Declassified E.O. 12356 Section 3.3/NND No. 785017

ACC

10000/109/580
(VOL. III)

Declassified E.O. 12356 Section 3.3/NND No. 785017

10000/109/580
(VOL. III)

LEGAL INFORMATION
MAY 1946 - JAN. 1947

Declassified E.O. 12356 Section 3.3/NND No. 785017

257

V.P. C.E. Div.

Please see Minute #255. As requested by the Chief Commissioner draft of letter of reply, copy of which appears as Folio #254 in this file has been forwarded to him, ready for approval and signature.

[illegible signature]
Maj., S.C.

258

To: Ex. Commissioner's Office.

Ref. minute no. 255.

Ext. 358 — Please see reply in above minute no. 257.
6/9

[illegible signature] Capt
CAS

Ext. 358
6/9

Capt

3259

Declassified E.O. 12356 Section 3.3/NND No. 785017

C.S.O. Ex Comms 254

Please see folio 253 for info. C.A. Sec. are taking the necessary action.

Ref the second para of para 2 Replies of [illegible] letters sent out under Ex Comm's file no. are sent to this office for "action" and may possibly be passed by us to another Sec. or Sub. Comm. for "action". On the other hand, letters sent out by a Sec or Sub under their own ref. would be returned to them direct with a copy to this office for info.

As will be seen, in folio 252. AFHQ quote a Legal S/C file no and therefore the letter was sent to them for action

[illegible] 29/8 [illegible] 29/8

Declassified E.O. 12356 Section 3.3/NND No. 785017

their own ref. would be [illegible]
with a copy to this office for info.

As will be seen, in folio 252. AFHQ quote a Legal S/C file no and therefore the letter was sent to them for action AWK 29/8 29/8

TTS 29/VIII

V.P. C.A. Sec. 255

May the Exe Comm. please be advised of the action taken on folio 249. AWK 3/9

A. W. Kossick
OFFICE OF THE EXECUTIVE COMMISSIONER

3258

Legal S/C 256

Please see above minute n. 255.

Infantellu
Capt
ATS

3/9

Declassified E.O. 12356 Section 3.3/NND No. 785017

2097

Declassified E.O. 12356 Section 3.3/NND No. 785017

222

PA.

Please have retyped to include Judge Thomas' suggestions - & my amendments.

MS 27/5

223

C.S.O. for Comm.

Please see folio 222 and enclosures for info. Legal o/c are taking action

N.S. 4/6

AWB 4/6

224

P.A.

B.f. for next Political meeting. — Discussed.

MS 4/6.

12/6.

To Security div:

246 M/6/6 ... has been

Declassified E.O. 12356 Section 3.3/NND No. 785017

for info. Legal o/c are taking action. PJ 4/6
AWB 4/6

P.A. 224.

B.f. for next Political meeting. — Discussed.
MS 4/6. [initials] 12/6.

To Security div:

246 [initials] 6/6.

May I please be advised if a reply has been received to folio 233. If not a hastener might be sent.

AWK 3/8 2257

Ex Comm [initials]

247.

A reply has been received and letter to the Prime Minister forward above signature of Ex Comm on 3/8.

[initials] AB. 4/8

Ex. Comm. 217

Para 3 of the attached letter would more closely represent the opinions expressed if it ran as follows:

" . . . . that civilian allied nationals who are (1) not subject to the military law of the Occupying Powers, or (2) are not excluded under the Restoration Agreements, are within the jurisdiction of the Italian Courts and may be tried by them."

The question whether Great Britain is de jure still at war with Italy is one on which this S/C is not called upon to express an opinion and would only do so after very careful consideration. The question is of great importance and seems to have been entirely overlooked. It is frequently stated that the effect of an armistice is

Declassified E.O. 12356 Section 3.3/NND No. 785017

tried by them."

The question whether Great Britain is de jure still at war with Italy is one on which this S/C is not called upon to express an opinion and would only do so after very careful consideration. The question is of great importance and seems to have been entirely overlooked. It is frequently stated that the effect of an armistice is only to suspend hostilities, and that a state of war continues to exist until it is put an end to by a Treaty of Peace. From the signature of the Armistice Italy was declared to be a co-belligerent and immediately took part with the Allies in military operations against the Germans. What the precise position of a co-belligerent is no one seems to know, nor has it ever been defined. It does, however,

3256

Declassified E.O. 12356 Section 3.3/NND No. 785017

Declassified E.O. 12356 Section 3.3/NND No. 785017

[redacted]

appear a clear contradiction in terms to say that a state of war continues to exist between the Allied Nations and a nation whose military and naval forces have actively co-operated with the forces of the Allies in operations against the Germans.

I have mentioned this point only to indicate that it is open to doubt whether a de jure state of war can be said to exist after the United Nations accepted the co-operation of the Italian armed forces in warlike operations.

[illegible]

647

forces

HS 275

25th May '46.

Declassified E.O. 12356 Section 3.3/NND No. 785017

[illegible] pure state of war can be said to exist after the United Nations accepted the co-operation of the Italian armed forces in warlike operations.

25th May '46.

[illegible] 647

forces

H.S. 575

3255

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS ALLIED COMMISSION
APO 394
Office of the Executive Commissioner

~~219~~ 216

CLA.

Reference conversation Judge Thomas - Brigadier Lush - does the attached letter cover the legal aspect. Brig. Lush has been much concerned & has emphasised the de jure state of war.

destroyed see new letter 219.

MS 23/v.

3254

Declassified E.O. 12356 Section 3.3/NND No. 785017

209.

OSO Ex Comm.

Letter at 208 for signature please.

Poland is has requested this letter be sent.

H.S. 15/5 [illegible] 15/5

213.

V.P. C.A. Sec.

Will you please take action on p 212.

H.S. 28/5

214 B

Ex ~~Comm~~ H.S. 30/5

Deputy CLA should have addressed 212 to me and I am so informing him. Action has already been taken on the lines of 212. There are complications because it is not clear yet owing to release & leave whether the O/f concerned will be available here all this is being dealt with.

29/5/46

M Carr Brig V.P. C.A.S. [illegible] 29/5

to me and I am so informing him. Action has already been taken on the lines of 2/2. There are complications because it is not clear yet owing to release & leave whether the Offr concerned will be available but all this is being dealt with.

29/5/46

M Carr Brig
V.P. C.A.B.

[initials] 29/5

3233

Declassified E.O. 12356 Section 3.3/NND No. 785017

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

260

AC/4079/1/L

13 January 1947

My dear Monsignor Carroll:

Your letter N. 138971/SA of 26 December 1946 has been received.

There has not been any alteration in the decision of the Supreme Allied Commander that the Amnesty decree should not, for the time being, take effect in Venezia Giulia.

On the other hand, because of the reasons given in your letter, and many others, the matter has been and is receiving consideration equal in measure to the importance with which a decision thereon is regarded by all.

With all good wishes,

Sincerely,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Rt. Rev. Msgr. Walter S. Carroll
Secretariat of State of His Holiness
Vatican City

Jvv 16/1

32

Card V.

Declassified E.O. 12356 Section 3.3/NND No. 785017

320 Sagnoli, Dr. Dino
BBS:sml

2604 46

259

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

SEP 3 1946

AMERICAN EMBASSY
(Consular Section)
Rome, August 30, 1946

Captain Alan W. Kinsely,
Office of the Executive Commission,
Headquarters, Allied Commission,
Rome.

Dear Captain Kinsely:

251

Thank you for your letter dated August 28th (reference 2604/251/EC) indicating the reasons for the further retention in police custody of Dino Sagnoli alias Gabriele Mattina.

Your letter under reference is being transmitted to the American Consulate General in Naples, as was previous correspondence in the case, since legal action in the matter is occurring within that office's Consular district.

Sincerely yours,

Byron B. Snyder
Byron B. Snyder
American Vice Consul

(Capt. K)

3251 6/9
PA
R.

