

**EXTRACT OF THE JUDGEMENT ON AN APPEAL IN THE PENAL TRIBUNAL
OF PISTOIA
(5.6.1964)**

The Penal Tribunal of Pistoia in single session, composed of the Magistrates: Dr. Mario Ciantelli, President; Dr. Umberto Stoppoloni, Judge; Dr. Giovanni Ponzetta, Judge, has handed down the following judgement in the appeal case against Paternò-Castello Francesco-Mario, son of the late Roberto and of Paternò Castello Eleanora, born in Catania on 20.6.1913 - *OMISSIS* -; accused of an infringement of Article 81 of the Penal Code and of Article 8 of the Law number 178 of 3.3.1951 by having with criminal intent conferred honorific titles and also false and at the same time invalid titles of nobility. - *OMISSIS* - The charge was brought at Montecatini Terme on 14.7.1958. Aggravated by recurrence (Article 99 of the Penal Code). An Appeal was lodged against the judgement of the Court of Monsummano Terme dated 29.5.1962, by which he was condemned to 4 months and 15 days imprisonment and to a fine of Lit. 220'000 - *OMISSIS* -Resultant in the public verbal proceedings held today in proper manner. *OMISSIS*

In an opportune appeal the accused has contested the above-mentioned judgement; requesting to be acquitted because the deed does not constitute a crime, - *OMISSIS* -During the opening stage of the hearing of the Appeal the appellant produced various documents in an endeavour to demonstrate the legitimacy of the honorific titles distributed by him - *OMISSIS* -The Tribunal observed: the charge which is contested by the accused proceeds on the basis that honours distributed by the Paternò may be false or illegitimate; as for being false there exists no evidence, in as much as the same accused has admitted to having bestowed it on his initiative and by reason of having retained in his power this legitimate faculty. It is, therefore, a matter of establishing whether such a legitimacy exists, because, if it is found to be so, the granting of the above-mentioned honours would not constitute a violation of Article 7 of the Law number 178 of 3.3.1951.

Truly it should be noted that according to the terms of Articles 7 and 8 of the said Law, while the conferring of honours, decorations and chivalrous distinctions is forbidden to organisations, associations and private individuals and the practice is to be punished, be it in whatever form or manner in which it is carried out, the conferring and acceptance of honours is sometimes permitted to Italian citizens when conferred by non-national orders, or by foreign states, and this practice is only forbidden in so far as it lacks the authorisation of the President of the Republic as proposed to him by the Minister of Foreign Affairs.

Without the application of such an interpretation, the terms in question should remain without significance because the mention of non-national orders, in connection with the possibility that the practice of the relative concessions may be authorised, necessarily signifies that the same concessions may exist and be accepted. Such an interpretation was confirmed by Parliament, with the result that the phrase "non-national orders" has been added to the original text of Article 7 and that the expression "cannot be accepted" has there been substituted with the other phrase "cannot be used in the territory of the Republic". In substance, with the terms in question the legislator has wished to forbid that various subjects be able to take the initiative to make themselves the distributors of honours and decorations without an effective pre-existent title or faculty; and moreover that such concessions should remain in the private ambit of the distinguished subject, unless he has permission to use it in public, without which these same concessions should remain matters inconsistent with the internal right of the State, which forbids such external manifestation

in order justly to safeguard the merits reserved and represented by the honours recognised by the State. In the course of the voluminous documentary evidence produced by the appellant it is established that Paternò Francesco Mario is the descendant of the House of Paternò Castello Guttadauro di Emmanuel; even without going over the past precedents, likewise demonstrated; an Ordinance of King Ferdinand II of the Kingdom of the Two Sicilies in the year 1853, of which is found mention in an order of 30th March of the Commander of the Province of Catania, recognises a special privilege granted to the said House, together with that granted by the Roman Pontiff and certain other associations in respect of the bestowal of honours, permitting the practice of the wearing of decorations without the need for Royal consent, with the exception of all those stemming from foreign orders. There having come to be various branches of the House, and as a result of a Royal invitation, various representatives of the family came together and recognised in the family pact of 1853 the entitlement of Don Mario Paternò to bestow honours; the present accused is the grandson directly descended from him and as such the heir and also legitimate possessor of the above-mentioned faculty, which embodies the *jus honorum*, an expression of the power of the House in respect of honours which it has preserved by family tradition and the denial of which has not been verified, that is to say the forced removal of the power. The Appeal therefore should be accepted -

OMISSIS -P.Q.M. The Tribunal, having noted Article 525 of the Penal Code in overturning the judgement of the Court of Monsummano Terme of the 29th May 1962 against which Francesco Mario Paternò Castello has appealed, acquits the same of the charge of an infringement of Article 8 of the Law number 178 of 3.3.1951, because the deed does not constitute a crime.

In Pistoia, today 5th June 1964.

Signed, the President : Ciantelli;

Judges: Ponzetta and Stoppoloni.

Clerk of the Court: Palamidessi.