



# Military Justice During Italian Fascism: Culture, Politics and Law in the War Courts. The Exemplary Case of Umberto Meranghini by *Federico Goddi*

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The Exemplary Case of Umberto Meranghini*

The history of the Italian military magistracy during the fascist wars still awaits a thorough analysis. Research on the judiciary system often neglects military jurisdiction. Yet, military courts had a fundamental function during the dictatorship: the courts were instrumental for the implementation of political goals, reflecting a characteristic of the totalitarian tendencies of the fascist regime. This article aims at answering questions still debated in historiography. Until recently, too little attention has been paid to judicial documents – including files of the magistrates – which can help clarify how pervasive was fascist ideology in the management of the judicial sector, particularly in connection to military justice. In this regard, the case of the military magistrate Umberto Meranghini is exemplary. The article mainly highlights the kinds of relations established between fascist political power and military magistrates that supported the fascist repressive system.

*Keywords:* Military justice, Fascism, Magistrates, War courts

## **Introduction: state of the art and research questions**

Military justice played an important part in Italian history, especially when considering punitive provisions issued during the fascist wars. To study this complex topic, it is therefore necessary to highlight the multi-faceted character of military justice, given its pervasiveness in fascist society. This research is not limited to institutional history, but also extends to a political and social history of the judiciary system and military justice<sup>1</sup>.

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<sup>1</sup> Concepts expressed in G. Scarpari, *Giustizia politica e magistratura dalla Grande Guerra al fascismo*, il Mulino, Bologna 2019, pp. 217-39.

As such, this essay represents the first attempt at dealing comprehensively with a research topic that so far has been neglected in existing historiography. Research on the history of military justice has long been hindered by the unavailability of relevant primary sources. In particular, the judicial institutions established by fascism – such as military courts – are often overlooked if compared with other issues. This article fills this gap by making use of sources that were previously inaccessible or have not yet been fully exploited from the Archivio Centrale dello Stato as well as documents on the military system that can be perused at the Ufficio Storico dello Stato Maggiore dell'Esercito. In addition to this, the article will fully use the recently available possibility to obtain the magistrates' personal files via the Consiglio della Magistratura Militare (CMM). By making use of this documentary base, this research has the ambition to fill the gap reported by Nicola Labanca fifteen years ago concerning the history of judicial policies of the military courts<sup>2</sup>.

To be sure, personal booklets of the members of the corps of military justice will be essential for prosopography of military judges who served during fascism. As a starting point, this research will use personal record book and states of service, as all the members of the military justice corps were treated as military personnel by legislative provisions. The compilation of the state of service and the personal booklet was required only for the officers of the royal army. These are documents different from the army serial number (common to all soldiers), because in addition to containing the notes and updates related to one's military career, they were accompanied by a series of personal notes, which included information on the private life of the owner of the personal booklet and his family members. They often contained observations and news on behaviors observed outside the military environment. Generally, in the personal booklet there was a copy of the army serial number common to each military, which reported the same annotations as the "services, promotions and variations" section. The dossier contained all the documentation that was produced according to the service provided to the military administration. In addition to that, it also kept the qualification notes, compiled annually by the direct hierarchical superior, who prepared a sort of report on the activity carried out by the officer in the year

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<sup>2</sup> N. Labanca e P.P. Rivello (eds.), *Fonti e problemi per la storia della giustizia militare*, Giappichelli, Torino 2004, pp. XIII-XV.

of reference. These are all useful information to trace the degree of “fascistization” of the magistrate<sup>3</sup>.

With the exception of the works of Filippo Focardi, which focus on the analysis in Republican Italy of the war crimes legacy of the Second World War<sup>4</sup>, relations between the magistracy and political elites during fascism have been studied only in relation to ordinary magistrates or certain special magistracies<sup>5</sup>, such as the administrative one<sup>6</sup>. These studies are mainly based on sources such as ministerial circulars, which were addressed not only to Ministers of Justice, but also to presidents of courts. These directives oriented the activity of the judiciary body according to the legislative choices and the political needs of fascism. A different kind of sources was used in a publication by Antonella Meniconi<sup>7</sup>. She examined the circulars, published by contemporary legal journals, related to the manifestations of adherence of the magistracy to the regime on the occasion of public ceremonies, as well as memoirs and testimonies of some magistrates operating during fascism. Her study has shed new light on the debates that emerged in the criminal law literature during the fascist regime, as reported in legal journals and during meetings between jurists, and among magistrates.

However, none of these important works have focused on the military magistrates' relations with the political power. The military judiciary during the fascist wars (1935-1945) remains a blind spot in Italian historiography. This topic has never been studied with a social history approach, as was done for instance for the study of the colonial system<sup>8</sup>: i.e. with a prosopographic method that also highlights the culture and training of the magistrates. This approach would allow qualitative information to be added to quantitative data<sup>9</sup>.

<sup>3</sup> Cf. L. Lacchè, *Tra giustizia e repressione: i volti del regime fascista*, in *Il diritto del duce. Giustizia e repressione nell'Italia fascista*, ed. L. Lacchè, Donzelli, Roma 2015.

<sup>4</sup> Cf. F. Focardi, *Criminali di guerra in libertà: un accordo segreto tra Italia e Germania federale, 1949-55*, Carocci, Roma 2008.

<sup>5</sup> Cf. G. Focardi, *Magistratura e fascismo: l'amministrazione della giustizia in Veneto, 1920-1945*, Marsilio, Venezia 2012.

<sup>6</sup> G. Melis (ed.), *Il Consiglio di Stato nella storia d'Italia: le biografie dei magistrati (1861-1948)*, Giuffrè, Milano 2006.

<sup>7</sup> Cf. A. Meniconi, *Storia della magistratura italiana*, il Mulino, Bologna 2012.

<sup>8</sup> P. Saraceno, *La magistratura coloniale italiana (1886-1942)*, in Id., *I magistrati italiani dall'unità al fascismo. Studi biografici e prosopografici*, Carucci, Roma 1988, pp. 225-40.

