

ACC

10000/143/225

MEMORANDA
NOV. 1943 - M

10000/143/225

MEMORANDA FROM LEGAL SUB-COMMISSION & REGIONS
NOV. 1943 - MAY 1944

ON HIS MAJESTY'S SERVICE.

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Memoranda from Legal Sub-Commission
9 Regions

This Referred to Date

10000 143

225

Memoranda from Legal Sub-Commission
& Regions

Folio Referred to Date

10000 / 43 / 225

THIS FOLDER	
CONTAINS	PERS
FROM	NOV - 1943
TO	MAY - 1944
CATALOGUE	

File No. 100-100000
Sheet No. 100000

Folio No.	Ref.	Date.	To/From.	Subject.
1A	4002/L	1 Nov 43	From C. L. O.	Administrative Instruction (Legal)
2A		28/11/43	From Col. Hart	Points in Legal Draft Directive - effect of the Dir
3A	4109/L	6/12/43	" C. L. O.	Office of Records of Special Prosecution
4A	4113/L	14/2/44	" Legue	Italian Legislation
5A.		17/2/44	To S.O. Admin. V.P.	Memorandum.

2036

HEADQUARTERS
ALLIED CONTROL COMMISSION
Public Safety Sub-Commission

Folio 7A for ~~action~~/information

C.P.S.....

D.O.P.S..... *Al*

Ex. Officer..... *W*

Police..... *Therney*

Fire & C.D..... *W*

Regn. & Licensing..... *W*

Adm. Officer.....

REMARKS.....

.....937.....

29 FEB 1988

0000/0000

VR.

10347: Espionage Cases.

1. I confirm conversation Col. Wright - Lt. Col. Gibson when the former visited RAI yesterday, when the following was agreed:

(c) That after the Penickhill case which commences on Friday next the present arrangement whereby all espionage cases are handled by HQ AF and dealt with by 5th Army HQ will cease.

(a) In future when espionage or other cases arise it is agreed that they will be handled by the Army concerned which will deal direct with the SAC or 5th or 8th Army (2) as the case may be and request him to convene a court.

(c) If more convenient in any particular case having regard to the locality where the prisoner is in gaol or other circumstances such cases may be tried by Courts constituted by Regions 3 or 5 and the Army concerned will contact such Regions direct.

~~Begonia~~ 3 H₂O attempted at Naples - NLO Lt. Col. Simpson
Begonia 5 H₂O " " " Campobasso - NLO Lt. Col. ~~Simpson~~ Petrus.

Normally, however, all cases in gray areas will be dealt with by JAG 9th or 8th Army.

(d) This arrangement will be reconsidered as soon as mutually convenient.

2. I should also like to place on record what I said yesterday in reply to your statement that difficulty might be experienced in procuring the attendance of witnesses who were not available by reason of military operations, namely: in cases where an accused was charged with commission of a serious crime, ⁹³¹ civilly a crime carrying the death penalty, the prosecution should hesitate to ask the Court to exercise the power conferred by Art. 22 1(b) (consolidated Instructions for A.M. Courts at any rate in the case of important witnesses for the Court might easily find itself unable to convict or if a conviction was made it might be quashed. While it is impossible to lay down any principle and every case must be determined on its own merits you will, I am sure, appreciate that the presence of the witness in Court and the right of cross-examination is no less a part of Anglo-American ideas of justice that the absence of an important witness in a serious case may well prove fatal to the prosecution.

copy to: HHS Regions 3, 4, 5
HHS 5th & 8th Annals
HHS C.A.S.

G. R. WYVEN, Colonel
Chief Legal Officer.

Public Safety Section
19402161
P.H.

RECEIVED
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 39L

100/4011/L.

12 March 1944.

SUBJECT: Directive from the Minister of Justice in regard to offences against Allied Forces and Property.

TO : See Distribution List.

1. Enclosed are copies of the translation of a directive from the Minister of Justice to Procuratori Generali and Procuratori del Re dated 8 March 1944 for the purpose of expediting and making effective trials of Italians for offences against Allied personnel and property.

2. All personnel in your organization having to do with the arrest and subsequent trial of offenders in the Italian courts should be advised of the contents of the directive.

