

Declassified E.O. 12356 Section 3.3/NND No. 785016

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DEFASCISM, PROPOSED LEGISLATION, COMPENSATION
OF ANTI-FASCISTS
AUG. SEPT. 1945

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION NO. 933

HIGH COMMISSION FOR SANCTIONS AGAINST FASCISM

ROME, 28 September 1945

Ref. 347

TO: COLONEL WHITE
ALLIED COMMISSION HEADQUARTERS
Civil Affairs Section
R O M E

With reference to your letter DF/5.25/CA of 25 September 1945 I am sending you a copy of the reply which I sent directly to the President of the Committee of Expiration of Bolzano.

Best regards.

THE COMMISSIONER FOR EXPIRATION
Avv. D. Riccardo Peretti Griva

COMMISSION FOR REPARATION

Ref. No. 345

ROME, 27 September 1945

SUBJECT: Indemnity for damages caused by the Nazi-fascists
TO : THE PRESIDENT OF THE COMMISSION OF REPARATION
POLAND

The Allied Commission, Civil Affairs Section has sent me your statement concerning the compensation for damages.

Property which has been forcibly taken from its owner as a result of any particular act committed by Nazi-fascists may be restored in kind whenever such property still exists in its original condition and is fully recognizable. Unless it has since been bought in good faith by a third party (Art. 1193 C.Civ.).

As regards damage caused to persons or objects by Nazi-fascists, the persons who have suffered such damage are, of course, entitled to claim the damages from whomever the person concerned proves was responsible.

Whenever property cannot be restored in kind or damages paid by those responsible, the person who has suffered the damage has no right to claim compensation from the State, as with reference to the State the damage must be considered the result of 'force majeure' and not involving the juridical responsibility of the State to whom the person in question belongs by right of citizenship.

Nevertheless the State is morally and politically bound to compensate damages caused directly or indirectly by the war, under the law of natural right, according to which law the State must endeavour to divide equally among all its citizens those damages which, although they fell to individuals, are the result of a collective misfortune, i.e. the war.

But in order that the citizen in question may have a subjective right to claim damages from the State, special provisions should be introduced by the State. Only by such provisions can it be established what compensation is to be made to citizens.

As regards the initial responsibility of Nazi-fascists in respect of damages caused indirectly by them, only the State (as the representative of all its citizens) can realize the assets obtained therefrom, and any such assets shall be credited to the State, which should establish precise legislative rules for determining what compensation a citizen is entitled to claim. For without such rules all assets derived from action against the above-mentioned responsible persons would go to the State Treasury.

In any case I shall forward your report to the Presidency of the Council of Ministers for such action they may decide to take.

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and for information
THE SECRETARY
Dr. Alberto Bernardi

THE COMMISSIONER FOR EMIGRATION
Avv. Domenico Riccardo Peretti Griva

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Declassified E.O. 12356 Section 3.3/NND No. 785016

no. 931

Alto Commissariato
per le Sanzioni contro il Fascismo

ALTO COMMISSARIATO NAZIONALE PER L'EDUCAZIONE

UFFICIO S. P. P. P.

Let. N° 327 S. P. Allegati 1

Ripresentato al P. N°

del

OGGETTO

Mod A

Roma

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1945

1 - OTT. 1945

Col. S. P. P. P.

Quartier Generale della

Commissione Alleata

Soc. A. Pari Civili

H. G. K. A.

In relazione alla nota DM/5.25/CA 10
 data 29 settembre 1947 della S. V., prete-
 sti riprodurre copia della risposta da me
 direttamente inviata al Pres. del Comitato
 di Assistenza di Berlino.

Con osservanza

IL COMMISSARIO PER L'EDUCAZIONE
 (Avv. D. Riccardo Percotti Griva)




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Declassified E.O. 12356 Section 3.3/NND No. 785016

Donat, 27 40, 1948-1949

At Donat, 27 40, 1948-1949

Donat, 27 40, 1948-1949

Donat, 27 40, 1948-1949

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Arthur

Declassified E.O. 12356 Section 3.3/NND No. 785016

From: Lt Col S.H. WHITE
CA Section HQ/AC

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HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

DE/5.25/CA

25 Sep 45

Dear Sir,

The enclosed which have been received from the President of the Epuration Committee of Bolzano are forwarded to you for such action as you may consider desirable.

It is pointed out however that there is logically no difference between compensating a person injured by Nazis and compensating one injured by Fascists. The proposal opens a very wide question.