Declassified E.O. 12356 Section 3.3/NND No. 785017

254

AC/4083/23/L. September 1946.

SUBJECT : Cases of COSTANZO Giuseppe, GAI Giuseppe and BACINOTTI Giacomo.

TO : Dr. R.V. Restagno,
Undersecretary of State, Ministry of Public Works.

1. Receipt of your letter No.652 dated 19 August 1946, on behalf of the above named persons, is hereby acknowledged. In view of the contents thereof re-examination of the records of their cases has been made by the Board of Review and decision rendered that no just cause has been revealed for extraordinary action regarding them. These records show that the conviction and sentence of each of the persons concerned were based solely upon evidence of the substantive offences with which they were charged, and that the Courts which adjudged their cases did not include consideration of possible other offences that may have been committed by them in imposing sentences. No evidence of crimes of violence was presented or admitted against them.

2. At the time of prior review of these cases, in the regular course, the Board of Review decided upon action to reduce the sentence in each instance to three and one half years. Thus, if they may be otherwise eligible, conditional release may be invoked in favour of these men in the not distant future.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

3250

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

253

AUG 29 1946

HEADQUARTERS ALLIED COMMISSION
APO 390
CIVIL AFFAIRS SECTION.

TO: Executive Commissioner. 29th August,1946

252

1. The attached copy of a letter, which was passed direct to LegalSub-Commission, is sent to you for information of Chief Commissioner, who was sent a copy of this Headquarters letter of 8th July.

I am never quite certain what is the procedure as regards distribution of letters like the attached. In this case the original was sent direct to Legal Sub-Commission. In some cases letters are received after distribution from your office.

2. It has taken AFHQ G-5 six weeks to send a reply to our letter on the subject of the application of the Italian Amnesty to AMG Court cases, and cases tried by Italian Courts for offences against the Allies.

3. As regards the information requested in para 2 of the attached,AFHQ were given a break down of all outstanding AMG cases as long ago as April 4th, which I would have thought would give them sufficient guidance.

We have repeatedly told them that the second class they refer to in para 2 no longer exists, Sentences having expired.

Legal S/c are bringing our information of 4th April up to date

M Carr Brigadier

M. CARR, Brigadier.
VP. CA. Section.

(Capt R)

32 29/8/46

Declassified E.O. 12356 Section 3.3/NND No. 785017

26048

252

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.43P

23 August 46

SUBJECT: Clemency.

TO : Chief Commissioner,
Allied Commission,
APO 794.

243 231

1. Full and serious consideration has been given to the proposals contained in your letter AC/4079/1/L of the 8 July and to the Italian Prime Minister's letter 73387/50077 of the 24th June, by the Supreme Allied Commander. He finds it inadvisable to agree your recommendations in toto. He however wishes to give the matter further consideration based on additional information.

2. Will you therefore please supply statistics of the AMG cases divided into those whose release might endanger allied security or operations and those which would not. In the first class would be included and shown separately those who were guilty of unlawful possession of Allied arms; assault of Allied personnel; theft, robbery and unlawful possession of Allied property; bribing of Allied personnel; counterfeiting; espionage and sabotage; and murder. In the second class would be included other crimes including offenses not committed against the Allies and those committed against Allied orders but which are no longer of moment, such as curfew offenses. In preparing the table please show sentences of 1 year or less separately from sentences of over 1 year.

3. Offences against the Allies which have been tried by Italian Courts will be the subject of another letter when it has been determined what action will be taken in respect of offences tried by AMG Courts.

BY COMMAND OF LIEUTENANT GENERAL LEE:

A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5

See 263

3248

Declassified E.O. 12356 Section 3.3/NND No. 785017

File 251

Ref. : 2604/251/SC 28 August 1946.

SUBJECT: Dr. SAGNOLI Dino detained in Salerno Prison.

TO : The American Embassy, Rome.

1. With further reference to my letter No. 2604/202/SC dated 6 May 46 regarding Dr. SAGNOLI.

2. It has been ascertained by the Italian Police that Dr. Sagnoli whose real name is MATTINA Gabriele di Antonio and fu Minacapelli Liberia, born at Barrafranca (Enna), on 23 March 1894 is a dangerous criminal who has served many terms of penal servitude having been in numerous instances found guilty of swindling, false declaration regarding his personal identity, desertion, material falsity, substitution of person etc.etc.

3. A new penal proceeding is now being brought against him by the "Giudice Istruttore" of Salerno who is charging him under Arts. 347, 495, 640 of the Penal Code (usurpation of public functions, false attestations, swindling and other minor offences). The same "Giudice Istruttore" has also ordered that Mattina be held under arrest in accordance with the provisions under Art. 375 of the Code of Penal Procedure.

4. Due to the above the order of release previously issued has been waived.

For the Chief Commissioner:

A. W. Knisely.
Brigadier,
Executive Commissioner.

Copy to: Legal S/C.

3217
29/2/46
P. A.

See 7-259

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604. 9d

250

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AUG 27 1946

AP/ns
AC/4030/L 27 August 1946

SUBJECT : Dr. SAGNOLI Dino detained in Salerno Prison.

TO : Executive Commissioner, Hq. AC.

199 Vol II

1. Reference to this Sub-Commission's letter AC/4030/L of 25 April 1946 and previous correspondence.

2. It has been ascertained by the Italian Police that Dr. Sagnoli whose real name is MATTINA Gabriele di Antonio and fu Minacapelli Liboria, born at Barrafranca (Enna), on 23 March 1894 is a dangerous criminal who has served many terms of penal servitude having been in numerous instances found guilty of swindling, false declaration regarding his personal identity, desertion, material falsity, substitution of person etc.etc.

3. A new penal proceeding is now being brought against him by the "Giudice Istruttore" of Salerno who is charging him under Arts. 347,495,640 of the Penal Code (usurpation of public functions, false attestations, swindling and other minor offences). The same "Giudice Istruttore" has also ordered that Mattina be held under arrest in accordance with the provisions under Art. 375 of the Code of Penal Procedure.

4. Due to the above the order of release previously issued has been waived.

G.G. Hannaford

G.G. HANNAFORD,
Lt.Colonel,
Deputy Chief Legal Advisor.

3246

(Capt L)

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

EC 249

MINISTRY OF PUBLIC WORKS

The Undersecretary of State

No. 652

Rome, 19 August 1946.

AUG 27 194

I beg your excellency's intervention on behalf of 3 young men from my home-town, ex partisans, held at the judiciary prison of Ivrea (Aosta) following the sentence dated 17 Aug. 1945 of that town's Allied Military Court, for unauthorized carrying of arms and the employment of a car without circulating permit.

The 3 young men COSTANZO Giuseppe; GAI Giuseppe and BACINOTTI Giacomo, injustly indicted, together with another one CASALE Francesco, for robbery and violence, and lately acquitted - after the guilty persons were found - were sentenced to 4 years and 6 months imprisonment for crimes that the Allied Military Court of Ivrea has constantly sentenced with from 4 to 12 months of punishment.

This Court, though it sentenced the ex partisans only for unauthorized carrying of arms and irregular circulating, was evidently convinced that the four were also responsible for robbery and violence, while their innocence was later established by the proper Italian judiciary authorities.

In face of these facts the lawyer of the 3 boys, who are praizeworthy for their actions as partisans, (COSTANZO is an ex chief partisan whose father was killed by the nazi-fascists), has addressed on the 8 of August an appeal to Your Excellency begging your high intervention for the release of the boys, only responsible for a crime that is usually sentenced to less than a year's imprisonment and that they have already served.

I enclose herewith a copy of the appeal in question taking the liberty of recommending the case to your judgement and clemency.