<sup>9</sup> Y. Beaulieu, *Magistrature italiane et régime fasciste: une approche socio-historique*, in V. Bernaudeau et al., *Les praticiens du droit, du Moyen-Age à l'époque contemporaine. Approches*

Guido Neppi Modona has repeatedly pointed out that research on the relationship between the judiciary and fascist cronies must not be limited to a legal approach, which captures only the aspect of the laws or of the jurisprudence published in law magazines. Referring to the sociological concept of “habitus”, famously put forward by Pierre Bourdieu, Neppi Modona argues that special attention should be paid to mindsets, behaviors, values, strategies proper to the profession of the military magistrate, and to the extent to which the socio-professional category defined itself in contrast or convergence with the new fascist mindset. Given the logic of power in which the military judiciary too was involved, it is therefore important to get out of a formalistic and abstract conception of justice: without an in-depth analysis of the careers of the Italian military magistrates, it would be impossible to write a history of military magistracy<sup>10</sup>. By adopting an approach that blends social and military history, this research can therefore offer a framework that can serve as an interpretative yardstick with the only other publication dedicated to the activities of military courts during fascism<sup>11</sup>. However, Rochat’s approach focused exclusively on military courts during the Second World War, from the perspective of the defendants, brushing aside any analysis on the magistrates working in the courts, a limitation even Rochat acknowledged.

Putting the magistrates at the center of the analysis, it seems useful to include in the research the whole decade of the fascist wars, which also includes the period of the RSI (Repubblica Sociale Italiana), given that some careers of military magistrates spanned over that decade (1935-1945). In fact, military justice was subject to changes, some of them radical – as demonstrated by the numerous legislative interventions, as well as the fervent debate and the bitter controversies that accompanied them. One of the best examples of the turning point that occurred with the fascist wars, starting with the Ethiopian one (1935-1936), is the fact that justice military personnel were part of the role and its members assumed the military rank that corresponded to the hierarchical rank they held. In this way, they retained the juridical status of civil servants

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*prosopographiques (Belgique, Canada, France, Italie, Prusse)*, Presses universitaires de Rennes, Rennes 2008, pp. 153-70.

<sup>10</sup> G. Neppi Modona, *Diritto e giustizia penale nel periodo fascista*, in L. Lacchè, C. Latini, P. Marchetti, M. Meccarelli, *Penale, Giustizia, Potere: metodi, ricerche, storiografie per ricordare Mario Sbriccoli*, cum edizioni università di Macerata, Macerata 2007, pp. 341-78.

<sup>11</sup> Cf. G. Rochat, *Duecento sentenze nel bene e nel male. La giustizia militare nella guerra 1940-1943*, Gaspari, Udine 2002.

and its related prerogatives, but at the same time enjoyed military perks, such as the right to don military uniforms (ministerial decree of June 9, 1936)<sup>12</sup>. These significant developments have not been sufficient to arouse the interest of historians, who did not show the same academic curiosity as they did, for instance, in the case of military justice during the First World War, owing perhaps to the overall lower severity of military sentences compared to the First World War<sup>13</sup>.

While also in recent years the historiography on the fascist regime has underlined that the political radicalization and the growth of violence in the collective discourse during the fascist period involved institutions at large, the absence of specific attention to the institutional data has persisted (in particular, when it comes to the theme of military justice). As noted above, many scholars have drawn attention to the need to fill this gap. In a contribution to a special issue of the journal “Studi Storici”, published in 2014 and focused on mapping the existing historiography on fascism, Irene Stolzi has pointed out, once again, how there still is no historiographical investigation that has looked at the work of the judiciary with a historical approach that does not recur to legal materials as its only source. The personal biographies of the magistrates, she insisted, are no less important than the norms, judgments, statutes and circulars<sup>14</sup>.

The analysis of the state of the art has highlighted several methodological questions. A useful, if partial, recapitulation is provided by the works of Pietro Saraceno, one of the first historians of the Italian state to deal with the figure of the magistrates. In his groundbreaking studies, Saraceno raised several crucial questions. What factors influenced the work of the courts? Consequently, what do historians know about the mechanisms that supervised the operation of the courts? Who were the members of the judging courts? Saraceno has observed how contemporary scholars, faced with enormous masses of documentation, are at risk of making a few arbitrary choices, and should therefore never lose sight of the political and juridical aspects of military justice<sup>15</sup>.

<sup>12</sup> Cf. L. Pompeo D’Alessandro, *Giustizia fascista. Storia del Tribunale speciale (1926-1943)*, il Mulino, Bologna 2020, pp. 228-45.

<sup>13</sup> Starting in 1916, military justice personnel were militarized. The magistrates were assigned the relative rank with the appointment of law graduate officers. Cf. G. Procacci, *La società come una caserma. La svolta repressiva nell’Italia della Grande Guerra*, in “Contemporanea”, n. 3, 2005, pp. 423-45.

<sup>14</sup> Cf. I. Stolzi, *Fascismo e cultura giuridica*, in “Studi Storici”, n. 1, 2014, pp. 139-54.

<sup>15</sup> Saraceno, *La magistratura coloniale italiana (1886-1942)*, cit., pp. 225-40.

## The methodology and a single case

This updated historiography shows very clearly the relevance of analyzing personal files of magistrates. Only by analyzing these new materials, will it be possible to measure the degree of success the regime achieved in its drive to strengthen the bonds of dependence and the internal hierarchical organization of military justice. Examination of the laws of the judiciary, while representing a privileged environment, cannot explain the personal paths, or shed light on the socio-cultural characteristics of the military judiciary: even more so since some judges were not military by training, but civilian magistrates referred to war as complementary forces. They were thus more attached to attitudes proper to civil justice, which were traditionally more autonomous than those spread among “career” members of military justice. Thanks to the consultation of personal files, it is now possible to attempt to reconstruct the professional events (partly private ones) of a large part of the judging and investigating staff. And it should also be possible to distinguish between careers developed solely on professional merit and those propped up by political influences<sup>16</sup>. To give an idea of the novelty that the use of those documents would entail, it is useful to reflect on a remark Nicola Labanca made in 2004: «it is not easy to follow the formation of the bureaucracy of military justice: how to make a collective biography or a prosopographic study without access to the archive of personal files?»<sup>17</sup>. Given the state of the art and the new availability of primary sources, what should the main features of a different scientific approach to the history of the Italian military magistracy during fascism be?<sup>18</sup>

A specific use of qualitative documentary sources (personal certificates and states of seniority), which will be studied for the first time, alongside the memoirs, is also indispensable<sup>19</sup>. Other data can be found

<sup>16</sup> The importance of the materials is indicated by F. Ratto Trabucco, *La responsabilità magistratuale: l'esperienza disciplinare del Consiglio della Magistratura Militare*, in “Il lavoro nelle Pubbliche Amministrazioni”, n. 15, 2012, pp. 1155-203.

