

Spared Lives

The actions of three Portuguese diplomats in World War II

19 Oct. 1940

Report by Count Tovar, rapporteur of the disciplinary proceedings against Aristides de Sousa Mendes.

(AHD - Disciplinary Proceedings against Aristides de Sousa Mendes)

DISCIPLINARY PROCEEDINGS AGAINST CONSUL (1ST CLASS) ARISTIDES DE SOUSA MENDES

The faults imputable under these proceedings to Consul (1st Class) Mr. Aristides de Sousa Mendes, come under four headings:

- disobedience
- falsifying documents
- desertion of post
- graft

The last of these imputations was made by the British Embassy in its Memorandum of 20 June last (see pp. 3). The Defendant has contested it and alleges that "The affirmations contained in the Verbal Note from the British Embassy, unaccompanied by any proof, are devoid of all probative significance" (pp. 102v.-103v.). In fact, I can find nothing in the proceedings to prove this charge. Neither do I see that the Instructor of the proceedings made any particular attempt to verify its veracity. The British Embassy does not appear to have been invited to submit any evidence it may have on this matter.

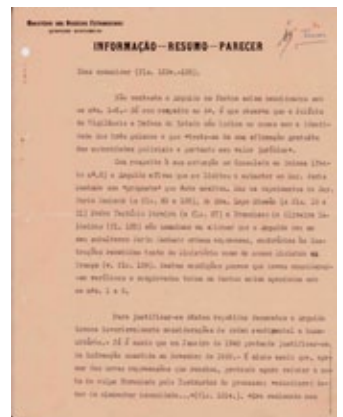
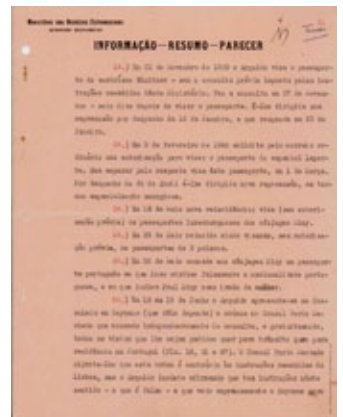


The disobedience imputed to the Defendant is based on a series of facts which took place between November 1939 and the end of June 1940, which are documented in the proceedings:

1st) On 21 November 1939 the Defendant issues a visa in the passport of the Austrian Wiznitzer – without effecting the previous consultation imposed by instructions received from this Ministry. The consultation was made on 27 November – six days after the visa was issued. He was reprimanded by dispatch of 16 January to which he replies on 22 January.

2nd) On 3 February 1940 he sends an application by ordinary mail for a visa in the passport of the Spaniard Laporte. Without waiting for a reply he issues the visa on 1 March. He was again reprimanded, in particularly strong terms, in a dispatch of 24 April.

3rd) On 16 May another case: without prior authorization he issues a visa to the Luxemburgers, Mr. and Mrs. Miny.



4th) On 29 May, yet again, issuing visas without prior authorization to three Poles.

5th) On 30 May he gives the Minys a Portuguese passport in which he falsely ascribes Portuguese nationality to them, and indicates that Paul Miny is his wife's brother.