Thanking you, I beg to remain,

Yours respectfully

/s/ Pestagno

To : Admiral Ellery W. STONE
Chief Commissioner, A.C.
ROME

Action – CA Sec
Info – CC
– EC

(copy K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

260498

248

D/550.05

3. August 1946

AUG 6 1946

231

My dear Mr. Prime Minister:

With reference to your 73387/50077.4.2.4.2 of 24th June.

I am glad to be able to inform you that the Military Authorities have agreed that the majority of the internees held on security grounds will be released as fast as administratively possible.

Only those Italian subjects who are considered to constitute a direct threat to the security of the Allied Forces will be retained in custody.

The number of Italian subjects held on July 17th was 373. Since that date, 95 have been released.

Arrangements have been made for notification of all releases to be sent to the Ministry of Interior.

As regards the matter of the application of the Amnesty and Pardon decree, or some similar act of clemency in the case of persons sentenced for offences committed to the detriment of the Allies, I have, my dear Mr Prime Minister, referred this question to higher authority and am awaiting a decision.

Yours very truly,

M. S. LUSH
Brig.
ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Dr. Alcide De Gasperi,
President of the Council of Ministers
Italian Government,
ROME.

Copies to: - Legal S/C
Public Safety S/C
Chief Commissioner.
File.
Ex.Com ✓

(CAPT K)

3/9/46
P.A.

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

245

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

In reply refer to AG 000.5/082 JA-O

29 July 1946

AUG 1 1946

SUBJECT: Report of Italians Involved in Crimes Against the United States for the Month of June 1946

TO : Chief Commissioner
Allied Commission
APO 794

1. It is requested that a conference be arranged between the Minister of Grace and Justice; the Theater Judge Advocate, Colonel Tom H. Barratt; and your legal branch to discuss the possibility of the Italian judiciary's processing more expeditiously the trial of Italian offenders against the United States who have been turned over to the Italian authorities by U. S. agencies for disposition.

2. Major commands in this theater have reported that of 205 cases turned over by U. S. agencies by the end of June 1946, only 7 had been disposed of; 89 are less than one month old; 13 are less than two months old; 6 are less than three months but more than two months old; and 90 cases are more than three months old. Most of the cases, so far as this headquarters is aware, consist of thefts from U. S. Military sources.

3. It is suggested that the most convenient time for such a conference would be Thursday, 1 August or Saturday, 3 August 1946.

BY COMMAND OF LIEUTENANT GENERAL LEE:

M. FRANCES AMAN
Captain, AGD
Asst Adjutant General

EC DIST - 1 Aug

ACTION - 3243

INFO - E.C.

P.A. 2/8/46

Of Seen by Capt K CSO
(CAPT K)

2117

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

244

HEADQUARTERS ALLIED COMMISSION
Office of the Chief Commissioner
A P O 794

Ref: AC/4079/2/L.

19 July 1946.

JAN 19 1946

SUBJECT: Implementation of Amnesty Decree in VENEZIA GIULIA.

TO : ALLIED FORCE HEADQUARTERS.
Attn: G-5 Section.

243

Reference my letter AC/4079/1/L and in particular to para 7.

1. The question of extending all or part of the amnesty decree to VENEZIA GIULIA was discussed in TRIESTE at a meeting at which Colonels Bowman and Robertson, AMG 13 Corps, and Lt.Col. Hammford of this HQ were present.

2. It was agreed, for political as well as practical reasons, not to publish a General Order embodying the provisions of the decree pending instructions from your HQ.

3. The Special Court of Assises is still operating in TRIESTE and the consequence of a political amnesty liberating Fascists a few months after their sentences have been pronounced by Courts created by AMG might be prejudicial to the whole jurisdiction thus established.

4. On the other hand, there remains the injustice of a functionary appointed by the Republican Fascist Government remaining in prison just because he was unfortunate enough to be assigned to a locality now in disputed territory.

5. The former Minister of Justice, Palmiro Togliatti, in an interview with Lt.Col. Hammford expressed the opinion that it would be premature to implement in VENEZIA GIULIA the amnesty decree under some form or other. Togliatti pointed out that the political conditions which justified the promulgation of anti-Fascist legislation, now partly rescinded by the amnesty, had subsided in Italy but still obtained in VENEZIA GIULIA. The implementation, he thought, would at present do more harm than could be justified by the desire to redress a small number of individual cases of injustice.

6. I am of opinion that the amnesty decree of 22 June 1946 should not for the time being take effect in VENEZIA GIULIA.

7. Will you please say if you concur.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: Chief Commissioner
Exec. Commissioner
Polad (A)
Polad (B)
AMG 13 Corps.

3242

(160) 2017

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 90

243

HEADQUARTERS ALLIED COMMISSION
APO 794
Office of the Chief Commissioner

Ref: AC/4079/1/L.

8 July 1946

JUL 9 1946

SUBJECT : Italian Amnesty.

TO : AFHQ (G-5 Section).

231

1. My advisors and I have given full consideration to the Italian Government's Presidential Decree No. 4 of the 22nd June 1946 which grants a wide measure of amnesty and pardon for common, political and military offences and of which a version in English is enclosed. I have also received from the Prime Minister a letter dated 24th June 1946 on this subject, a copy of which is enclosed.

2. I am of opinion that there is nothing in the above mentioned decree which transgresses the long armistice terms or the Moscow declaration. This view is shared by my political advisors and Chief Legal Officer.

3. Attention is drawn to the interpretation of Article 3 of the decree. Read together with the explanatory notes which accompanied the decree, as submitted to the Council of Ministers, this Article excludes from any benefits under the decree those persons who, possessed of high functions of a civil, political or military nature, committed certain specified offences. It means, moreover, that the persons concerned need not necessary be of high rank, but that the provisions can be applied to a subordinate officer who held an appointment normally granted to an officer of high rank.

4. The only other article of the decree [illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785017

2. I am of [illegible] mentioned decree which transgresses the long armistice terms or the Moscow declaration. This view is shared by my political advisors and Chief Legal Officer.

3. Attention is drawn to the interpretation of Article 3 of the decree. Read together with the explanatory notes which accompanied the decree, as submitted to the Council of Ministers, this Article excludes from any benefits under the decree those persons who, possessed of high functions of a civil, political or military nature, committed certain specified offences. It means, moreover, that the persons concerned need not necessary be of high rank, but that the provisions can be applied to a subordinate officer who held an appointment normally granted to an officer of high rank.

4. The only other article of the decree which calls for comment is Article 13 which deals with offences committed to the detriment of the Allied Forces. Under this Article, according to the Italian Government's interpretation, with which I agree, persons who committed offences to the detriment of the Allied Forces or to members of the said Forces who have been tried by Allied or Italian Courts are excluded from the provisions of the decree.

In making my recommendations concerning this category of persons, I have borne in mind the legal distinction between amnesty and pardon. Shortly put, amnesty is the act of forgiveness of the offence and acts as a bar to trial. Pardon is a forgiveness of the punishment and may carry a restoration of civil rights.

See 252.

9/ (COPY K)

See 7-244

PA R.9

242

5. Persons convicted of offences to the detriment of the Allied Forces can be divided into two classes:

(a) Those tried and convicted by A.M.G. Courts.

(b) Those tried and convicted by Italian Courts. It is the Italian practice to consider all such persons to be at the disposal of the Allies. The Prime Minister includes this category in the words "at the disposal of Allied Authorities" in the fourth paragraph of his letter.

6. As regards persons convicted by A.M.G. Courts, sentences imposed are at present being reviewed at this Headquarters and in many instances reductions of sentences have been ordered. The review is carried out with a view to determining that the evidence is sufficient to warrant the conviction and that the sentence is fair, reasonable and uniform. No action is taken by the Review Board to reduce sentences merely on the grounds of clemency. In this connection reference is made to your Headquarters letter G-5:014.5 of 28th February 1946 and in particular to paragraph 4 of that letter.

