrender arms, helping soldiers,

thefts and the possession of Military property. These offenses should, generally, be dealt with by rendering a substantial sentence. Nominal fines, suspended sentences and undue leniency will not be sufficient to protect the Military Forces from the interference which these offenses cause. Every effort should be made by the Senior Legal Officer to co-ordinate his law enforcement program with the Military in his area as well as with Public Safety Division and with local police agencies.

c. Black Markets have a far reaching effect upon the people of Sicily, by rendering it difficult or impossible for great numbers of distressed people to obtain the necessities of life. This situation is exploited by selfish interests for their own gain. The food supply of this island must be used to give at least a minimum of food to the greatest number of inhabitants. Every effort must be made to eliminate the Black Market by careful preparation of the prosecutions, coordinating the work of all agencies and by a vigorous, swift and certain sentence to wrongdoers. As in paragraph 3b, fines, suspended sentences and undue leniency will not strike at the heart of the Black Market. Whenever practicable, the wrongdoer's right to do business (his license) should be rescinded as part of the punishment.

d. Suspension of penalties is a duty and an obligation in proper cases but care should be exercised that such suspensions do not nullify the program of law enforcement nor weaken the respect due the Court. If a case is worth bringing and the guilt of the accused is evident, a proper penalty should be imposed. If a series of cases merely result in suspended sentences, perhaps the cases should never have been instituted. Suspension of penalties should not be used as an expediency to compromise with crime.

e. Collection of fines is a means to an end, to secure proper respect for law, and is not, in itself, a proper end. Fines should be paid at the conclusion of the trial or the accused committed to prison. Fines should be remitted to the accused official without delay.

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4. Supervisors of Italian Courts will occupy an increasingly important place in the efforts of the Senior Legal Officer. This supervision will include some of the following items:

a. Reliability, integrity and competency of the judicial personnel is of the highest importance. Recommendations for the removal from office of any person who is unworthy of his position should be made to Regional Headquarters when good reason therefor appears.

b. The Italian Courts normally function more leisurely than do Anglo-Saxon Courts. War and the interruption of the normal life of the people of Sicily, attendant upon war and invasion, have disrupted the normal judicial schedules. Difficulties of communication and transportation exist. These Courts, therefore, must have firm but sympathetic guidance to the end that in the shortest practicable time they can be made to function efficiently for the benefit of the people of Sicily.

c. Constant supervision, inspection and helpful advice is necessary.

5. All orders, instruction and directives, heretofore or hereafter issued by Headquarters AMGOT or the Chief Legal Officer, AMGOT, are and will remain in full force and effect, except as modified by orders and instructions from this headquarters under authority from higher headquarters, and full compliance therewith will be required by each Legal Officer.

6. The Senior Legal Officer must at all times hold himself in readiness to render full, complete and intelligent service to the Provincial Military Government of which he is a part.

By order of Lt. Col. Charles POLETTI, R.C.A.C.

WILLIAM R. JORDAN,
Lt. Col., C. A. C.,
Regional Chief,
Legal Officer.

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Distribution.

1 Each Staff Section Region I.
10 Headquarters, C.I.O., AMGOT
S.C.A.O.S
15 Palermo
10 Messina
10 Catania
10 Ragusa
10 Caltanissetta
10 Enna
15 Agrigento

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- 10 Trapani
- 10 Syracuse

Regional Chief, Region I.

Via Garibaldi - Stazione Centrale
Procura Generale

Com. Rosario Miceli
Avvocato Generale
per Corte d'Appello

Istituto Maria Adelaide

11. Via Cialafini 3049

For T. P. E. P. C.

ad Catania - fu C. S. M. R.

M separat
with man bond

19 Oct, 1943.

HEADQUARTERS AIGOT.

Court Invercorty

Subject:- Italian Legal Advisory Committee.

To:- All concerned.

AIGOT/1001/L.

1. CREATION OF COMMITTEE.

A Committee to be known as the "Italian Legal Advisory Committee" (hereinafter called "the Committee") is hereby created.

2. COMPOSITION OF THE COMMITTEE.

The Committee will consist of not more than seven and not less than four members appointed from those who have held high positions as judges, legal officials or members of the bar in Sicily.