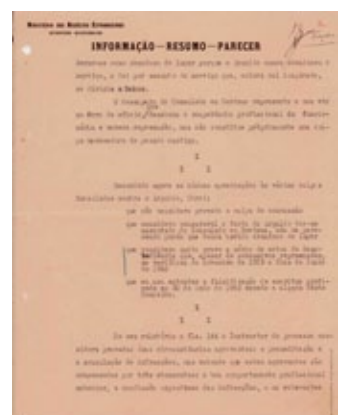
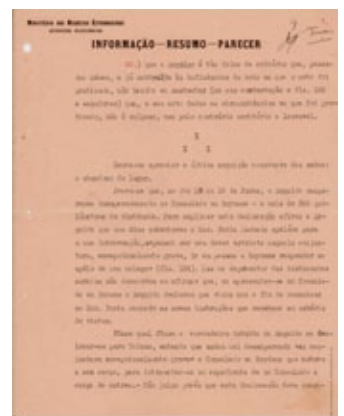
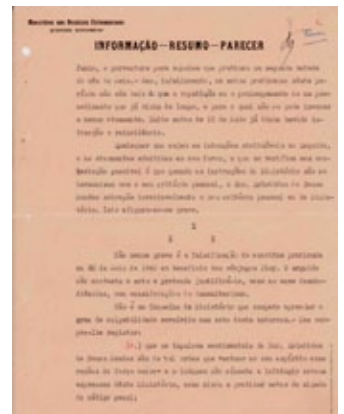
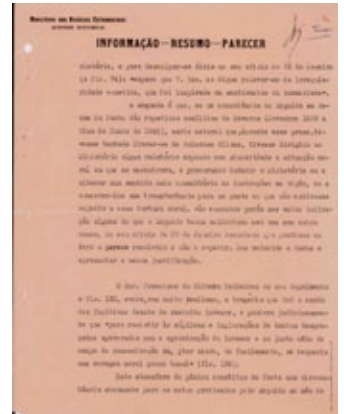
6th) On 18 or 19 June the Defendant appears at the Bayonne Consulate (in his charge) and orders Consul Faria Machado to issue all transit visas or residence permits for Portugal without prior authorization and without charging emoluments, to whoever applies for them (pp. 18, 31 and 87). Consul Faria Machado objects that this order contradicts instructions received from Lisbon but the Defendant firmly insists that he has received instructions accordingly – which is false – and that he has come expressly to Bayonne to pass them on (pp. 123v.-125).

The Defendant does not contest the above mentioned facts under n° 1-5. As regards n° 4 he observes that the Police of Vigilance and Defense of the State mentions neither the names nor the identity of the three Poles and says that "it is a gratuitous statement made by the police and accordingly has no legal value".

As regards his behavior in the Consulate in Bayonne (fact n° 6) the Defendant states that he merely made a "suggestion" to Mr. Faria Machado which the latter accepted. However, the depositions of Mr. Faria Machado (on pp. 83 and 135), Mr. Lopo Simeão (on pp. 18 and 31), Pedro Teotónio Pereira (on pp. 87) and Francisco de Oliveira Calheiros (pp. 125) are unanimous in stating that the Defendant gave his subordinate Faria Machado express orders, contrary to instructions received from the Ministry and from our Minister in France (see pp. 139). It therefore seems that all the facts mentioned in n° 1 to 6 should be considered true and proven.

To justify these repeated acts of disobedience the Defendant invariably invokes sentimental and humanitarian reasons. – He did this in January 1940 when wishing to justify the infraction committed in November 1939. – Despite new reprimands received, he now wishes to contest the charge note formulated by the Instructor in the proceedings: "I considered it a duty of elementary humanity..." (pp. 101v.). "It was indeed my aim to save all those people, whose suffering was indescribable" (on pp. 104v.). – "Hence my attitude, inspired solely and exclusively by the feelings of altruism and generosity which in eight centuries of history have been eloquently proved by the Portuguese and amply illustrated by our historic feats" (pp. 105v.).

The Defendant therefore wishes us to understand his conduct as follows: when asked to issue visas for Portugal there was a conflict in his conscience between "a duty of elementary humanity" which compelled him to do everything he could to save those people and his



duty as a functionary which compelled him not to issue visas. The duty of humanity triumphed in this conflict and he issued visas: "I acted compelled by circumstances which acted on my spirit as reasons of force majeure" (pp. 109). And he did not restrict himself to act thus in the cases that came to his consulate in Bordeaux. He went to Bayonne and with false allegations (special instructions he had received) forced a consul of lower category to act in a similar fashion.

The Defendant's construction, however, in my view raises two considerable objections:

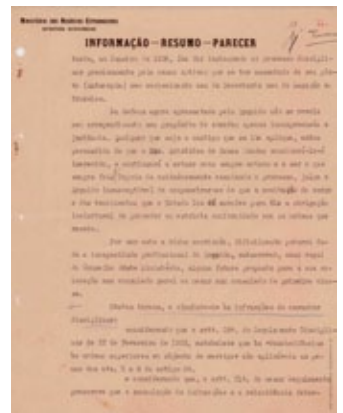
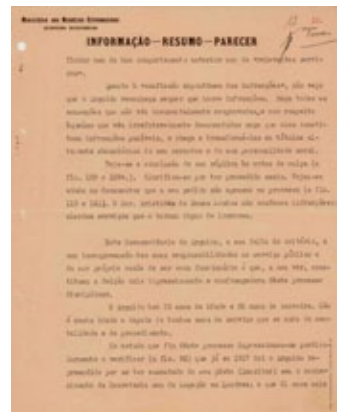
- the first is that this irresistible impulse of Mr. Aristides de Sousa Mendes' humanitarian feelings did not only occur in June 1940 with the arrival of the refugees from northern France. In November 1939 the Defendant was already issuing visas with total disregard for the Ministry's instructions, excusing himself in his letter of 22 January (on pp. 74) by saying: "I hope that you will forgive the irregularity I have committed which was inspired by humanitarian feelings".