There is logic in the suggestion that a person who has been improperly deprived of property should be compensated by the State if that property or its value can be traced to the States hands. That is to say if its value is included either in the funds of a fascist organisation which has been abolished and whose funds have come into the hands of the State under Part IV of DL 159; or they have formed part of the property received from a fascist as a profit derived from the Regime and have come to the hands of the State under Part III of DL 159.

It would not seem ethical for the State to retain property if this connection were established.

Yours very truly,

Sig. Domenico Riccardo FENETTI-GRIVA
Alto Commissario Aggiunto per l'Epurazione,
Palazzo del Viminale,
ROMA.

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Declassified E.O. 12356 Section 3.3/NND No. 7850161AHEADQUARTERS ALLIED COMMISSION
APO 194
LEGAL SUB-COMMISSION

AC/4104/L.

/ps.
22 Sept 45.

SUBJECT : Proposed reparation decree.

RE : CA Sec 1.

IC The attached copy of letter Hill/LE/Reg/C/11.1 of 17 Sept 1945 together with enclosures therewith are passed to you for transmission to High Commissioner for Sanctions against Fascism if you deem fit.



G. J. Hamford
G. J. HAMFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

1cc:1.5972

HEADQUARTERS
VENETIAN REGION
Allied Military Government
APO 394

17 September 1945 .

TO : Chief Legal Adviser, Legal Sub-Commission,
Hq. AG. (for Italian Branch)

SUBJECT: Proposed reparation decree.

FILE : RXII/RS/Reg/C/11.4

1. Enclosed is a proposal made by Dott. Franz Dinkhauser, vice president of the Expurgation Committee of Bolzano for legislation to enable victims of Nazis to recover damages for losses suffered through illegal restraint, arrest, and dismissals, which may be of interest to the Italian Government.

(Sgt) Dinkhauser,
Major.
Regional Legal Officer
Venetian Region



Dr. Franz Dinkhauser
Advokat
BOZEN

Tel. 12-63

Boisano, August 20th 1945.



To the Provincial Commissary of A.M.G.

B o l z a n o .

A.M.G. already has taken several sharp measures against the Nazis, but it has not yet been sought of the victims of Nazism. Victims have been taken for the punishment of the Nazis, but not for the reparation of the damages caused by them. Many South Tyrolians, even whole families have been deprived of their property, earnings, health, liberty and even life through illegal arrests, seizures, dismissals etc. only because they were anti-Nazis. It helps these poor people little if the Nazis are put to prison. They are not much intimidated in the punishment of the Nazis, but only in the reparation of the damages suffered. These victims can be assisted in two ways.
first : Through the confiscation of the Nazi funds.

A.M.G. was able to seize considerable funds collected for Nazi purposes or money robbed by Nazi leaders. These sums coming partly from mischiefs of the Nazis should in first instance be used for the reparation of the damages done by them. It is a natural principle of law that the property of the debtor should serve before all for the payment of his debts. Therefore it would be nothing but right and due if the victims were in first instance indemnified from these Nazi funds.

Second : Through special Civil Law Ordinances.

The objection that the indemnity claim is a private concern must be rejected. Such a point of view would deprive the most poor of their right. The normal common law proceeding would be vain in the majority of cases, because the greater part of the victims have become resourceless and have no means to sue for years ; they must

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The objection that the indemnity claim is a private concern must be rejected. Such a point of view would deprive the most poor of their right. The normal common law proceeding would be vain in the majority of cases, because the greater part of the victims have become resourceless and have no means to sue for years ; they must first provide for their living. On the other hand it is in most cases impossible to bring legal evidence of the direct responsible and of his deeds, because the archives of the Nazi offices are destroyed, the residence of the witnesses is unknown and the responsible themselves either have escaped or are unknown. In this way in the most

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P. 2. To the Provincial Commissary AMG, Belgrade.

cases the damaged persons would not get the indemnity.

Extraordinary circumstances require extraordinary laws. In criminal matters, where the existing laws were considered insufficient for the punishment of the guilty, such extraordinary provisions have been taken already (f.i. for the "collaboration"). Why should this not be possible in the domain of common law?

These provisions would be required in this case particularly.

a) Joint Responsibility of the Nazi Leaders.