3. In order that the best results may be obtained from this effort Allied personnel should give the Italian law enforcement officials their fullest cooperation. It has sometimes happened that offenders are turned over to the Carabinieri without sufficient data on which charges can be based and without the names and addresses of the prospective witnesses. Also there have been delays in handing over offenders to the Carabinieri. This should be avoided.

4. A further directive in respect of proceedings before Italian Military Courts in the same connection will be forwarded to you as soon as received from the President of the Italian Supreme Military Court, General Morandini.

Richard H. Viener
RICHARD H. VIENER
Lt. Col. CAC
Deputy Chief Legal Officer.

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20 copies each for transmission to every legal officer and to every legal liaison officer at the Courts of Appeal.

935

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Richard H. Wimer
 RICHARD H. WIMER
 Lt. Col. GAC
 Deputy Chief Legal Officer.

Distribution List:

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SIO 5th Army	- 10	
SIO 8th	- 10	

935

Translation: By Major Harpford.

Salerno, 8 March 44

MINISTRY OF JUSTICE.

Central Office for Criminal Affairs.

SUBJECT: Directive in regard to proceedings for offences of any description committed against the Allied Governments, Allied forces and property.

To all Procuratori Generali -
Procuratori del Re.

Attention has been drawn on previous occasions by circular directive from this Ministry to the Procuratori Generali to the fact that offences of theft especially to the detriment of Allied Forces were on the increase and it was recommended not only that the police be given strict instructions in relation to the necessity of preventing such thefts by exercising the greatest watchfulness, but also that pre-trial investigations be carried out with care and solicitude, always bearing in mind the gravity of the offence when having to take a decision with regard to the personal freedom of the accused.

It was also requested at the time that this Ministry be kept informed, as soon as the charges were known, of any theft of correspondence and other serious crimes affecting the Allied Forces, and also of the result of the inquiries and proceedings.

Now, at the request of the Allied authorities, the general instructions hereunder, (in addition to and in partial modification of previous directives) shall be followed for any offence committed against the Allied Governments, Forces and property.

In this respect, it must be remembered, that the Allied Military Police will inform at the same time the Allied Control Commission, the Royal Carabinieri (to whom prisoners shall be handed) and the Procuratore del Re of the names of the accused and of their offence.

As soon as such information is received, Procuratori del Re shall decide whether the offence committed falls within the jurisdiction of the Italian Military Courts or the ordinary Civil Courts, bearing in mind the provisions of Article 15 of the Italian Military Code of War, which this Ministry considers applicable in this connection.

As soon as the competence of the Civil Courts has been established the Procuratori del Re shall initiate penal proceedings forthwith and if necessary shall request from the Carabinieri a copy of the charge sheet (denuncia). The provisions of Article 31 of the Penal Code of Procedure shall be applied whenever the gravity of the offence renders it undesirable that such case be tried before a Pretorian Court and when possible the pre-trial proceedings shall be cut down to the minimum, the Procuratore availing himself of the short procedure (giudizio direttissimo).

Furthermore, the Procuratore shall make certain that these proceedings be given absolute priority during pre-trial investigations (istruttoria) and also in the lists, and that the findings be accurate and comprehensive, always remembering the gravity of such crimes which by interfering with the smooth running of the Allied services delays the achievement of the principal aim of the Italian State to drive the Germans out of Italy.

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All decisions taken by the Procuratori as to proper jurisdiction, the results of pre-trial investigations and of the Court proceedings shall be communicated forthwith to the local Allied Legal Officer, to whom the Procuratori del Re may refer whenever they deem it useful during the investigations and trial, especially in regard to the actions of the police and the examination of their evidence.

Furthermore the Allied Control Commission have expressed the wish that provisional liberty (except under special circumstances) should not be granted for the offences in question or, that proper security be obtained in order to ensure that defendants shall not escape the law.

This request is perfectly legitimate because not only is the Commission personally interested in the punishment of such offenders but also it corresponds with the views of this Ministry in regard to the gravity of these crimes. Procuratori del Re are therefore urged, in cases when the granting of provisional liberty is optional, to make full use of their discretionary powers in this connection.