Your Headquarters has never agreed to amnesty being applied to offences triable in A.M.G. or Italian Courts affecting Allied Interests or personnel but by letter G-5:014.5 of 30th April 1946 has agreed to the Italian Government applying 'provisional liberty' to the cases specified in para 5 of this letter.

I am not in favour of applying amnesty to these offences, as such offences are probably even now being committed against Allied interests, e.g. in Udine, but am of opinion that pardon could be applied in the case of convictions as set out in the Decree.

In so far as the cases in para 5 (a) are concerned, I strongly recommend that pardon be applied through the medium of the Review Board who would be given directions to apply pardon to all A.M.G. cases on lines similar to those set out in the Italian Decree.

Declassified E.O. 12356 Section 3.3/NND No. 785017

of clemency. In this connection reference is made to your Headquarters letter G-5:014.5 of 28th February 1946 and in particular to paragraph 4 of that letter.

Your Headquarters has never agreed to amnesty being applied to offences triable in A.M.G. or Italian Courts affecting Allied Interests or personnel but by letter G-5:014.5 of 30th April 1946 has agreed to the Italian Government applying 'provisional liberty' to the cases specified in para 5 of this letter.

I am not in favour of applying amnesty to these offences, as such offences are probably even now being committed against Allied interests, e.g. in Udine, but am of opinion that pardon could be applied in the case of convictions as set out in the Decree.

In so far as the cases in para 5 (a) are concerned, I strongly recommend that pardon be applied through the medium of the Review Board who would be given directions to apply pardon to all A.M.G. cases on lines similar to those set out in the Italian Decree of 22nd June 1946.

I would also recommend that so far as the cases in 5 (b) are concerned, pardon should be applied. This could be done by the issue of an amendment by the Italian Government to Art. 13 of the Decree.

7. With regard to Article 16 the decree will automatically come into operation within the A.M.G. territory of Udine, and it is not proposed to take any action to prevent this.

It will not have effect in Venezia Giulia, but it may be

Declassified E.O. 12356 Section 3.3/NND No. 785017

241

politic to consider how far a modified application might be made in Zone "A". My Deputy Chief Legal Advisor is visiting Venezia Giulia this week and will discuss this question with the authorities on the spot.

8. In order to make clear the Allied policy to date, I recommend for consideration the publication of a statement explaining the action being taken by the Allies as regards the review of cases tried by A.M.G. Courts. If approval is given to apply pardon to A.M.G. cases, this statement could also explain the proposal which I should make to the Prime Minister for the issue of an amendment to Article 13 regarding pardon in respect of cases tried by Italian Courts as recommended in para 6.

9. A separate communication has been sent to you on the subject of Italian citizens interned in concentration camps who are mentioned in the Prime Minister's letter paragraphs 4, 5 and 6.

10. I should be grateful for an early and sympathetic consideration of the recommendations made in paragraphs 6 and 8 above.

/s/ Ellery W. Stone

ELLERY W. STONE.
Rear Admiral, USNR.
Chief Commissioner.

Declassified E.O. 12356 Section 3.3/NND No. 785017

10. I should be grateful for an early and sympathetic consideration of the recommendations made in paragraphs 6 and 8 above.

/s/ Ellery W. Stone

ELLERY W. STONE.
Rear Admiral, USNR.
Chief Commissioner.

Copy to: G. Cu.
E. Cu. ✓
Poland (a)
Poland (b)

3239

Declassified E.O. 12356 Section 3.3/NND No. 785017

2124

Declassified E.O. 12356 Section 3.3/NND No. 785017

PREAMBLE TO DECREE PROVIDING FOR AMNESTY AND PARDON DATED 22 JUNE 1946. -

Mr. President,

The Republic is celebrating its birth issuing as its first act a general provision of clemency.

It is unnecessary to discuss this act as far as the common offences are concerned as such a policy is constantly being applied in accordance with the Italian constitutional and political practices adopted on historical dates; a more solemn event than this one, on which the Italian people called to express its will upon the institutional form of the State has chosen the Republic, cannot be found; this choice was recognised and announced in accordance with the law in force and the first constitutional modifications deriving from it have already been accomplished.

With the passage from Monarchy to Republic the beginning of a new period of life has been opened to the united Italian State, and it is fair that an act of clemency be granted at this time in order to alleviate also the position of those persons, who having violated the penal law are enduring or have to endure the consequence thereof and to assist as well a large number of their miserable and unfortunate relatives.

As far as common offences are concerned, it was thought advisable not to excessively extend this measure in view of the considerable increase of common crimes committed in the last two years and especially in view of the particular types of offences. A general desire to return to a normal situation of order and security both in regard to persons and property has created the necessity of granting an act of clemency and in the same time has fixed the limits of its application.

In regard to political crimes, it may be considered that a political and social peace is necessary for this country. The Republic has to satisfy this necessity and pacify all the Italians.

It must not be forgotten that in the past years, and especially during the period of the German occupation, many citizens have violated their loyalty towards the State and towards their country. They entered into the service of the invaders, violated both political and civil rights, committed detestable acts of persecution and violence. But it has to be taken into consideration that the despotic fascist regime has not given the young generation a proper education, which is necessary in order to distinguish good from evil. This has been taken into consideration by the provisions of the amnesty.

Declassified E.O. 12356 Section 3.3/NND No. 785017

But if the alleviation of such repression is fully justified in less serious cases, or in cases where the act was committed by persons who were not entrusted with high functions, it is not advisable that it be applied for more serious offences or in cases where the act was committed by persons entrusted with high public, political or military functions.

If clemency would have been extended also to such cases, the measure would have seriously hurt the people's feeling and would have been contrary to principles of equity.

There is a juridical, political and moral necessity that the persons who committed said crimes against their country, which they betrayed and ruined, against their fellow citizens, against the most elementary duties of humanity continue to serve their punishment under all severity of the law.

Having in such a way illustrated the basic principles of the decree, its single provisions should appear clear.

Article 1, of the amnesty covers all the offenses - therefore also military as well as political ones, which are punished by detention only or by detention and fine, not superior to five years imprisonment. For the granting of such benefit art. 32 of the Penal Code applies.

In regard to political offenses, the decree makes a distinction between those which were committed in certain parts of the State after the beginning of the AMG Administration or in territory which remained under the Administration of the legitimate Italian Government from the 8th September 1943, as well as for those which were committed before this time limit.

In the first case the amnesty, excepting the cases under Article 4, is complete, and also includes criminal acts committed by certain elements or groups which belonged to the sicilian separatist - movement, or which attempted to reconstitute the fascist movement. Acts committed in violation of penal laws after the liberation of the national territory, committed by the partisans are also included in these provisions. Even the crime under art. 575 of the Penal Code falls under the amnesty if it were committed in the conditions established by D.L.L. 17-XI-1945 No. 719, and before 31-VII-1945. In the second case, which covers crimes under Articles 3 and 5 of D.L.L. 27-VII-1944 No. 159, and Art. 1 D.L.L. 22-IV-1945 No. 142, and the crimes connected with them by virtue of Art. 45, No. 2 of the Penal Code, the persons who were entrusted with duties of high responsibility and those who committed or were associated with murder, massacre, robbery and other crimes committed with the purpose of obtaining a personal profit are excluded from the amnesty. In this way, the amnesty is applied in favour of those persons who were not entrusted with high functions, or have not committed criminal acts of great importance while in cases of great responsibility and cases of criminal acts the full severity of law is applied.

The judge may request that necessary investigations be made in cases where the application of articles 2 and 3 is not clearly established.

2126

Declassified E.O. 12356 Section 3.3/NND No. 785017

The offences excluded from the amnesty are very few. These are only particularly serious crimes, even in cases where penalty is not superior than 5 years, or in cases of offences committed against the moral rehabilitation of the Country. The above considerations apply as well for the offences under art. 575 of the Penal Code, as far as the political crimes are concerned.