3. The power of appointing and removing as bars of the Committee is vested in the Chief Legal Officer, AIGOT.

4. FUNCTIONS OF THE COMMITTEE.

The powers and duties of the Committee, which may be modified from time to time by the Chief Legal Officer, AIGOT, are as follows:-

- (1) To advise the Chief Legal Officer, AIGOT on any points of Italian Law or Procedure or other points connected therewith which may be submitted to it;
- (2) To advise the Chief Legal Officer, AIGOT on the functioning of Italian Courts, judges, judicial officials, legal practitioners or other legal personnel throughout Sicily, at any time occupied by Allied Troops and to make recommendations regarding the same particularly with a view to procuring increased speed and efficiency throughout the Italian legal system;
- (3) To advise AIGOT on any suggestions, complaints, claims or requests emanating from any judge, judicial official or legal practitioner addressed to the Legal Division of AIGOT;
- (4) To make recommendations for the removal or appointment of any judge or judicial official as may be necessary, but without prejudice to removals or appointments of any member of the judiciary being made by AIGOT without reference to or contrary to the recommendations of the committee;
- (5) To appoint for each province a local representative previously approved by AIGOT, whose duties shall be:-
 - (a) To act as the provincial representative of the Committee;
 - (b) To advise the Senior Legal Officer of the Province on any

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- (5) To appoint for each province a local representative previously approved by AIGOT, whose duties shall be:-
 - (a) To act as the provincial representative of the Committee;
 - (b) To advise the Senior Legal Officer of the Province on any points of Italian Law or Procedure which he may request and generally to act as intermediary between the Senior Civil Affairs Officer and the Italian Courts, Judges, judicial officials, legal practitioners and other legal personnel in the province.

(6) Generally to perform such other functions as AIGOT may from time to time request.

By Order of the Chief Civil Affairs Officer:

C. M. Stottord
 CHARLES M. STOTTORD,
 Lt. Colonel, G.S.C.
 Chief Staff Officer.

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19 August 1963

HEADQUARTERS ALCOT.

23607/4604/L.

Subject: Opening of Italian Courts.

To: All Senior Civil Affairs Officers.

1. Further to the Chief Staff Officer's instructions of the 13th instant with regard to the re-opening of Italian Courts, Provincial Senior Civil Affairs Officers are now directed to re-open all "Preture" wherever they have not so far been re-established. The competence of these Courts will be exclusively criminal and specific directions will be forwarded shortly in connection with Civil Procedure.
2. The opening of Tribunale Fomale, being a matter now under consideration, Senior Civil Affairs Officers and Legal Officers should take steps to prepare their re-establishment at short notice. They should contact judges and judicial personnel immediately available, ascertain that they are politically suitable to undertake their functions, instruct them to collect their archives forthwith and whenever necessary new premises will have to be found to enable them to pursue their activities.
3. All judicial personnel having left the district for "reasons of war" should be made to return to their posts at the earliest possible date under penalty of dismissal. Payment of their salaries will have to be assured and amounts approved by the Financial Section.
3. As seen in these steps are taken on Provincial Senior Civil Affairs Officers are satisfied that Tribunale Fomale can be re-opened without delay, an order will be issued to that effect setting forth rules and regulations prior which they will be allowed to carry out their legal functions.
- Temporary assignments to the Italian Penal Procedure may also be decided upon by the Chief Legal Officer in order to speed up the hearing of trials and judicial investigations, so as to relieve the present congestion of local prisons.
4. The "Tribunale Civile" will not be re-opened until further notice but this step is also under consideration. In the meantime the "Pretorato del Tribunale" will be allowed to deal with the following urgent procedures under Legal Officers' supervision:-
 - "Appointment of Receivers "benfante lite" (deceased persons and creditors)."
 - "Declarations of absence or of presumed death."
 - "Judicial Separation of Spouses."
 - "Measures to protect the interests of minors (Appointment of Guardians etc.)."
 - "Rights of Married Women."
 - "Interment or Release of Lunatics."

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Procedure.

2. The opening of Tribunale Penale, being a matter now under consideration, Senior Civil Affairs Officers and Legal Officers should take steps to prepare their re-establishment as short notice. They should contact judges and judicial personnel immediately available, ascertain that they are politically suitable to undertake their functions, instruct them to collect their archives forthwith and whenever necessary re-appointees will have to be found to enable them to pursue their activities.

3. All judicial personnel having left the district for "reasons of war" should be able to return to their posts at the earliest possible date under penalty of dismissal. Payment of their salaries will have to be assured and amounts agreed by the Financial Section.

4. As soon as these steps are taken an Provincial Senior Civil Affairs Officers are satisfied that Tribunale Penale can be re-opened without delay, an order will be issued to that effect setting forth rules and regulations under which they will be allowed to carry out their legal functions.

5. Temporary amendments to the Italian Penal Procedure may also be decided upon by the Chief Legal Officer in order to speed up the hearing of trials and judicial investigations, so as to relieve the present congestion of local prisons.

6. The "Tribunale Civile" will not be re-opened until further notice but this step is also under consideration. In the meantime the "Presidents del Tribunale" will be allowed to deal with the following urgent procedures under Legal Officers' supervision:-

- "Appointment of Receivers "pendente lite" (deceased persons and creditors)."
- "Declarations of absence or of presumed death."
- "Judicial Separation of Spouses."
- "Measures to protect the interests of Minors (Appointment of Guardians etc.)."
- "Rights of Married Women."
- "Interment or Release of Lunatics."
- "Orders concerning Shares or Bonds destroyed or lost."