Finally in modification of previous instructions Procuratori Generali are requested to forward to this Ministry at the end of every month, a list of such cases, which have been tried in their district indicating the result of each proceedings and also a nominal roll of matters pending, either before the examining judge or the Court, giving the reasons why specific cases have not reached finality within the maximum time limit of two months after the notification from the Allied police has been received.

The Minister.

E. CASATI.

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The Minister.
D. CASATI.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Public Safety Sub-Commission

17 February 1944.

MEMORANDUM TO: Staff Officer, Admin. V.S.

1. The procedure outlined in C. . . 's letter, "Subject:- Italian Legislation" dated 12 Feb. 1944, leaves nothing to add.

2. As is intimated, the proposed procedure cannot become operative unless a well-defined relationship is achieved with the Italian ministries. At least four Italian Ministries cover fields which affect directly the scope of activity of the Public Safety Sub-Commission. The activities of other ministries might affect it indirectly but importantly. Rather than have each sub-commission undertake to contact all of the ministries with which it may have to deal, it is suggested that a very brief resume' of any proposed decree be submitted to the Admin. Vice-President before it leaves the ministry of origin for transmittal to the legal adviser to the Cabinet of Ministers. (See par. 2 of basic letter). This resume' could be placed upon the agenda of our semi-weekly meeting, or brought to the attention of the sub-commission immediately if necessary.

3. It is my opinion that a standard operating procedure of this sort is necessary, particularly in the opening phase of our operations. It can be supplemented of course by the informal relationship suggested in par. 6 of basic letter.

PAUL G. KIRK,
Colonel, Infantry,
Chief, Public Safety
Sub-Commission.

PGK/5

PA a/3

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee.
APO 394

14 February 1944

ACC/4113/L

SUBJECT: Italian Legislation.

TO : All Subcommittees.

1. In the course of meetings between Subcommittees and their opposite numbers in the Italian Government and discussions on matters of policy it frequently becomes necessary for Subcommittees to consider the initiation and preparation of decree laws by the Italian Government and this directive lays down the procedure to be followed.

2. The method of preparation of decrees by the Italian Government is as follows:

Under the present Italian system of administration all legislative proposals emanating from the several Ministries of State are drafted by the originating department itself for submission to the legal adviser to the Cabinet of Ministers as a preliminary to consideration by that body. The draft bill or administrative decree when approved in principle by the Council of Ministers is examined as to its final legal form by the Minister of Justice before presentation to the King or Chief of Government for signature and publication in the Official Gazette.

3. When a Subcommission and a Ministry are agreed on a joint policy which necessitates a decree law it is the duty of the Ministry concerned to prepare the decree and not ACC. When considering the terms of the draft decree with the Ministry concerned the Subcommission should AT THIS STAGE consult the Legal Subcommittee to see that the draft decree in fact carries out what the Subcommission has in mind.

4. It is then the duty of the Italian Ministry concerned to carry through the draft in accordance with the procedure outlined above. If any changes are made in the draft at a later stage the Ministry concerned should be asked to inform the Subcommission concerned and if any difficulty arises therein the latter should consult the Legal Subcommittee.

5. The decree only becomes effective in law on the date of its publication in the Gazzetta Ufficiale and is NOT operative in territory still occupied by the Allied Forces. If the Subcommission concerned desires to make such decrees operative in occupied territory the Legal Subcommittee should be so informed in writing BEFORE, if possible, the date of publication in the Gazzetta.

6. Apart from the foregoing the Italian Government may initiate

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6. Apart from the foregoing the Italian Government may initiate and prepare decrees on their own and not as the result of a common or agreed policy. The relationship between Subcommittees and Ministries should be such that Ministers will as a matter of course inform their opposite numbers of their intentions in this respect at the earliest stage so that any defects may be remedied and that any appropriate action may be taken thereon sooner rather than later.

7. The above draft proposed directive is circulated for your comments to be made to Staff Officer to Administrative V.P. on or before 17 Feb. 44. Para 6 has been drawn vaguely in the absence of policy directive and your comments hereon only specially asked.

Copy to: ACC/4104/L

G. R. Upjohn
G. R. UPJOHN, Colonel
Chief Legal Officer.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.P.O. 512
LEGAL SUB-COMMISSION

AM/1409/L

Subject:- Office of Director of Special Prosecutions.

To :- S.O.I.C. (thru ROACs) Regions I and II.