As these mischiefs and injustices were committed under the Nazi system through general and special ordinances and recommendations of the Nazi leaders in the interest and according to the spirit of Nazism, there can be no doubt of the collective culpability and joint responsibility of all Nazi Leaders. Therefore the officials of the Party should be made responsible for the consequences of their orders. The collective responsibility already foreseen in the Indemnity Law should be extended in the widest sense.

b) Simplification of the Proceeding.

The victim must get his right immediately and not by means of an expensive lawsuit lasting for years. The Nazis too made quick process, and in the most cases robbed the people and put to prison without trial.

c) Amendment of the Evidence Proceeding.

Owing to the difficulty for the victims to bring evidence, the responsibility should be established upon the consequences of the deed. This principle already is recognized by the Italian and German law for indemnity claims for traffic incidents. The burden of evidence (onus probandi) must rest on the accused. In cases in which the responsibility of the leading Nazi and the damage caused are beyond doubt the Nazi leader and the direct responsible must bring evidence of their innocence. With the limitation, however, that the excuse

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I take the liberty to submit a Scheme of such an "Ordinance of reparation" as a basis for the examination of this important question.

Yours faithfully

One Enclosure.

J. Pinthmann

Scheme of a Reparation Decree.Para. 1. Claimants.

All persons have a right to a reparation who on the political ground of their anti-Nazi convictions a) were persecuted or suffered damage from German Civil or Military Authorities, from the NSDAP or ~~from~~ other German officials, or b) who fled on the ground of a well-founded fear of such persecutions.

In case of death this right goes over to their heirs. Members of the NSDAP cannot be claimants.

Para. 2. Main Responsibilities.

All persons are liable to indemnity who by denunciation, survey, information, slander, persecution, order, arrest, condemnation, ill-treatment, dismissal Act. caused directly or indirectly damage to persons as defined under para. 1.

Para. 3. Co-Responsibles.

All Party Officials, Commissioners, Commissioned Managers, Deputies and Men-of-Confidence of the district of the Claimant as well as persons who occupied or were appointed to the office, employment or business in place of the Claimant can be declared liable to indemnity jointly & severally with the Main Responsible. If no Main Responsible can be found, and, as a rule, in the event described by para. 1b) the Co-Responsible respond alone. Among such persons those more closely connected with the Claimant by their profession and domicile have to be called to respond in first instance.

Para. 4. ~~Main~~ Heirs.

The liabilities of the Main and Co-Responsibles can be extended to their heirs, especially if the latter have drawn advantages or if they shared the (~~political~~) convictions of the Responsibles.

Para. 5. Recourse.

The Co-Responsibles can appeal against the Main Responsibles

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The Co-responsibles can appeal against the Main Responsibilities by recourse case in ordinary Court, provided the Main Responsibilities does not prove that the appellant himself directly or indirectly caused damage to the Claimant. If the Co-Responsible finds out the hitherto unknown Main Responsible he has a recourse right against him, provided he supplies evidence.

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p.2.

Para. 6. Indemnity.

The claimant has a right to the indemnity for direct and indirect damage, loss of profit included and to a corresponding extra penalty in aggravating cases, especially in cases of slander, ill-treatment or prejudice to personal liberty.

Para. 7. Lawsuit.

The claimant must lodge his claim with the Prefecture, supplying a short description of the case, indication of evidence, of the claim, and, if case may be, of the co-responsibles, of the indemnity claimed and eventual extra-penalty. The Claimant's rights extinguish after a prescription term of five years after the end of war.

Para. 8. Commission.

The Prefecture forwards the instance immediately to the Commission for Reparations. This Commission is appointed by the Prefect and is composed of one presiding judge and two assistants : one damaged person and one re-immigrant.

Para. 9. Proceedings.

The Commission decides by writ with the majority of votes, without verbal debate, but after interrogatory of the responsables or their heirs, if possible. The President and the Surveyor can first make enquiries, interrogate witnesses or order such interrogations.

In case of condemnation the decision is definite. In case of a plea in bar (exception) the claimant has a right of appeal to the Prefect within 30 days. If the Prefect approves the claim he can return the case to the Commission or decide himself.

Para. 10. Execution.

The writ warrants immediate legal fulfillment from the moment of delivery. The President can, upon request, order a provisory fulfillment already when the claim is lodged. The courts are bound to execute such writs and orders.

Otherwise the Cod.Proced.civ. remains in force.

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Para. 11.

Fees for Procedure and Commission including expenses of the claimant have to be born by the responsible. In case of plea in bar (exception) reimbursement of the fees can be claimed only in case of malicious claim.

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