7. Senior Civil Affairs Officers will report on the situation in their province as soon as they are in a position to do so.

By order of the Chief Civil Affairs Officer:

Charles M. Stifford
 CHARLES M. STIFFORD,
 Lt. Colonel, USG,
 Chief Staff Officer.

3047

Subject:- Temporary Amendments to Italian Penal Procedure.

To:- The President of the Court of Appeal, Palermo. AIGOT/4004/L.

From:- The Chief Legal Officer, AIGOT, H.Q. 19th Aug. 1943.

1. I have studied with interest your memorandum of 13th August, and as a result of your recommendations, I agree that notwithstanding the provisions of the Italian Penal Code and Code of Penal Procedure, the following forms of procedure will be adopted to meet present emergencies:-

(a) The legal delay between date of service and date of trial to be reduced to 5 days.

(b) Articles 462 and 463 of the Code of Penal Procedure to be modified so that whenever witnesses or injured parties are absent or cannot be served by reason of the state of war, the Court may have power to dispense with their presence and to order that the evidence given by them before the examining magistrate should be read instead.

(c) Article 433 (requiring joint trial of joint defendants) and Article 434 (permitting separation during trial) to be amended to permit separate trial of joint defendants now in custody when it is impossible to produce all the joint defendants.

(d) The Court and Prosecution to have the right to grant provisional liberty even in cases set forth in Article 253 of the Code of Penal Procedure, whenever the offence is not serious or the circumstances in which the act has been committed do not justify the continuous detention of the accused.

(e) If in any case before it the Court is of the opinion that the maximum sentence for the offence charged is excessive under the circumstances of the particular case, it will forward the record to the Chief Legal Officer of AIGOT with its recommendations.

Please have prepared forthwith and submit to me as soon as possible a draft of the amendments required to carry out the above.

2. It is also agreed that Italian Civil Courts may proceed with the following urgent procedures:-

- "Appointment of receivers 'rendente lite' (absent persons and creditors)."
- "Declaration of absence or of presumed death."
- "Judicial Separation of Spouses."
- "Measures to protect the interests of minors"
- "Rights of married women."
- "Internment or release of lunatics."
- "Orders concerning shares not being destroyed or lost."

(a) The legal delay between date of service and date of trial to be reduced to 5 days.

(b) Articles 462 and 463 of the Code of Penal Procedure to be modified so that whenever witnesses or injured parties are absent or cannot be served by reason of the state of war, the Court may have power to dispense with their presence and to order that the evidence given by them before the examining magistrate should be read instead.

(c) Article 499 (requiring joint trial of joint defendants) and Article 474 (permitting separation during trial) to be amended so as to permit separate trial of joint defendants not in custody when it is impossible to produce all the joint defendants.

(d) The Court and Prosecution to have the right to grant provisional liberty even in cases set forth in Article 253 of the Code of Penal Procedure, whenever the offence is not serious or the circumstances in which the act has been committed do not justify the continuous detention of the accused.

(e) If in any case before it the Court is of the opinion that the minimum sentence for the offence charged is excessive under the circumstances of the particular case, it will forward the record to the Chief Legal Officer of AIGOF with its recommendations.

Please have prepared forthwith and submit to me as soon as possible a draft of the amendments required to carry out the above.

2. It is also agreed that Italian Civil Courts may proceed with the following urgent procedures:-

- "Appointment of receivers 'pendente lite' (deceased persons and creditors)."
- "Declaration of absence or of presumed death."
- "Judicial Separation of Spouses."
- "Measures to protect the interests of minors."
- "Rights of Married Women."
- "Interment or release of Lunatics."
- "Orders concerning shares and bonds destroyed or lost."

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Will you also submit in draft your proposals as to the Order to be issued by the Allied Military Government to carry this into effect.

3. In future all judgments will be given "in the name of the Law". Please issue the necessary instructions to that effect to all judges throughout the Occupied Territory.

4. In conclusion, I wish to draw your attention to the fact that in regards to both criminal and civil courts, the following powers are reserved to the Allied Military Government:-

(a) The right of attendance by a Civil Affairs Officer or Legal Officer at any court session:

(1).

- (b) The right to revise any sentence or verdict;
- (c) The right of recourse to the Military Governor by all defendants under petition by any party, when the claim is made that the judgment was affected by hostility towards the Allied Forces or was prejudicial to their interests;
- (d) The confirmation of death sentences and the power of clemency being vested in the Military Governor.

I agree with you in regard to the opening of Civil Courts and hope to be able to give the necessary instructions to that effect shortly.

H. E. G.

Lieut. Col.,
Chief Legal Officer,
AMGOT.

AMGOT, H. E.