6th December 1943.

1. In order to achieve uniformity in prosecution and, as far as possible, uniformity in the imposition of punishments for all crimes deemed directly to affect special interests of the Allied Military Government, there has been established within the Legal Sub-Commission, this Headquarters, the Office of the Director of Special Prosecutions, Legal Sub-Commission.

2. The function of the offices of the Director of Special Prosecutions is to advise and, whenever necessary, to assist in or conduct all prosecutions within the occupied territory, of crimes within the category described in paragraph 1.

3. Crimes within the category described in paragraph 1 are :-

- (a) All criminal acts of any kind or nature whatever, that are committed with the purpose or intent of aiding or assisting the enemies of the United Nations or of interfering with the operations of the Allied Forces.
- (b) All criminal acts which tend to bring about a substantial interference with the operations of the Allied Forces within the occupied territory, irrespective of the specific intent with which they are committed.
- (c) All acts of organized or mass violence or terrorism or of organized or mass resistance or opposition to the Allied Military Government or other lawfully constituted government or its representatives or agents.
- (d) Violation of Article V of Proclamation No. 7 of July 1943.
- (e) All violations of applicable laws, decrees, Proclamations, orders and regulations (hereinafter referred to as "black market cases") which constitute :-
 - (i) a diversion of essential commodities from legal channels by hoarding, transportation or sale through other than legal means;
 - (ii) an unlawful purchase or sale of such commodities at prices in excess of legally prescribed maximums.
- (f) All other substantial...

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Public Safety 34

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 - (i) a diversion of essential commodities from legal channels by hoarding, transportation or sale through other than legal means;
 - (ii) an unlawful purchase or sale of such commodities at prices in excess of legally prescribed maximums.
- (f) All other substantial violations which in the judgment of the C.A.C., Legal Officer or C.A.P.O. having jurisdiction thereof are of such a nature or extent as to fall within the category described in paragraph 1.

4. Whenever cases of the kinds mentioned in paragraph 3, sub-**931** (e), (b), (c), (d) and (f), or major black market cases arise, it shall be the duty of the C.A.C., C.A.P.O. or Legal Officer having jurisdiction :-

- (a) to report the case immediately through Regional Headquarters to the Director of Special Prosecutions;
- (b) whenever practicable in view of existing communication and transportation difficulties, to withhold prosecution of the offenders until advice is received from the Director of Special Prosecutions through Regional Headquarters to proceed with the prosecution.

(c) To give all such cases special preferred and expeditious treatment, including to the maximum extent possible special investigative attention to make certain that all available evidence of the offence has been secured and all available individuals involved in the offence have been discovered and apprehended.

5. It shall be the duty of each Regional Headquarters to forward as soon as practicable all reports of the type described in paragraph 4 hereof to the Director of Special Prosecutions and, in any event, to render such assistance to the investigation and prosecution of offences so reported as the Regional Chief Legal Officer deems necessary.

There, however, in view of the nature of the case so reported and the state of transportation and communication facilities, it is not deemed practicable to withhold prosecution until advice is received from the Director of Special Prosecutions, it shall be the duty of Regional Headquarters to take all necessary steps to ensure prosecution of the case in accordance with the policy defined in this directive.

6. All prosecutions for crimes that affect the interests of A.M.G. as defined in para. 3 hereof shall be brought before A.M. Courts.

7. The procedure described in para. 4 hereof shall be followed in all cases of any nature whatsoever, if it seems likely that the prosecution is to be brought before a General A. M. Court. The duties of Regional Headquarters with respect to such cases shall be as set forth in para. 5 hereof.

8. Major black market cases as distinguished from other black market cases are subject to the procedure set forth in para. 4 hereof. No hard and fast rule can be laid down defining a major black market case. Illustrative of the type of cases falling into this category are the following types of cases. These are examples only for they by no means exhaust the category :-

- (a) Violations which are the result of the operation of any organized group, ring or conspiracy;
- (b) Violations which involve a breach of trust such as violations by law enforcement officers or other public officials charged with the supervision of black market practices or with the administration of supplies or rationing;
- (c) Violations whose extent is such as to indicate a black market operation on a major scale.