The financial offences (art. 14), (for which another decree shall be issued) and the military offences (governed by the provisions of Decree of 29.3.1946, No. 132, - the effect of which is extended up to the 18.6.1946 (art. 15) are excluded from the amnesty.

Art. 6 contains a new provision which recognises the right to refuse the benefit of the amnesty. It was introduced for the first time by decree of 29.3.1946 No. 132, relating to an amnesty for military offenses. It was considered as advisable to insert it also in the present decree in order to protect the persons who refuse to recognise the offence with which they were charged.

It is obvious that once a person has renounced to take advantage of the benefit provided by the amnesty, the same is no longer applicable.

If the accused has been proved guilty at the trial the judge shall pass sentence and may provide for the application of pardon.

The difference of treatment made between common offences and political crimes is also applicable for the granting of clemency. In fact, for common offences the pardon is granted only in cases where the penalty does not exceed three years and the fines are not higher than three thousand lire. In cases where a higher penalty or fine is imposed or is to be imposed, the pardon will provide a reduction of three years and of three thousand lire.

As far as political crimes are concerned, the clemency provides for a commutation in the most severe sentences and a liberal application of pardon in the other cases. It has been decided that the death penalty be commuted to that of imprisonment for life in all cases in which the exceptions established under Art. 3 of the amnesty decree are not applicable and that all sentences imposing an imprisonment for life be commuted to a term of 30 years. Other sentences of imprisonment are reduced as established under Art. 9 (a). The monetary penalties are totally remitted. The policy in regard to the objective exclusion from the benefit which is always more favourable to political prisoners is also different. Finally, in so far as the most severe sentences for which a commutation of penalty has been granted are concerned, the provisions under Art. 12 relating to the revocation of the benefit are not applicable. These apply only in the case of pardon.

Declassified E.O. 12356 Section 3.3/NND No. 785017

It has been established, in the present decree, in so far as previous penal records are concerned to deviate from the provisions contained in the Penal Code. Said previous penal records shall not be taken into consideration as far as political crimes are concerned except in cases of habitual, professional or potential delinquents. In other cases they will be taken into consideration only within the limits established in the second and third paragraphs of Art. 11.

Art. 13 establishes that those persons who are accused of crimes committed against the Allied Forces, sentenced by Allied Courts or awaiting trial before such Courts are excluded from all benefits.

As far as the effective date of the decree is concerned, it has been established to deviate from the provisions contained in the Code.
It has been fixed that the benefits are applicable to offences committed up to 18 June 1946 with the particular exceptions set out in the present decree.

This amnesty which has been approved in the most critical moment of our national life, certainly will contribute to create in the Country a new atmosphere of unity and harmony which is the most favourable for the political and economic rehabilitation of the nation.

236

Presidential Decree No. 4 of 22 June 1946 granting amnesty and pardon for common, political and military offenses.

The President of the Council of Ministers by virtue of the powers of temporary Chief of State vested upon according to Art. 2, II part of the D.L.L. 16 March 1946 No. 98;

Having seen the Art. 8 of the Statute;

Having heard the Council of Ministers;

On the proposal of the Minister of Pardon and Justice in full accord with the Ministers of Interior, of War, of Navy, of Air Force and Agriculture hereby.

DECREES

Art. 1

Amnesty for crimes

An amnesty is granted for the crimes which are punished by imprisonment for not more than five years and or by fine, or both.

Art. 2

Amnesty for political crimes committed after the liberation

An amnesty is granted for political crimes which are punishable with a penalty, even superior to that indicated in art. 1 above, provided they have been committed in any part of the national territory after the beginning of A.M.G. administration as well as for all political crimes committed after the 8th Sept. 1943 in the part of the national territory which remained under the administration of the legitimate Italian Government.

Declassified E.O. 12356 Section 3.3/NND No. 785017

Amnesty for crimes

An amnesty is granted for the crimes which are punished by imprisonment for not more than five years and or by fine, or both.

Art. 2

Amnesty for political crimes committed after the liberation

An amnesty is granted for political crimes which are punishable with a penalty even superior to that indicated in art. 1 above, provided they have been committed in any part of the national territory after the beginning of A.M.G. administration as well as for all political crimes committed after the 8th Sept. 1943 in the part of the national territory which remained under the administration of the legitimate Italian Government.

Art. 3

Amnesty for other political crimes

An amnesty is granted for the crimes provided for by Art. 3 and 5 of the D.L.L. 27 July 1944 No. 159 and by Art. 1 of the D.L.L. 22 Apr. 1945 No. 142 as well as for crimes governed by the provisions of Art. 45 No. 2 of the Penal Procedure Code except in case they have been committed by persons of high civil political or military functions, or in the case where massacre, savage tortures, murder, pillage have been committed or in the case they have been committed for purpose of profit.

Declassified E.O. 12356 Section 3.3/NND No. 785017

235

imposed and for any other purpose established by law the rules set down in Art. 32 of the Code of Penal Procedure shall apply.

Art. 8

Pardon for common offences

Excluding the cases in which amnesty is granted under Art.1, pardon is granted for sentences not over three years imprisonment and for fines not over 3000 lire. Sentences imposing higher penalties shall likewise be reduced by the same term and limits as established above.

Pardon is reduced by one year for sentences imposing a term of penal servitude and by 1000 lire for sentences imposing a fine in cases where the beneficiary has received or may receive, for the same offence, a pardon granted under Royal Decree No. 96 of 5 April 1944.

If the offence was committed after D.L.L. No. 679 of 5 October 1945 came into operation, the limits for the fine under para 1 above are doubled.

Art. 9

Pardon and commutation of penalty for political offences.

Excluding the cases in which an amnesty is granted under Art. 1, 2 and 3, for political offences and other crimes governed by the provisions of Art. 45 (No. 2) of the Code of Penal Procedure, the following rules shall apply:

(a) The penalty of death is commuted to one of life imprisonment, save for the exception provided for an amnesty granted under Art. 3.

(b) The penalty of life imprisonment is commuted to one of

Declassified E.O. 12356 Section 3.3/NND No. 785217

If the offence was committed before 5 October 1945 come into operation, the limits for the fine under para 1 above are doubled.

Art. 9

Pardon and commutation of penalty for political offences.

Excluding the cases in which an amnesty is granted under Art. 1, 2 and 3, for political offences and other crimes governed by the provisions of Art. 45 (No. 2) of the Code of Penal Procedure, the following rules shall apply:

(a) The penalty of death is commuted to one of life imprisonment, save for the exception provided for an amnesty granted under Art. 3.

(b) The penalty of life imprisonment is commuted to one of 30 years imprisonment.

(c) All other sentences of imprisonment over five years shall be reduced by one third but in any case such reduction shall not be less than five years; all other sentences of imprisonment not over five years are fully pardoned.

(d) All fines are fully remitted.

Art. 10

Exclusion for from pardon

Pardon shall not apply:

2233

Declassified E.O. 12356 Section 3.3/NND No. 785017

1. In favour of those persons who at the date upon which this decree shall come into force, are in hiding, save that they surrender themselves for imprisonment wit in four months from such date. This provisions is not applicable in cases where the penalty or the remaining penalty are fully pardoned or in cases where penalty of death is commuted for life imprisonment by virtue of Art. 9.

2. For offences indicated in Art. 4.

3. For offences under Arts. 314, 317, 451, 575, 628, 629 and 630 of the Penal Code, save if committed for political reasons.

4. For offences under Art. 1 and 2 of D.L.L. No. 234 of 10 May 1945 relating to penal provisions of an extraordinary nature.

Art. 11

Consideration of previous penal Records.

The previous penal records shall be taken into consideration in applying the benefits of the present decree in the limits established by the following provisions.

The benefits are not applicable to those persons who at the date of the present decree have been once, or more, sentenced, for having committed a unpremeditated offence, to an aggregate term of penal servitute superior to 3 years.

In examining the persons penal records the following shall not be taken into consideration.