<sup>17</sup> Labanca e Rivello (eds.), *Fonti e problemi per la storia della giustizia militare*, cit., p. 271.

<sup>18</sup> In prospective, it is necessary to insert the theme in a context of international comparison. See, for example, the workshop activities of the project “Extraordinary Military Justice” organized by Istoretto (Turin). The project recently received funding from the Federal Government of Germany through the German-Italian Fund.

<sup>19</sup> In Umberto Meranghini's case, for the defence testimony to justify his actions: Rome, Archivio dell'Ufficio Storico dello Stato Maggiore dell'Esercito (AUSSME), N. 1-11, b. 2255 L, fasc. 112 “Tribunale speciale della Dalmazia”, Relazione sull'attività svolta quale procuratore militare in Dalmazia, Roma, 9 marzo 1945, Umberto Meranghini.

scattered in military law manuals or in articles written by military magistrates<sup>20</sup>. The key figures within these courts were the military prosecutor – who assumed the role of the prosecution and who in practice was responsible for the functioning of the court – along with deputy magistrates, the investigating magistrate for the investigations, the judge-rapporteur and the chancellor. While the prosecutor was always a career military magistrate, the others could be auxiliary military judges (reserve officers coming from the civil magistracy) and in case of need professional military officers with a law degree. Starting from 1923, military justice personnel ceased to be part of the army and the recruitment of military magistrates took place by competition for titles for magistrates 35 years or older. To fill the gaps after the hiring of civil magistrates, provision was made for a competitive examination among the graduated law students between 21 years-old and 30 years-old of good moral conduct. Thus, the bulk of military courts in peacetime was made up of soldiers who had not trained as legal experts in the armed forces, but had followed legal studies in the University before joining the army. The military magistrates were the result of a so-called “ordinary” initial preparation to which was added the military training. The career of some military magistrates, as Umberto Meranghini, are a significant proof of this. As recently written:

Those who enter into the ranks of the body of military justice have basic legal training: a degree in Law (i.e., studies comprising exams which are nearly all obligatory) is the first fundamental building block of a culture which is consolidated through study dedicated, first, to the civil, commercial and criminal codes, then to the military codes (in peace time and in time of war), finally integrated with military regulations. Often military judges develop their professional skills by learning foreign languages and by exercising forensic practice as lawyers: a profession that some take up again after having finished serving the State<sup>21</sup>.

In this regard, some interesting findings of the recent historiography on the military judiciary show that judges abstained from pronouncing par-

<sup>20</sup> See the presentation by General Umberto Meranghini to the report of A. Crisafulli, B. Di Tullio, *Aspetti della criminalità militare nel settore albanese: relazione*, Tipografia militare, Tirana 1942, pp. VII-XI.

<sup>21</sup> N. Da Lio, G. Focardi, A. Mansi, *Amoveatur ut promoveatur: the careers of military judges in Italy and the colonies*, in L. Biasiori, F. Mazzini, C. Rabbiosi (eds.), *Reimagining Mobilities across the Humanities*, vol. 2: *Objects, People and Texts*, Taylor & Francis Ltd, London and New York 2023, p. 98.

ticularly severe sentences, even in the presence of explicit solicitations coming from the departments to which the defendants belonged. This, some have argued, proves that discipline could not be enforced by judicial means<sup>22</sup>. These are questions of a historical-political nature that must be compared with some historical-judicial data, through capillary research on the legislative provisions issued between 1922 and 1940 on military justice, as suggested by the analysis of the careers of magistrates<sup>23</sup>.

This research will be carried out by studying individual profiles of the member of the corps of military justice. The latter have been so far almost always left in the background, as if they were characters without a face and without history or confused with the institution they represented. Through the examination of their individual files, personal record book and service statuses, this research will focus on the relationships with the various political authorities, central and local, to understand their attitude towards undesired pressure with inevitable effects on their careers. The aim is to give some ideas for writing a collective and prosopographical biography, particularly of military magistrates who served in war courts. An important methodological reference for the use of these materials can be found in the works that used the reports of the Consiglio di Stato and the yearbooks to obtain biographical information on magistrates<sup>24</sup>.

In this sense, one of the exemplary careers is Umberto Meranghini's, deputy military attorney general of the Court of Tirana (Albania) who had graduated in law in Urbino in 1910 and had embarked on a military career. He participated in the military campaign against Turkey in 1911-12 and during the First World War became Deputy Secretary of Military Justice in Verona, Udine and Parma. Later he devoted himself to teaching, assuming the chair of "Military Criminal Law" at the University of Trieste in the years 1931-34, where he taught war law<sup>25</sup>.

<sup>22</sup> Cf. P. Fonzi, *I tribunali militari italiani nell'occupazione della Grecia durante la Seconda guerra mondiale*, in C. Nubola, P. Pezzino, T. Rovatti (a cura di), *Giustizia straordinaria tra fascismo e democrazia. I processi presso le Corti d'assise e nei tribunali militari*, il Mulino, Bologna 2019, pp. 305-34.

<sup>23</sup> In particular "professional and/or political" merits, cf. Focardi, *Magistratura e fascismo: l'amministrazione della giustizia in Veneto, 1920-1945*, cit., pp. 111-26.

<sup>24</sup> G. Focardi, *Gli 'africani' di Palazzo Spada: tracce biografiche dei consiglieri di Stato*, in "Quaderni fiorentini per la storia del pensiero giuridico moderno", vol. 33-34, 2004/2005, pp. 1129-69.

<sup>25</sup> Rome, Consiglio della Magistratura Militare (CMM), fasc. "Umberto Meranghini", Regia Avvocatura Generale Militare al Regio Avvocato Militare di Trieste, Encomio, Roma, 17 ottobre 1933, Ovidio Ciancarini.



Going into the details of his career, Meranghini took up his duties following a competitive examination on 1 March 1912. Then, he obtained promotions through other competitive exams, becoming Military Prosecutor on 1 December 1925 and reaching the rank of Deputy Military Prosecutor General on 10 March 1943. Subsequently, he headed the Public Prosecutor's Office at important War Tribunals in the Second World War. Of crucial importance, for his career, was his appointment as Military Prosecutor in Albania, where he arrived on 3 October 1940<sup>26</sup>. Moreover, for a few months from the end of 1941 until March 1942, he worked at the Extraordinary Court of Dalmatia<sup>27</sup>.