- the second is that, if the Defendant's conscience was in fact repeatedly assaulted by conflicts of duty (November 1939 to the end of June 1940) he should in that time have tried to solve his painful dilemma by sending a report to the Ministry setting down with all sincerity the moral situation in which he found himself, and seeking to induce the Ministry either to make its instructions more humanitarian or to agree to transfer him to another posting where he would not be subject to this moral torture. I find nothing in the documents to indicate that the Defendant requested either of these two things. In his letter of 22 January he acknowledges that he made a mistake and seems determined not to repeat it. But he does repeat it and submits the same justification.

In pp. 120 of his deposition Mr. Francisco de Oliveira Calheiros very realistically invokes the tragedy of the exodus of refugees before the invading army, and judiciously ponders that "it would require unusual courage to resist the pleas and imploration of so many unfortunate people, terrified at the approach of the invader and the justified fear of the concentration camp or, worse, the firing squad" (pp. 126).

This atmosphere of panic does in fact provide an extenuating circumstance for the acts committed by the Defendant during the month of June and possibly even for those committed in the second half of the month of May. - Unfortunately, however, the acts committed during that period are no more than a repetition or extension of a procedure that already existed, for which the same extenuating circumstance cannot be invoked. There had been infractions and repetitions long before 15 May.

Whatever the intentions attributable to the Defendant and the extenuating circumstances allowed him, the fact is that when the



Ministry's instructions did not match his personal criterion, Mr. Aristides de Sousa Mendes invariably placed his personal criterion before the Ministry's. I believe this is serious.

No less serious is the falsification made on 30 May 1940 to benefit Mr. and Mrs. Miny. The Defendant does not contest the act and wishes to justify it, as all his acts of disobedience, with considerations of humanitarianism.

The Board of the Ministry is not competent to assess the degree of culpability involved in an act of this nature. – But it would like to register the following:

1) Mr. Aristides de Sousa Mendes' sentimental impulses are such that they "acted on [his] spirit as reasons of force majeure" and lead him not only to disobey express orders from this Ministry but to practice acts that fall within the scope of the criminal code;

2) the Defendant is so wanting in judgment that months later, having been removed from the influence of the environment in which he committed the act, he does not hesitate to sustain (see his defense on pp. 108 et. seq.) that given the circumstances in which it was committed his act is not guilty but rather deserving of merit and praise.

I must now judge the last argument in the documents: desertion of his post.

It has been proved that on 18 or 19 June the Defendant appeared unexpectedly in the Consulate in Bayonne – more than 200 kilometers away. To explain this journey he states that during the previous days Mr. Faria Machado had requested his intervention and that he "thought it my strict duty at that exceptionally serious moment to travel in person to Bayonne to respond to my colleague's appeal" (pp. 104). However, the depositions of the witnesses are unanimous in saying that when he arrived at the Consulate in Bayonne the Defendant said he had come to inform Mr. Faria Machado of new instructions he had received regarding visas.

Whatever the Defendant's real intention in going to Bayonne, I consider that he acted wrongly by leaving the Consulate in Bordeaux which was in his charge "at a particularly serious time", to interfere in the work of another consulate under someone else's charge. – I do not, however, consider that the journey should be looked on as desertion of his post as the Defendant never deserted his work and however wrongly inspired went on work-related matters to Bayonne.

The act of leaving the Consulate in Bordeaux is in my view a fault which discredits the professional competence of the functionary and merits a reprimand but is not actually a fault deserving a heavy punishment.

To summarize my judgment of the various charges formulated against the Defendant, I will say:

I do not consider that the charge of graft is proven.

I consider that the fact that the Defendant left the Consulate in Bordeaux is to be censored but I do not consider that it was desertion of his post.