Sentences declared extinct by reason of previous amnesty; offences extinct at the date of the present decree for expiration of the time limits under Art. 167 of the Penal Code establishing a suspension of conditional liberty; sentences for which a provision of rehabilitation has been issued.

In applying the benefits to cases of political crimes, previous

Declassified E.O. 12356 Section 3.3/NND No. 785017

The previous penal records shall be taken into consideration in applying the benefits of the present decree in the limits established by the following provisions.

The benefits are not applicable to those persons who at the date of the present decree have been once, or more, sentenced, for having committed a unpremeditated offence, to an aggregate term of penal servitute superior to 3 years.

In examining the persons penal records the following shall not be taken into consideration.

Sentences declared extinct by reason of previous amnesty; offences extinct at the date of the present decree for expiration of the time limits under Art. 167 of the Penal Code establishing a suspension of conditional liberty; sentences for which a provision of rehabilitation has been issued.

In applying the benefits to cases of political crimes, previous penal records shall not be considered, but said benefits shall not apply to habitual and professional criminals or to other criminals who are naturally inclined to commit offences.

Art. 12

Revocation of pardon

Pardon shall be revoked in cases where the person to whom it was granted is sentenced, to a term of penal servitude of not less than one year, for an unpremeditated crime committed within five years after the date of the present decree.

Declassified E.O. 12356 Section 3.3/NND No. 785017

234

Art. 13

Offences committed to the detriment of the Allied Forces

In any case offences committed to the detriment of the Allied Forces or to members of said Forces or tried or being tried by Allied Courts are excluded from amnesty and clemency.

Art. 14

Financial offences.

The present decree does not cover financial offences and does not affect the law establishing forfeiture of profits of the regime.

Art. 15

Military offences.

D.L. No. 132 of 29 March 1946 granting amnesty and pardon for military offences is extended to offences herein contemplated provided they were committed up to 18 June 1946.

In cases where such decree provides that the benefit shall be granted subject to a fulfillment of an obligation, such obligation shall be carried out within 30 days after the present decree comes into force. Such time limit shall start from the first day the interested person, in case he is abroad, reaches Italy. In applying articles 1 and 2 of the above mentioned D.L. the increase of penalty provided by Art. 47 of the Military Penal Code of War shall not be taken into consideration.

Declassified E.O. 12356 Section 3.3/NND No. 785017

Art. 15

Military offences.

D.L. No. 132 of 29 March 1946 granting amnesty and pardon for military offences is extended to offences herein contemplated provided they were committed up to 18 June 1946.

In cases where such decree provides that the benefit shall be granted subject to a fulfillment of an obligation, such obligation shall be carried out within 30 days after the present decree comes into force. Such time limit shall start from the first day the interested person, in case he is abroad, reaches Italy. In applying articles 1 and 2 of the above mentioned D.L. the increase of penalty provided by Art. 47 of the Military Penal Code of War shall not be taken into consideration.

Art. 16

Date of operation.

3232

The present decree shall come into operation on the first day of its publication in the G.U. and has full force of law for offences committed up to the 18th June 1946 save for what has been differently provided for by the preceding articles. The present decree shall come into operation in the territory not yet restored to the Italian Administration upon restoration of the same or at a date established by order of the Allied Military Government etc. etc.

We order that the present decree bearing the seal of the state,

Declassified E.O. 12356 Section 3.3/NND No. 785017

be inserted in the official collection of laws and decrees of the Italian Republic.

We order whomsoever it concerns to observe it and have it observed as a law of the State.

Dated, 22 June 1946.

DE GASPERI

Togliatti - Romita - Brosio -
- De Courten - Cevolotto -
- Gullo

Scoca, the Keeper of the Seals:
Togliatti.

Declassified E.O. 12356 Section 3.3/NND No. 785017

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 91

232

Ref. SD/550.05 4 July 1946

JUL 6 1946

SUBJECT : Italian Subjects in Allied Internment Camps.

TO : APHQ (G-5 Section)

See min 247

231

243

1. I am enclosing herewith a copy of a letter dated 24th June received from the Italian Prime Minister with regard to the recent Italian Government Amnesty Decree, and to the question of Italian subjects interned in Concentration Camps under Allied Administration or otherwise at the disposal of Allied Authorities.

2. The request of the Prime Minister regarding these internees reflects the concern with which the Italian people regard the continued incarceration of these persons without trial - a concern which, I must add, is shared by a number of Allied nationals.

3. I am of the opinion that the time has come when the majority of Italian subjects still in Allied Internment Camps should now be released and that only in most exceptional circumstances should such subjects continue to be detained.

Such a policy should also apply to Italian subjects who (having been handed over by the Allies to the Italian Authorities for trial for political crimes) as a result of the Italian Amnesty Decree of 22 June are now being released from Italian Prisons and who since they are at the disposal of the Allied Authorities are liable to reinternment on Allied Security grounds.

4. Can I please be advised at an early date as to

3231

(CAPT K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

232

what reply should be given to the Prime Minister in respect of this matter, and be furnished with particulars as to the number of Italian subjects still held in Allied Internment Camps for the information of the Prime Minister in accordance with the final paragraph of his letter.

5. With reference to the Italian Amnesty decree, the question of the action to be taken in regard to persons convicted for offences committed to the detriment of the Allied Forces is being made the subject of a separate communication to your Headquarters.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

b. Comer.

Copy to : Office of the Executive Commissioner ✓
Public Safety S/C.
File AC/4079/I/2

3230

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 4 File 231

TRANSLATION

THE PRESIDENT OF THE COUNCIL OF MINISTERS

73387/50077.4.2.4.2. Rome, 24 June 1946.

JUN 29 1946

My dear Admiral,

As you already know, in occasion of the advent of the Republic and with a view to a fruitful internal pacification, the Government has made a large provision of amnisty and pardon for the crimes committed up to 18 June 1946.

Besides, all the sanctions foreseen by art. 3 of the Decree of 26 April 1945, No 149, against those who developed Fascist activities were pardoned. Also, the Minister of the Interior has been requested to make arrangements for the liberation of those who, in compliance with Public Safety laws, were assigned to police confinement.

I am sending you herewith the text of the provisions so that you may exactly know their terms.

From the amnisty and pardon decree are expressely excluded the persons sentenced by Allied Military Courts, in whose favor the Italian Government had no power to dispose. Equally excluded from any benefit are those who are still interned in concentration camps under Allied administration or anyhow at the disposal of Allied authorities.

In consideration of the same reasons which inspired the above provisions by the Italian Government, I feel that I ought to call your attention to the painful disparity of situation arising from the abovementioned exclusions, so that you, with your deep sense of justice, may value the possibility of a similar act of clemence granted by Allied Authorities.

Besides, I shall be grateful if you will kindly let me know the number of citizens interned at the disposal of Allied Authorities, as the Italian Administration does not possess precise data in this regard.

Believe me, my deer Admiral,

Respectfully yours,

/s/ De Gasperi

see 243 See 252

3229

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission
Rome.

(CAPT K)

See 7-248

EC DIST - 1 JULY
ACTION - CA Sec
INFO - CC
EC
POLAD 'A'
POLAD 'B'

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 / 0 230

SECRET

HEADQUARTERS
ROME AREA ALLIED COMMAND

DC/26
25 June 1946

SUBJECT: Amnesty

JUN 26 1946

TO : Headquarters Allied Commission
(Attn: Executive Commissioner)

In reference to this morning's conversation Brigadier LUSH - Brigadier LOW.

This Headquarters has been verbally instructed that Allied Force Headquarters are anxious that no person in whom G-2 Section at A.F.H.Q. are interested from the security aspect should be included in the terms of the amnesty which, it is understood, is at present in preparation by the Minister of Grace and Justice.

This would include of course all persons tried by A.M.G. courts and by Italian courts at Allied instance on security grounds.