Furthermore, the documentation in the archive of the Ufficio Storico dello Stato Maggiore dell'Esercito will allow to understand the representation of this professional group by relevant external and internal subjects (fascist government and military commands). It is no coincidence that the historical caesura of 8 September is also chosen by Umberto Meranghini to justify his previous work. In fact, after the Second World War, Meranghini was accused of war crimes by the Yugoslavian commission. In his defence dossier, Meranghini recalls the close relationship between fascist occupation policies and the activities of the military tribunal<sup>28</sup>. When he was in Dalmatia, he often received visits from the governor, Giuseppe Bastianini:

Ever since a meeting that the governor had held, in the first days I was in Zadar, of the panel of judges, I did not like the fact that the governor, after describing the local situation in truly shocking tones, called the judge to an action that he called historic, which should have been carried out with an immediacy of judgement. I attended those meetings. [...] Not a few days later the governor, passing through Šibenik, proposed another meeting with the judges. In this one, too, he ordered energetic and harsh action for the work of military justice<sup>29</sup>.

<sup>26</sup> Ibid., Il Procuratore Generale Militare Arrigo Mirabella al Ministero della Difesa – Esercito – Direzione Generale Pers. Civili ed Affari Gen.li, Roma, 19 novembre 1957.

<sup>27</sup> Decreto 23 marzo 1942, “Giornale Ufficiale del Governo della Dalmazia”, 31 marzo 1942, p. 38.

<sup>28</sup> Memoirs are a very useful genre. One of the best examples is the autobiography of a Calabrian magistrate who worked in the military courts of the Second Army, sections of Ljubljana, Sibenik and Sussak, as judge during the Italian occupation. Cf. M.F. Marasco, *Dalla verde Sila alle bianche nevi delle Alpi tinte di rosso. Autobiografia di un magistrato*, Calabria letteraria, Soveria Mannelli 2009, pp. 199-223.

<sup>29</sup> AUSSME, b. 2255 L, fasc. 112 “Tribunale speciale della Dalmazia”, Attività svolta dall'interessato, Roma, 9 marzo 1945, Umberto Meranghini.

## Meranghini in the Second World War

Thanks to the documentation kept in the CMM archive, it is possible to obtain further information on Umberto Meranghini's work in Tirana. In this regard, the file contains a letter from General Sebastiano Visconti Prasca, one of the main officers active in the Italian invasion of Greece<sup>30</sup>. Again, the letter clarifies the key role of military justice during the fascist wars. Visconti Prasca recalls how Meranghini had accompanied him on various military inspections to assess the psychological nervousness of the Italian troops. According to General Visconti Prasca, the head of military justice had a key function in the war zone:

The Head of the Military Magistracy therefore has greater powers and functions of responsibility in Albania than a territorial military court of the Kingdom. That of Albania is the military court of a State and whoever heads it with such dignity and such competence as Gen. Meranghini should be promoted to a higher rank for the high functions he exercises under exceptional conditions. [...] The promotion of Gen. Meranghini would not only be a dutiful recognition of the magistrate and the soldier, but a measure in the interest of the service and the State<sup>31</sup>.

As mentioned, Meranghini was acting as “Royal military lawyer” at the Military Court of Albania from the beginning of October 1940 to the eve of the Greek War. His was therefore a decisive function for the court's action<sup>32</sup>. In fact, the corps of military justice provided the key figure: the prosecutor, until 1941 known as royal military lawyer, was responsible for the accusatory function and the functioning of the court itself. This latter figure was flanked by the judge for the investigations, judge-rapporteur and chancellors. Instead, the president of the court and a number of not always well-defined judges came from the officers. The military magistrate who drafted the sentences guaranteed

<sup>30</sup> S. Visconti Prasca, *Io ho aggredito la Grecia*, Rizzoli, Milano 1946, pp. 61-70.

<sup>31</sup> CMM, fasc. “Umberto Meranghini”, Rapporto informativo, Avvocato militare di guerra a capo della Procura generale del Tribunale delle FF.AA. Unificate, Roma, 7 giugno 1941, Sebastiano Visconti Prasca.

<sup>32</sup> Even memoirs confirm that the key figures in the military courts were military prosecutors such as Meranghini, or the judges who spoke. As recalled by one of the protagonists, in fact: «Being a rapporteur judge, the only magistrate in a college for the rest made up entirely of officers, meant, at the time of the decisions, to see four eyes set waiting for a word that could become definitive». V. Ventro, *Vincenzo Vi: una toga fra le stellette*, s.e., s.l. 1990, p. 58.

the technical contribution. The hearings were short and the military courts generally dealt with half a dozen or more cases on any given day in the period between 1935 and 1945<sup>33</sup>. In most cases the defendant's attorney was a commanding officer, bent towards accommodating the prosecution's set-up and demands. Everything was organized hierarchically: the military prosecutor directed the activity of the magistrates, instructors and speakers, and, like the president, depended directly on the commander of the large unit headed by the court. Military justice was considered an instrument of high command, with greater autonomy during the conflict. The dependence of military justice passed from the Cabinet of the Ministry of War to the General Staff with the outbreak of the Second World War. For these reasons, the courts were free in their assessments, but had to take into account the directives given them by the General Staff. Magistrates and judges could in fact be replaced at any time, even though attempts were made to avoid excessive punishment, given the numerical insufficiency of military magistrates and the lack of enthusiasm of the officers for desk service<sup>34</sup>.

When analyzing the work of a military tribunal, an additional element to be considered is military contingency<sup>35</sup>. With the attack on Greece on 28 October, the court in Tirana assumed the character of a military war tribunal. With the increased influx of troops (120,000 men) and the start of military operations, the court's activity, as was to be expected, immediately increased. For instance, between October and November, the number of desertion offences increased to 1520 cases reported to the military court<sup>36</sup>. For such an offence, the maximum sentence imposed on Albanian soldiers engaged at the front alongside Italians was the death penalty, as evidenced by the sentence against N.G., who deserted in the presence of the enemy on 29 November 1940. The death sentence with military degradation was signed by Umberto Meranghini<sup>37</sup>. This crime was deemed

<sup>33</sup> Meranghini will also be under investigation for his activities as a magistrate after 8 September, having taken the oath to the «fascist republican government». Roma, Archivio Centrale dello Stato (ACS), Ministero della Difesa, Stato maggiore dell'esercito, Ufficio segreteria e personale (1943-1959), b. 63, fasc. 101 M 150, Commissione epurazione personali civili del Ministero Guerra, Roma, 29 ottobre 1944, Il segretario Benvenuto Silvio.