9. Success of the current drive against black market cases is of special interest to the A.M.G. Hence the greatest emphasis should be laid upon the prosecution and investigation of major cases. Other black market cases should also be the subject of an intensive law enforcement drive by C.I.C., Legal Officers and C.I.P.O.s. The greatest available concentration of time, effort and enforcement personnel should be made upon this type of violation. The steps to be taken in pursuance of this policy will depend on a large extent upon the resourcefulness of the C.I.C.O., Legal Officer or C.I.P.O. having jurisdiction and his knowledge of local conditions. The following measures, however, should be put into effect whenever they are applicable:-

- (a) Imposition of uniform punishments for this type of violation within the limits set forth in the directive of the Chief of the A.M.G.

Regional Chief Legal Officer deems necessary.

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- (a) Imposition of uniform punishments for this type of violation within the limits set forth in the directive of the Chief Judicial Officer on the subject;
- (b) A special effort to discover and apprehend major violators, suppliers, transporters of grain on a large scale and individuals connected with organized black market activity;
- (c) In connection with the above a policy of leniency to minor offenders who aid the enforcement authorities by giving information concerning their sources of supply, their confederates, or other matters;
- (d) Dissemination by whatever means available of publicity as to cases actually tried, the names of the offenders and the punishments imposed.

- 3 -

- (c) Establishment of road blocks and the use of such other special investigative devices as may be warranted by conditions obtaining in any particular locality.
10. Communications from Regional Headquarters will be transmitted to the Legal Sub-Commission for the office of the Director of Special Prosecutions.

Richard H. Wilmer
 RICHARD H. WILMER

Lt. Colonel,
 Acting Deputy Chief Legal Officer.

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(For information)

Richard H. Wilmer
 RICHARD H. WILMER

Lt. Colonel,
 Acting Deputy Chief Legal Officer.

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Points in Legal Draft Directive which may
affect Public Safety Directive.

Allied Military Courts.

Pending cases to be completed.

Reviews of findings and sentences to be expedited.

If military zones are established and Allied Military Courts function therein, Summary and Superior Military Courts will be established.

If Allied Military Courts are set up in any other part of unoccupied territory, they will be established by and under the orders of H.Q., A.C.C.

In closing out activities, convictions must be re-examined, outstanding fines checked and Allied Military Court dockets checked.

War Crimes.

If it comes to the notice of R.C.L.O.s that war crimes have been committed the fact must be reported to the C.L.O. and if it is learnt that any Italian Court contemplates dealing with such cases, the judge must be warned against attempting to do so.

Italian Legislation and Laws.

R.C.A.O.s are not to interfere if the Italian Government make amendments to or suspend existing Italian Laws, but amendments to the Rules of Procedure initiated during the period of Allied Military Government must be continued.

Italian Prisoners.

R.C.A.O. should see that all sentences imposed by Allied Military Courts continue to be carried out. No prisoners should be released without serving their proper sentences.

It is proposed to set up, in conjunction with the Italian Government, a Committee to consider the revision of sentences imposed by Italian Courts.

No prisoners imprisoned without trial by Italian Authorities or detained under Art. VII of Proclamation No. 4 are to be released without further orders from H.Q., A.C.C. A list of prisoners so held is to be forwarded by R.C.A.O.s to A.C.C. within 14 days of the restoration of territory to the Italian Government.

Italian Courts generally will continue to function.

Judges and Officials of Courts.

All appointees under A.M.G. are to remain in office. Additional judges may be appointed by the Italian Government with the sanction of A.C.C. There will be no further

under the orders of H.Q., A.C.C. In closing out activities, convictions must be re-examined, outstanding fines checked and Allied Military Court dockets checked.

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If it comes to the notice of R.C.L.O.s that war crimes have been committed the fact must be reported to the C.L.O. and if it is learnt that any Italian Court contemplates dealing with such cases, the judge must be warned against attempting to do so.

Italian Legislation and Laws.

R.C.A.O.s are not to interfere if the Italian Government make amendments to or suspend existing Italian Laws, but amendments to the Rules of Procedure initiated during the period of Allied Military Government must be continued.

Italian Prisoners.

R.C.A.O. should see that all sentences imposed by Allied Military Courts continue to be carried out. No prisoners should be released without serving their proper sentences.