It is considered that this is a matter which can properly be taken up with the Italian Government only through the Allied Commission, and it would be therefore be appreciated if it were possible for you to find out whether there is any intention to include any such persons in the terms.

Brigadier
Commanding
Rome Area Allied Command

EC DIST - 27 June

ACTION - CA Sec
POLAD 'A'
'B'

I spoke to EC 3228
CMS + DCLA

(CAPT K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 Ex Comr. 229

24 June 1946.

My dear Mr. Prime Minister:

I understand that the Council of Ministers is considering a decree law under the terms of which an amnesty would be granted to certain individuals convicted by Italian courts since 8 September 1943.

In view of Article 30 of the Long Armistice Terms and the Moscow Declaration of 1943, the Allied Governments have an interest in the terms of this decree insofar as it affects Fascist personnel. I shall be grateful, therefore, my dear Mr. Prime Minister, if you will furnish me with the final draft of this decree law and keep me informed.

Very truly yours,

/s/ Ellery W. Stone
ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Dr. Alcide De Gasperi,
President of the Council of Ministers,
Italian Government,
Rome.

DISTRIBUTION:
Polad A
Polad B
Legal S/C
Ex Comr
CC

3227

(CAPT K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604/86

228

Translation

8.6.46

MINISTRY OF GRACE AND JUSTICE

TO: Allied Commission
Office of Executive
Commissioner

Ref. 283.32/966/46

208

JUN 14 1946

Reply to your 2604/207/SC of 14.5.1946.

SUBJECT: Process against Baccolin Giorgio -
Application of Public Prosecutor's Office
with the extraordinary Court at Trieste.

We thank for your kind information and we beg the Allied Commission to inform us about the decisions which should be taken by the Council of Foreign Ministers in Paris, regarding the application on the subject.

THE MINISTER

NO REPLY EXPECTED.

EC DIST - 14 June

ACTION - EC

INFO - Legal

(CAPT K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

Zc

Ministero di Grazia e Giustizia

DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE E DEL CASELLARIO

Roma, 8 giugno 1946 227

/ Alla COMMISSIONE ALLEATA - Ufficio del Commissario Esecutivo ROMA

Ufficio I° A.P.
Prot. N° 283.32/965/46

Risposta al f. del 14.5.946
Div. Sez. N. 2604/207/EC

OGGETTO Procedimento contro BACCOLIS Giorgio - Istanza dell'Ufficio del P.M. presso la Corte Straordinaria di Assise di Trieste.

e per conoscenza:
ALL'UFFICIO DI COLLEGAMENTO Gabinetto
SEDE

Nel ringraziare per la cortese comunicazione di cui alla nota sopra distinta, si prega codesto On.le Commissione di volere, a suo tempo, dar notizia a questo Ministero delle decisioni che saranno adottate dal Consiglio dei Ministri degli Esteri sedente in Parigi circa l'istanza in oggetto indicata.

pel MINISTRO

[signature]

228

3225

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 58

226

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

/cm.

AC/4083/23/L.

11 June 1946.

JUN 12 1946

SUBJECT : BOZZI Arturo.

TO : H.B.M. Minister to the Holy See
Vatican, Rome
(Attn: Mr. Leigh Smith).

1. On 19 March 1946, a decision was rendered in the case of Dr. BOZZI Arturo. Without going into detailed discussion of the action taken on this voluminous record of 345 pages, exclusive of exhibits, you are advised that the sentence imposed by the Court was reduced from sixteen years to six years imprisonment.

2. Dr. BOZZI was indeed charged with selling medical supplies that belonged to the Allies, but he was found not guilty of these charges.

3. He was, however, convicted of various fraudulent transactions, including, on clear evidence, the use of his official position to sell to various Italian civilians for their serious ill relatives distilled water and other liquids which he assured them were penicillin.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Copy to : ~~(a) Chief Commissioner~~
(b) Executive Commissioner

3224

(CAPT K)

2145

Declassified E.O. 12356 Section 3.3/NND No. 785017

Copy 225

HEADQUARTERS ALLIED COMMISSION
APO 394
Office of the Executive Commissioner

Ref: 2604/EC.

6 June 1946.

SUBJECT: TRIFIRÒ MARIO

TO : Col. Weber, Chief Legal Advisor,
Allied Commission

1. Attached hereto is translation of letter received by me from the above-named Mario Trifirò.

2. He is one of two Italian civilians captured and tried at Anzio during the beachhead and sentenced to be shot.

3. I was their defence counsel.

4. On review the sentences were commuted to 20 years imprisonment.

5. It is true, as stated in the letter, that Cattani, the other defendant, has since been set at liberty, and that the third person involved was never tried.

6. When I presented the petition for review, I made a much stronger plea for Cattani, as I felt he was much more deserving of the two. I am still of the same opinion, but I do not see what good can be served by keeping this defendant in a sanitarium or jail any longer.

7. Forwarded for such action as you may deem appropriate.

DELOS DE JOHN
/s/

CAPT. DELOS DE JOHN
Office of the Executive Commissioner

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

COPY

Office of British
Political Adviser

57/46

The Chief Commissioner

Allied Commission

JUN 3 1946

Subject: Clemency for Prisoners.

85 (Vol I)

Your letter No.AC/4879/1/L of 6th November 1945 to Allied Force Headquarters, G-5 Section.

The British Government have been in correspondence with the United States Government on the subject of a general act of clemency in Italy. This act, as you are aware, was originally intended to mark the return of North Italy to Italian administration but it now seems likely that any such act can only take place on the signature of a Peace Treaty with Italy.

2. The British Ambassador has been instructed to inform you of the above-mentioned correspondence and I accordingly enclose copies of a Note Verbale addressed by the British Embassy in Washington to the United States Department of State and of the latter's reply thereto.

31.v.46

(Sgd) A.S.Halford
Br. Political Adviser

Copied to: Executive Commissioner, AC
Vice President Civil Affairs Section, AC
Political Adviser (US), AC
British Embassy.

EC DIST - 3 June
ACTION - CA Sec (Legal s/c) (2)
INFO - CC
- EC - 3242

2147

Declassified E.O. 12356 Section 3.3/NND No. 785017

22

COPY

No.192

Ref: 1333/2/46

MEMORANDUM

In November 1945 the Italian Government suggested to the Allied Commission that the Supreme Allied Commander, Mediterranean, should grant a general act of clemency to mark the return of North Italy to Italian Administration and as a taken of Allied appreciation and goodwill. Allied Forces Headquarters felt unable to adopt the proposal but it was agreed in Rome that the matter should be referred to the United States Government and His Majesty's Government in case the two Governments should think it desirable to pursue it any further.

2. The suggestion of the Italian Government for a general act of clemency reached His Majesty's Government too late for consideration before the transfer of further territory in the North of Italy to Italian Government administration. Nevertheless, His Majesty's Government are inclined to think that the suggestion merits serious consideration, and in particular they are advised that the argument that a general act of clemency would reflect on the aptness of the sentences passed by the Allied Military Government courts is unsound. They are therefore prepared to consider whether a general act of clemency should be made at some date in the future.

3. The obvious occasion for such an act would be the conclusion of the Peace Treaty, provided always that this were not unduly delayed. It is, on the whole, a matter of no great concern to His Majesty's Government whether sentences imposed by Allied Military Government courts continue to be enforced after the conclusion of the Peace Treaty, and His Majesty's Government do not intend for their part to propose that any provision to limit Italian sovereignty in this respect should be inserted in the Peace Treaty. For the most part severe sentences were passed as a deterrent to protect what were at the time important Allied Military interest and when the Peace Treaty is concluded, this factor ceases to be operative. In these circumstances it would seem superfluous at this stage to take any special measures, apart from the normal work of reviewing performed by the Allied Commission, to reduce sentences which are still outstanding.