<sup>34</sup> G. Rochat, *La giustizia militare nella guerra italiana 1940-43. Primi dati e spunti di analisi*, in "Rivista di storia contemporanea", n. 4, 1991, pp. 510-1.

<sup>35</sup> On the penal code for the army, in the places declared in a state of war, see U. Meranghini, *La giustizia militare di guerra*, Soc. Anon. Editrice Universitaria, Firenze 1940.

<sup>36</sup> Tav. 1 in Crisafulli, Di Tullio, *Aspetti della criminalità militare nel settore albanese: relazione*, cit., pp. VII-XI.

<sup>37</sup> ACS, Tribunali militari di guerra e tribunali militari territoriali di guerra: seconda guerra

incompatible with military life by Meranghini in his speech at the First International Congress of Criminology held in Rome, 3-8 October 1938. The punishment in cases of desertion was to be exemplary:

Of an eliminatory nature, but exclusively for the purpose of expulsion, is the proven incompatibility; it relates to one who is already military and in that capacity proves himself, by means of a criminal act marked by a certain accessory penalty, to be absolutely unfit for military life. Military justice expels him once and for all. In this way, military justice simultaneously avoids the danger of new attacks on one's honor by the unworthy, erases the stain that one's honor has suffered and tends to preserve it immaculate in the future, through the threat to others made more vivid by the exemplarity of the sentence<sup>38</sup>.

It is interesting at this point to try to understand what were the guidelines that moved the court's legislature in Tirana with the help of other qualitative sources relating to the professional-intellectual production of military magistrates (volumes, essays and manuals) that are instrumental to bring out the collective self-representation within the group<sup>39</sup>. Meranghini had set up an office in Tirana that dealt with military crimes with particular emphasis on wartime operations. Further attention was paid to the crime of desertion. The office was composed of a jurist, sociologist and publicist (lawyer Anselmo Crisafulli) and an expert in criminal anthropology (prof. Benigno Di Tullio). Crisafulli was a jurist, sociologist and publicist, editor of the review "Criminalità" and a leading exponent of the Italian penal school, while Di Tullio was a professor of criminal anthropology at the University of Rome and Secretary General of the International Society of Criminology. The results of the studies published by the office were rendered by them in a report that Meranghini used as a working tool and orientation for the military court in Tirana. Concurrently with the office promoted by Meranghini, a Study Centre for Military Crime was established<sup>40</sup>.

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mondiale (1939-1945) Albania, Sentenze 1939-1945, vol. VI, giugno-dicembre 1942, n. 1980 della rubrica, 29 dicembre 1943.

<sup>38</sup> U. Meranghini, *La profilassi criminale nelle Forze armate in Italia*, in *Atti del I Congresso internazionale di criminologia: Roma 3-8 ottobre 1938*, vol. V, Roma 1939, p. 214.

<sup>39</sup> The only work on the subject concerns, once again, the period of republican Italy: R. Cartocci, *L'Università di provenienza, le precedenti esperienze lavorative e il ruolo delle scuole di preparazione*, in *Caratteristiche socio-culturali della magistratura. Le tendenze degli ultimi venti anni*, ed. G. Di Federico, CEDAM, Padova 1989, pp. 101-40.

<sup>40</sup> Crisafulli, Di Tullio, *Aspetti della criminalità militare nel settore albanese: relazione*, cit., pp. VII-XI.

Meanwhile, thanks to Meranghini's interest, the Albanian Society of Criminology was founded on 28 September 1941. The purpose of this Society, which was a member of the International Society of Criminology, was to curb crime in Albania according to the scientific and practical criteria of modern criminology. Scientific investigations into the «biological and sociological» causes of crime were encouraged, as well as any initiatives that appeared to be more efficient in terms of prevention. In this context, the creation of effective institutions for «human reclamation», the defense of Albanians and the moral upliftment of their land was urged<sup>41</sup>. The Court of Cassation of the Kingdom of Italy recognized the Albanian Society of Criminology as a branch of the highest body of international criminological culture with its headquarters in Rome<sup>42</sup>. With regard to crimes committed by Italian soldiers, another issue of primary importance mentioned by Meranghini was the use of military biographical records. The establishment of this instrument was the result of a proposal by the military prosecutor general, Ovidio Ciancarini, who took up an old proposal dating back to 1921 and favorably received by the military health authority, and obtained legal recognition in 1935. This file analysed the personality of men at decisive moments in their military life. The use of this instrument represented an initial screening: the aim was the creation of a permanent criminal prophylaxis study center<sup>43</sup>.

The sources cited facilitate a cultural analysis of the military judiciary. These printed sources allow us to better understand the self-representation of military judges, as well as a certain debate of ideas within the group. Only on the basis of a documentation of different nature mentioned here can a final balance be drawn up on the history of the Italian military judiciary. To date, an investigation conducted “from within” during the twenty-year fascist experience, that is on the voluntary or compulsory adhesion to the legislative choices of the regime and on possible resistances, has in fact been lacking. Did the conditioning suffered by the magistrates take place in a climate of servility and moral corruption that the regime had managed to spread among the Italian judges – comparable to that highlighted by Yannick Beaulieu for ordinary justice?<sup>44</sup>

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<sup>41</sup> AUSSME, H-8, b. 88, fasc. 710, Relazione Albania, Roma, 14 maggio 1948, Umberto Meranghini.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Beaulieu, *Magistrature italienne et régime fasciste: une approche socio-historique*, cit., pp. 153-70.

The papers of the Council of Military Magistracy also help in this transition. Towards the end of 1942, in Tirana, Meranghini's career suffered a setback when Terenc Toçi, president of Corporate Council of Albania, was removed from power. Meranghini shared Toçi's goal: «doing everything to free the Albanian population from the bad practices of the past that had harmful effects on the entire structure of society starting from the family»; according to both, “Italian modernity” also meant «bring a public and private legislation»<sup>45</sup>.