It is proposed to set up, in conjunction with the Italian Government, a Committee to consider the revision of sentences imposed by Italian Courts.

No prisoners imprisoned without trial by Italian Authorities or detained under Art. VII of Proclamation No. 4 are to be released without further orders from H.Q., A.C.C. A list of prisoners so held is to be forwarded by R.C.A.O.s to A.C.C. within 14 days of the restoration of territory to the Italian Government.

Italian Courts generally will continue to function.

Judges and Officials of Courts.

All appointees under A.M.G. are to remain in office. Additional judges may be appointed by the Italian Government with the sanction of A.C.C. There will be no further "vetting" by R.C.L.O.s.

929
Duffy
28/1/42

PA. 14002/1

Subject: Reports for Public Safety Division.

AMCOT/212/HQ.

16 Aug. 43.

C.A.P.O.

Province. (through S.C.A.O.)

It would be appreciated if Provincial C.A.P.O.s could forward to this Headquarters (Public Safety Division) through S.C.A.O. a short report covering the following points.

1. General Police position.
2. Extent and effectiveness of co-operation of
 - (a) Carabinieri Reali
 - (b) Agenti di P.S.
 - (c) Guardia Municipale.
3. Any points on which P.S.D. H.Q. can assist either by way of advice or in any other way.
4. Co-operation with F.S.P. and/or C.I.G. Is this properly tied up and maintained?
5. State of prisons with as complete a list of such establishments as is possible and some indication of local population and the general state of their administration.
6. Arrangements in the province for
 - (a) Fire-fighting
 - (b) Civil-Defence
 - On what basis are these services organised, what is the general state of efficiency of each and is the equipment adequate?
7. As Officers of this H.Q. become available they are being sent out to obtain more detailed information on the ground, but the reports now asked for are to give me a general picture of conditions from the Public Safety angle.
8. It is realised that provincial C.A.P.O.s are very busy, but an early response to this request would be much appreciated.

Ruffini

Lieut-Colonel,
Deputy Commissioner Public Safety.

AMCOT H.Q.

9676

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2. Extent and effectiveness of co-operation of
 - (a) Carabinieri Reali
 - (b) Agenti di P.S.
 - (c) Guardia Municipale.
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ALGOT H.Q.
15 ARMY GROUP.

R. J. ...
Lieut-Colonel,
Deputy Commissioner Public Safety.

Public Safety 1A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT

AMG/4002/L.

1 November 1943.

ADMINISTRATIVE INSTRUCTION (LEGAL)

1. Summary Courts have jurisdiction to impose a sentence of imprisonment for not more than one year or a fine of not more than 50,000 lire or both such imprisonment and fine. Further, the Court has power to order imprisonment in default of payment of a fine, but in no case can a person convicted by a Summary Court be kept in prison in respect of that conviction for more than one year.
2. A sentence of one year's imprisonment and a fine of 20,000 lire means, therefore, that whether the fine is paid or not, the accused must be released at the expiration of one year.
3. Similarly, no person convicted by a Summary Court can be detained in respect to that conviction for more than ten years.
4. Where a fine alone is imposed the Court should specify the period to be served in default of payment such period not being merely assessed on the Italian basis of 50 lire a day, but having regard to the probable capacity of the accused to pay.
5. Where a sentence of imprisonment and fine is imposed, the sentence should be in the following form:
"Two months imprisonment and a fine of 50,000 lire; in default of payment of the fine, accused to serve a further period of three months imprisonment."
6. Please take steps to see that all officers trying cases are instructed accordingly.

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WILLIAM C. CHAMBER,
 Lt. Col., PA,
 Chief Legal Officer.

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2. A sentence of one year's imprisonment and a fine of 20,000 lire means, therefore, that whether the fine is paid or not, the accused must be released at the expiration of one year.

3. Similarly, no person convicted by a Superior Court can be detained in respect to that conviction for more than ten years.

4. Where a fine alone is imposed the Court should specify the period to be served in default of payment such period not being merely assessed on the Italian basis of 50 lire a day, but having regard to the probable capacity of the accused to pay.

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WILLIAM C. CHAMBER,
Lt. Col., PA,
Chief Legal Officer.

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AMCOT Liaison
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" 5th Army
" 15th Army Group
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Sub-Commissions
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