I consider that the various acts of disobedience that took place between November 1939 and the end of June 1940, despite successive reprimands, are very serious.

In my view the falsification of documents committed on 30 May does not fall within the scope of this Board.

In his report the Instructor of the proceedings considers two aggravating circumstances to be proven: premeditation and accumulation of infractions, but is of the opinion that these aggravating circumstances are compensated by three extenuating circumstances: previous good professional conduct, spontaneous confession of the infractions, and the services for which he received praise by Dispatch of 14 July 1935.

I disagree with the Instructor with regard to the extenuating circumstances.

As regards his previous good professional conduct, it should be noted that this is the 4th case of disciplinary proceedings brought against the Defendant: one in July 1935 following certain statements made in public on the occasion of the inauguration of the Portuguese Pavilion at the Brussels Exposition (attached although truncated); another brought by dispatch of 26-7-1935 owing to irregularities in the consular accounts. In the second case the accusations were considered proven and led the Instructor of the Proceedings to propose a penalty of a reprimand.

A third case of disciplinary proceedings was brought by dispatch of 5 August 1938 because he left his post (Antwerp) and came to Portugal without leave and without the knowledge of this Ministry or of the Legation in Brussels. The charge was considered proven.

There is another case in which the instructor was Dr. Francisco António Correia. It is not attached but it figures in the proceedings (on. pp. 91).

The proceedings also contain quite a long list of reprimands and censures against him between 1937 and 1939.

On the other hand the proceedings only contain one praise "for services rendered on the occasion of the Antwerp International Exposition".

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In these conditions I do not think that the Defendant can benefit either from previous good conduct or "relevant services".

As for "spontaneous confession of infractions", I do not see that the Defendant even acknowledges that there were any infractions. He denies all charges that are not proven by documents and as regards those which are irrefutably documented he denies that they are punishable infractions and even transforms them into acts that are highly the credit of his character and his moral personality.

Consider the conclusion to his defense against the charges (on pp. 109 and 109v.). He glories in having acted the way he did. Consider, too, the documents attached at his request, to the proceedings (on pp. 115 and 141). Mr. Aristides de Sousa Mendes does not confess to infractions: he boasts of services that have made him worthy of praise.

The Defendant's lack of sense, his lack of judgment, his failure to grasp responsibilities in public service and his very *raison d'être* as a functionary is what in my view constitute the most impressive and distressing aspect of these disciplinary proceedings.

The Defendant is 50 years old and has spent 30 years in the foreign service. It will not be at this age and after so many years' service that he will change his mentality or his behavior.

When studying the proceedings I was particularly struck when noting (on pp. 90) that already in 1907 the Defendant had been reprimanded for having left his posting (Zanzibar) without the knowledge of the Secretariat or of the Legation in London; and that 21 years later, in January 1938, disciplinary proceedings were brought against him for precisely the same reasons: having left his posting (Antwerp) without the knowledge of the Secretariat or of the Legation in London.

In his present defense the Defendant shows neither repentance nor the intention to mend his ways: merely bafflement and boasting. Whatever punishment he is given I am convinced that Mr. Aristides de Sousa Mendes will consider it undeserved and will continue to act as he has always acted and be what he has always been. Having carefully examined the proceedings I believe that the Defendant is unlikely to grasp that the acceptance of a post and of a salary by the State gives him the ineluctable duty strictly to obey any orders he receives.

With this conviction and in view of the Defendant's professional incapacity, it will be difficult for me as member of the Board of this Ministry to support any future proposal to post him to a consulate general or even to a first class consulate.

Accordingly, and restricting myself to the disciplinary infractions: Considering that Article 18 of the Disciplinary Regulations of 22 February 1933 establishes that penalties 5 to 8 of Article 6 shall be applicable to the act of "disobeying higher orders during service".

considering that article 21 of the same Regulations establishes that the accumulation of infractions and repetition thereof determine the application of a penalty higher than that of the most serious infraction."

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I am of the opinion that all acts of disobedience mentioned under n° 2, 3 and 4 (on pp. 2 of this Report) are punishable with the penalty foreseen in n° 8 of the aforementioned article 18 of the Disciplinary Regulations;

and as a result of the accumulation of infractions and repetition thereof the Defendant subject to the penalty set out in n° 9 of that article: demotion to the category immediately below.

Lisbon, 19 October 1940

s/ Tovar