The Arbëresh leader Toçi had repeatedly called for the reconstitution of the army and gendarmerie on a purely Albanian basis, perhaps to obtain the formation of a government of national unity. According to the explanation offered by Lieutenant in Albania Francesco Jacomoni to Minister Galeazzo Ciano, Toçi's real objective was to weaken the Mustafa Merlika Kruja government. It was precisely the fear of this eventuality that prompted the Italian authorities to intervene, accepting the resignation that Toçi had tendered shortly before and proceeding to replace him with former Education Minister Ernest Koliqi. In fact, his resignation from the presidency of the Corporate Council at the end of November 1942 marked the end of Toçi's involvement in active politics. Only a few days later, Kruja also stepped down as head of the government. This opened a phase of profound instability destined to last until the armistice of September 1943, characterized by the collapse of consensus around the Albanian collaborationist authorities, by a shrinking Italian military commitment and by the spreading of the Resistance. It was only in these desperate circumstances that the authorities in Rome resolved to make certain concessions aimed at reviving Albanian national sentiment, with the modification of the economic order imposed in the aftermath of the occupation of Tirana, the reconstitution of the gendarmerie and the replacement of the fascist party with a “guard of Greater Albania”<sup>46</sup>.

Meranghini was affected by this context of changing leadership, demonstrating, once again, the importance of military justice<sup>47</sup>, and the

<sup>45</sup> A. Basciani, *L'impero nei Balcani. L'occupazione italiana dell'Albania (1939-1943)*, Viella, Roma 2022, p. 53.

<sup>46</sup> F. Caccamo, *Odissea arbëreshe. Terenzio Tocci tra Italia e Albania*, Rubbettino, Soveria Mannelli 2012, pp. 145-7.

<sup>47</sup> For example, in the trial for the assassination attempt against Victor Emanuel III, Meranghini justified the sentence by writing that the target was the Albanian minister Shefqet Verlaci and that the perpetrator was of Greek origin. He thus achieved two results: the death sentence on the Albanian resister and denying the anti-Italian matrix of the gesture, in D. Hoxha, *Giustizia militare e processi di guerra in Albania (1939-1943)*.

close relationship between political power and Italian occupation strategies in Albania:

Brigadier General (G.M.) Umberto Meranghini, military prosecutor and former Chief Prosecutor of the Special Court in Tirana. He has been in Albania for several years, his professional competence has never given rise to any notation, but his activity in the local environment, and especially in his function as prosecutor of the special court, has been carried out with orientations not entirely in keeping with the directives of the Lieutenancy. For these reasons, I was forced to disengage him from this function, limiting his activity to that of military prosecutor at the territorial military court. On the other hand, he created a hostile environment for himself among the members of the current government, both because of the – not always plausible – slowness of the procedures and because of his ostentatious friendship with the former president of the Superior Council of Corporations, Toçi, who was recently removed from the aforementioned office on authority for his clearly anti-government activities<sup>48</sup>.

Using the personal files it is possible to answer this question by going back to the pressures of the ministry, exercised through the official and institutional instrument of ministerial circulars. The intent is also to respond to another fundamental question: was the military judiciary subjected to political interference of fascist administrators on specific legal matters? And what were the outcomes of the constant involvement of the various branches of the political police in the deeds of individual magistrates?

In the case of Meranghini, it is also possible to draw data relating to disciplinary proceedings on 1942, distributing them according to the nature of the disputes: immoral conduct, corruption, professional errors, contrasts with local institutional and political authorities, involvement in internal fascist party conflicts and defeatism. Before the fascist wars, it had happened that magistrates were involved in local political feuds within the fascist party or between podestà (head of municipal administration), prefect and secretary of the local group. A judiciary subjected to such instrumental and coerced forms of disciplinary control could hardly have expressed free judgments: the interpretation and application of the law, in particular the military penal one, has strong political implications

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*Sondaggio nei fondi documentali a Roma e Tirana*, in “Rivista di storia del Diritto Italiano”, n. 1, 2019, pp. 286-7.

<sup>48</sup> CMM, fasc. “Umberto Meranghini”, Comando Superiore Forze Armate d’Albania – Ufficio Segreteria al Comando Supremo, oggetto: Generali Paganuzzi e Meranghini, 11 dicembre 1942, generale Lorenzo Dalmazzo.

and repercussions. To what extent did endogenous and exogenous conditionings or these real intimidations affect the work of the magistracy?

Thus, it is necessary to investigate the “fascistisation” of the judiciary, i.e. the way in which the dictatorship managed to establish a totalitarian control over the magistrates that was mediated by forms of external conditioning and relations of hierarchical subordination so invasive as to mark a break with previous practices. Given the degree of pressure, it cannot be ruled out that the public and private professions of fascist faith and warm adherence to the legislative choices of the regime published in legal journals, proclaimed during official demonstrations or traceable in personal files, should be at least partly balanced by anti-fascist opinions, which evidently remained unpublished, or by the stories of magistrates who have kept dignified personal and professional attitudes<sup>49</sup>.

However, this is not Meranghini’s case. For the biography of Meranghini, the indications of Neppi Modona about the need for studies of military justice to favor a biographical approach remain valid with regard to issues of particular political and social importance. This contribution is therefore attentive both to the attitudes of the judiciary and its relations with political-ideological and political-cultural values transposed in a given context, and to being an important page for the history of institutions with a defined approach: to reenact the action of magistrates in military courts<sup>50</sup>.

### Conclusion from a new perspective

This article aimed at analyzing the evolution of military justice during the fascist regime with attention to a specific case. The recent international historiography has analyzed the fascist wars as a single phase in which the fascist regime became an occupying power<sup>51</sup>. The activity of military courts can therefore be construed as part of the project of fascist totalitarian politics. In fact, as noted by Neppi Modona, ordinary and extraordinary justice during fascism were connected to political instances coming from the government<sup>52</sup>. Not by chance, fascism conceived special magistracies, not dissimilar to the military ones, although embedded

<sup>49</sup> Neppi Modona, *Diritto e giustizia penale nel periodo fascista*, cit., pp. 341-78.

<sup>50</sup> G. Neppi Modona, *La magistratura italiana e l’epurazione mancata (1940-1948)*, in “Le Carte e la Storia”, n. 1, 2017, pp. 25-37.

<sup>51</sup> Cf. E. Sica, R. Carrier (eds.), *Italy and the Second World War: Alternative Perspectives*, Brill, Leiden-Boston 2018.

<sup>52</sup> Neppi Modona, *La magistratura italiana e l’epurazione mancata (1940-1948)*, cit., pp. 36-7.



in a different institutional context. The regime did not completely trust ordinary magistracy<sup>53</sup>, even though they remained largely faithful to the dictatorship notwithstanding their liberal-authoritarian monarchical tradition, and often found a more faithful ally in the military judiciary<sup>54</sup>.

The present article has identified the links between the jurisdictional activity of Umberto Meranghini and the constant interest for a “political justice” on the part of fascism since the establishment in 1926 of the “Special Court” for political crimes. This latter court had a political character, and was composed by military judges: the politicization of military criminal law set a precedent<sup>55</sup>.

As Carlotta Latini’s research demonstrates, the affirmation of fascism changed penal law, thus marking a breakaway with the legal tradition of the old liberal State, hinged on individual freedoms and procedural guarantees. Before 1926, the use of military justice in the case of political crimes had been tested in Italy only in the event of conflicts, external or internal. The fascist legal system institutionalized these interventions that were originally devised for states of emergency: especially when it came to the political enemy, the state of war was almost perpetual. If it is therefore certainly true that in many respects there was a break with the liberal rule of law with regard to individual liberties, it should also be noted that in some respects the fascist legislator made use of repressive instruments that had already been tested: the use of military justice was not entirely novel<sup>56</sup>.

The establishment of the Special Court represents a key moment for the transformation of the juridical order, since through an apparently temporary authority, the use of military criminal trials to suppress political crimes became stable. This was therefore a court with a strong political connotation that used the norms set by the Military Penal Code in force

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<sup>53</sup> In fact, if on the one hand the regime creates a “Tribunale Speciale per la difesa dello Stato”, on the other it entrusts to the Cassation the control over the corps of the magistrates.

<sup>54</sup> During the fascist regime, if on the one hand politics committed itself to triggering radical and sudden changes, on the other the institutions of the State responded more slowly to the changes taking place. Some principles – although promoted by fascism in the name of the primacy of the State – represented instead a legal negation with respect to the rights in force in the liberal State, cf. C. Latini, *Cittadini e nemici. Giustizia militare e giustizia penale in Italia tra Otto e Novecento*, Le Monnier, Firenze 2010, pp. 1-13.

<sup>55</sup> The best example of a court of dual nature, which oscillated between military justice and the corps of political justice, is given by the Special Court for the defense of the State, cf. M. Franzinelli, *Il tribunale del duce. La giustizia fascista e le sue vittime*, Mondadori, Milano 2017.

<sup>56</sup> Latini, *Cittadini e nemici*, cit., pp. 329-33.

during wartime. Up-to date historiography raises legitimate questions on what is the best approach for answering our key research question: namely, what technical-administrative mechanisms and procedures guided the evolution of Italian military justice during the fascist wars?

Scholars have investigated the main historical-juridical questions concerning the military magistracy. What has so far remained in the shadow are the men who devoted their professional life to those ideals. We do not know their culture and formation, nor have existing studies fully apprehended their dual nature as military and magistrates<sup>57</sup>. In essence, we find ourselves in the presence of a historiographical void concerning Italian military justice during the fascist period, preceded and followed by the pioneering studies carried out by Enzo Forcella, Alberto Monticone and Giovanna Procacci for the Great War<sup>58</sup>, and by the partial studies of Giorgio Rochat and Tone Ferenc for the Second World War<sup>59</sup>. Currently, the historiographical gap is made even more evident by the great interest in transitional justice in Italy, developed only in recent times in the wake of the important research undertaken in the last three decades in international historiography<sup>60</sup>. This article aims to contribute to highlighting this gap by undertaking a specific study on military justice. The focus on the Tribunal of Tirana has therefore allowed us to follow the evolution of the careers of one magistrate, who operated throughout the period of the

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<sup>57</sup> Question raised several times regarding the military justice of the republican age, and valid also for the fascist period, in Labanca, *La magistratura militare della Repubblica: prime indagini*, cit., pp. 265-9.

<sup>58</sup> Cf. E. Forcella, A. Monticone, *Plotone d'esecuzione. I processi della prima guerra mondiale*, Laterza, Bari 1968. Several times Procacci has systematically analyzed the theme, Procacci, *La società come una Caserma*, cit., pp. 423-45.

<sup>59</sup> Cf. Rochat, *Duecento sentenze nel bene e nel male. La giustizia militare nella guerra 1940-1943*, cit. Slovenian historian Tone Ferenc was the first to study the papers of the Ljubljana military court during the Second World War, cf. T. Ferenc (ed.), *“Si ammazza troppo poco”. Condannati a morte, ostaggi, passati per le armi nella provincia di Lubiana 1941-1943. Documenti, Istituto di Storia moderna*, Istituto per la storia moderna. Società degli scrittori della storia della lotta di liberazione, Ljubljana 1999. A general overview of military courts in the Second World War (only on sentences and not on trial files), in S. Dini, *La bilancia e il moschetto. I Tribunali militari nella Seconda guerra mondiale*, Mursia, Milano 2016.

<sup>60</sup> Cf. I. Bolzon, F. Verardo (eds.), *Cercare giustizia. L'azione giudiziaria in transizione. Atti del convegno internazionale: Trieste, 15-16 dicembre 2016*, Irsml Friuli Venezia Giulia, Trieste 2018. For an international picture, see two recent volumes: R.G. Teitel, *Globalizing Transitional Justice*, Oxford University press, Oxford 2014 and N. Wouters (ed.), *Transitional Justice and Memory in Europe (1945-2013)*, Intersentia, Cambridge 2014.

fascist wars<sup>61</sup>. Analyzing the personal paths of those who constituted the corps of military justice, will allow us to reconstruct profiles that will be useful for probing «the functioning of the administration of justice [...] indirectly, through personal files, documents capable of recording any changes brought from within from the dictatorship»<sup>62</sup>.

It is a perspective used in studies on ordinary justice, but not yet for studies on a “special” justice such as the military one<sup>63</sup>. When it comes to the latter, the legislative events that led to the issuing of the new military penal codes still await a proper historical analysis. Meranghini worked in the long transition period (until the mid-1930s), so defined by general Meranghini himself, who, between 1924 and 1943, held prestigious positions in the corps of military justice, coming to be appointed deputy military attorney general of one of the courts of Tirana. The Albanian court represents a unique particularity. It is possible to analyze his work at the time of transition of the new penal code.

In this regard, it would be just as difficult to draw up a history of the military judiciary – which is political and social history – doing without the documentation of the sentences. In a 2002 book, Rochat chose to publish an appendix with some sentences selected by the F-19 fund of the Ufficio Storico dello Stato Maggiore dell'Esercito<sup>64</sup>, highlighting however the lack of the trial files that made the material less revealing than that used by Enzo Forcella and Alberto Monticone for the Great War. In any case, Rochat's work represents a model for the choice of sentences to be used<sup>65</sup>. On the other hand, from the writing of that work to the present, the availability of the sources is much improved: in fact

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<sup>61</sup> On the definition, see G. Rochat, *Le guerre italiane. 1935-1943. Dall'Impero d'Etiopia alla disfatta*, Einaudi, Torino 2005. In the area of operation, the military courts had authority for all crimes committed by the military and for those committed against the service and the military administration, in Rochat, *La giustizia militare nella guerra italiana 1940-43. Primi dati e spunti di analisi*, cit., pp. 509-10.

<sup>62</sup> Focardi, *Magistratura e fascismo: l'amministrazione della giustizia in Veneto, 1920-1945*, cit., p. 111.

<sup>63</sup> Except for a hybrid court, such as the Special Court for the defense of the State, to which a work has been dedicated recently with an approach more in keeping with the institutional legal data, cf. J.C.S. Torrisi, *Il Tribunale speciale per la difesa dello Stato. Il giudice politico nell'ordinamento dell'Italia fascista (1926-1943)*, Bononia University Press, Bologna 2016.

<sup>64</sup> Rochat, *Duecento sentenze nel bene e nel male. La giustizia militare nella guerra 1940-1943*, cit., pp. 70-187.

<sup>65</sup> It is no coincidence that, in this article, one specific sentence (see note 37) is cited (N.G.'s case).

we can now count on the «preliminary material of the single processes, of interest and depth certainly variable, but which would be useful for a less rapid approach»<sup>66</sup>. It is necessary to exploit that material to trace the functioning of military courts, which was ensured by two actors: the military justice corps (magistrates and chancellors role) and the officers (designated by the commands as judges).

Another issue is the particularity of the Tirana court. The latter, as briefly mentioned, shares a crucial characteristic with some other military courts of the Second World War: born as an ordinary territorial court<sup>67</sup>, it would later become a war tribunal, operating before and after the 1941 code was changed. It is therefore a perfect place to achieve one of the objectives of this research, that is to answer a specific question: what changed in the role of military magistrates with the emanation of the new military criminal codes of 1941?<sup>68</sup> And moreover, did those changes derive from the fascist political provisions (unifying the criminal law for all military forces), or rather were they the formalization of modalities already in use for several years with the troops operating in the war zone, as happened in the operations of the 1920s and 1930s in Libya, during the war in Ethiopia and in the Italian intervention in Spain?

As mentioned, fascism offered some room for maneuver to military justice, thanks to the alliance with the army that began in 1922. As an example of this tendency, one can mention the decision to assign trials that had to judge crimes committed from military in connection with civilians to the purview of the military magistracy in the 1930s<sup>69</sup>. Nevertheless, it was the same fascist criminal justice project that was characterized by numerous intervention tools and institutions capable of responding in

<sup>66</sup> Rochat, *Duecento sentenze nel bene e nel male. La giustizia militare nella guerra 1940-1943*, cit., p. 65.

<sup>67</sup> For the rule that established the jurisdiction of the territorial courts in Albania see Law June 14, 1940 - XVIII, n. 863: Military judiciary in Albania and establishment of three new territorial military courts ("Gazzetta Ufficiale", n. 169, July 30, 1940), while for the provisions that regulated the work of the courts in zones declared in a state of war see the Lieutenantcy Decree of October 28, 1940: Declaration of the state of war in some prefectures of Albania, in U. Meranghini (ed.), *Raccolta delle disposizioni per l'amministrazione della giustizia militare complementari dei codici penali militari*, Istituto Poligrafico dello Stato, Roma 1941, pp. 32 and 465.

<sup>68</sup> A variation, the latter, which involved changes in the jurisdiction of the court, since the scope of application of the military criminal law could be interpreted extensively in time of war, especially in the territory declared in a state of war. On the intervention on military justice following the new rules, see Rochat, *Duecento sentenze nel bene e nel male. La giustizia militare nella guerra 1940-1943*, cit., pp. 70-187.

<sup>69</sup> Lacchè, *Tra giustizia e repressione: i volti del regime fascista*, cit., pp. IX-XXXVIII.

a discretionary manner to the turns imposed by the regime to the world of justice. In this sense, a key step was precisely the creation by fascism of the corps of military justice (also using officers of the royal army on leave), on which historical research has yet to shed light<sup>70</sup>.

This is a small reconstruction about the administrative organization of the military judiciary in those years: how the corps of military justice was managed, how it was accessed, what were the mechanisms that presided over career progressions, by whom it was constituted. The next methodological step could be the study of the legal literature of the time, which will allow us to detect how much the military judiciary, and consequently the administration of military justice, were permeable to the natural tendency towards the “fascistization” of the institutions pursued by the regime, above all in reference to the case of military tribunals during the fascist wars. My article is to provide a first general reconstruction of the institutional and political history of the Italian military judiciary of the fascist era, based on quantitative and qualitative data.

This article is a contribution that provides unprecedented insight on the history of a special corps whose lack of democratization had important repercussions also for the period following fascism. As noted by Pierpaolo Rivello,

While the military judicial corps for peacetime have undergone a radical transformation with respect to the past, no intervention has affected the military judicial structures foreseen for the time of war, which were configured according to a clearly unconstitutional legislation, and as such openly violated some key principles of the jurisdiction, including that of the mandatory prosecution and independence and impartiality of the judicial corps<sup>71</sup>.

A political compromise in the second post-war period allowed the maintenance of an order of military courts and a related corps of military magistrates. The Italian case is an exception. Leaving in place a special justice differentiated Italy from other defeated powers such as Germany or Austria, where military justice was instead abolished.

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<sup>70</sup> Labanca e Rivello, *Fonti e problemi per la storia della giustizia militare*, cit., pp. XIII-XVI.

<sup>71</sup> P.P. Rivello, *Il procedimento militare*, vol. XLIX, Giuffrè, Milano 2010, p. 5.