4. On the other hand, His Majesty's Government would see no objection to agreeing to any proposal from the Italian Government that sentences of Allied Military Government courts which are still outstanding at the time of the conclusion of the Peace Treaty should be remitted or reduced by the Italian Government at their discretion.

5. His Majesty's Government would be grateful for the views of the United States Government on this question, and would be glad to know whether they agree to the procedure suggested in the foregoing paragraph.

28th March, 1946

BRITISH EMBASSY
WASHINGTON, D.C.

3221

Declassified E.O. 12356 Section 3.3/NND No. 785017

220

COPY

MEMORANDUM

The Department of State concurs with the views expressed in the British Embassy's memorandum No.192 dated March 28, 1946, concerning the suggestion that the Supreme Allied Commander, Mediterranean, should grant a general act of clemency at the conclusion of the Italian peace treaty. The Department of State agrees that for the most part factors involved in the imposition of severe sentences by Allied Military Government courts will cease to be operative at the conclusion of the treaty and is prepared to agree to any proposal from the Italian Government that sentences from such courts outstanding at the conclusion of the treaty should be remitted or reduced by the Italian Government at their discretion.

Department of State
Washington, May 1, 1946.

740.00119 Control (Italy) 3-2846

2149

Declassified E.O. 12356 Section 3.3/NND No. 785017

219

Ref. : 260/20 28 May 1946.

We have discussed from time to time the question of the subjection to Italian jurisdiction of Allied and other non-Italian civilian nationals. I refer to those who are not subject to military law by virtue of their being in Italy under military orders and so subject to the military law of their own country.

I have discussed it with the Commission's legal advisers and with the legal adviser of the British Embassy, as well as with other members of the Embassy.

The Allied Commission legal advisers point out that on no less than four occasions they, both British and US, have given their opinion "that civilian allied nationals who are (i) not subject to the military law of the Occupying Powers, or (ii) are not excluded under the Restoration Agreements, are within the jurisdiction of the Italian Courts and may be tried by them."

The argument that a country, e.g., Great Britain, is de jure still at war with Italy, makes no difference to this ruling. The facts are that Great Britain with her Allies have recognised the Italian Government as the legal government in co-belligerent Italy, pending the elections, and therefore must recognise her courts. It follows, therefore, that Allied nationals who are not subject to military law must be subject to the only other law in the land, viz., the Italian law.

The fact that those persons shown in parenthesis in paragraph 3 above are specifically mentioned in Clause 12 of the "Terms of Restoration" as not liable to trial by Italian Courts without SACMED's approval (and note that he can give such approval) points to the fact that other Allied civilian nationals are subject to Italian law.

I hope the above may help to clarify your mind, as it has mine.

3219

Brigadier Alban Low, CBE, MC,
Commander,
Headquarters,
Rome Area Allied Command.

M. S. LUSH

see M.216, 217, 218.

Copy to CLA. & file 1008/EC.

29/5

Declassified E.O. 12356 Section 3.3/NND No. 785017

6 A Civilian Allied nationals would appear to be subject to trial by Italian Courts, unless they are in Italy under military orders, & so subject to mil. law of their own country.

7 A Paras A & B. Same view.

25/7/45

16 A Person not under the protection of the occupying forces ~~is~~ can be tried by an Italian Court. (Appiohn)

18 A United Nationals nations (captured or detained by Italian authorities), who are not subject to the military law of their own country, fall under the jurisdiction of the local Courts.

Minute 1. Ital. Courts have jurisdiction to try any person resident in Italy who is not protected by the terms of internat. law relating to occupation forces or the various agreements

Restoration Terms

Cl. 12 No member of Allied Forces or any official or other representative or agent of the U.N., civilian or military to be tried in any Italian Court for any cause whatsoever without the consent of Sacmed. 3218

see 219

Declassified E.O. 12356 Section 3.3/NND No. 785017

212

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

FILE REF: 13C/AMG/[illegible]/134

SUBJECT: General Court Venezia Giulia.

Date 23 May 1946.

MAY 25 1946

TO: Executive Commissioner,
Allied Commission.

1. With further reference to my signal No. 8/134 of 23 May 1946.

2. I suggest that Col. WEBER is appointed President of the General Court to be set up to try certain members of the Venezia Giulia Police Force and that either Major McCOLM or Major GILSHENNAN be appointed prosecutor. Alternatively, that GILSHENNAN be President and McCOLM Prosecutor with two American assistants appointed by 13 Corps. The first suggestion would be preferred.

3. There is considerable work to be done by the Prosecutor in preparing the case for trial and it is suggested that he should be here at least two weeks before the trial starts. The last week in July would be the probable date of trial.

4. Major GOLD leaves for U.S.A. on or about 30 June. It is imperative that his replacement proceeds to TRIESTE at least one week before that date. D.C.L.A. could accompany him in order to relieve pressure on local Legal Officers who would have little time to spare to coach him.

5. Major REAKES is in Venezia Giulia at present and has stated that he would be willing to be posted to TRIESTE as soon as his Staff duties with the Vice President Civil Affairs come to an end.

see M 213 & 214

G.G. HATTERSLEY

G.G. HATTERSLEY,
Lt. Colonel,
Deputy Chief Legal Adviser.

FCSB/gar

Copy to: Chief Legal Adviser.

PA 29/5

P.S. For policy reasons none of V.G. officers can be spared without risking dangerous repercussions.

SSH

(50)

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604

210

8/134
MAY 230915

H/3229
MAY 231630
INPORTANT

HQ AMG XIII CORPS SIGNED HANNEFORD.
ALCOM FOR EXECUTIVE COMMISSIONER
INFO: CHIEF LEGAL ADVISER ALCOM

MAY 23 1948

CONFIDENTIAL

CONFIDENTIAL.

210

Reference this HQ signal 13C/AMG/4 dated 17 May 46 I suggest for General Court Col Weber as President and Major Mccolm or Gilshenon as prosecutor alternatively Gilshenon and Mccolm with 2 American assessors appointed by XIII Corps. 1st suggestion preferred. Approx date 1st week July. Prosecutor should arrive soonest to prepare case. Gold leaving on or about 30 June. Suggest replacement ~~xxxxxxxx~~ proceeds Trieste at least 1 week before to enable overworked legal officers to coach him.

AC DIST.

ACTION: LEGAL SC
INFO: CHIEF COMMISSIONER
EX COMMR
FILE
~~XXXXXXX~~ SKELETON

CONFIDENTIAL

3216

Sec 7-212

(CART K)

Declassified E.O. 12356 Section 3.3/NND No. 785017

3604.

13C/AMG/4
171600

H/3061 210
MAY 180900B
PRIORITY

AMG 13 CORPS
ALCOM FOR LEGAL

MAY 18 1946

CONFIDENTIAL

CONFIDENTIAL

Corps commander has directed trial of 8 Venezia Giulia Police before general court as result of shooting incident involving 2 dead and several wounded. Policy reasons and lack of personnel prevent legal division providing legal memeber or prosecutor. Suggest sub commission nominates american president and british prosecutor. If agreed prosecutor should report here soonest considerable preliminary work before trial. Letter follows.

AC DIST

ACTION: LEGAL SC
INFO: CHIEF COMMISSIONER
EXEC COMMISSIONER
FILE
SKELETON

See 211

HEADQUARTERS
24 MAY 1946
A.C.

CONFIDENTIAL

3215

2

2154

Declassified E.O. 12356 Section 3.3/NND No. 785017

208

Ref. : 2604/207/WC

4 May 1946.

SUBJECT: Adriatic Proceedings of the Extraordinary Court of Assise, Trieste.

TO : The Ministry of Grace and Justice, Rome.

206

I have to acknowledge receipt of your letter No. 233.32/966/46 dated 9 April 1946 enclosing a copy of the proceedings of the Extraordinary Court of Assise of Trieste against BACCOLIS Giorgio and I have to inform you that the case has been referred to the Council of Foreign Ministers, Paris, in accordance with your request.

For the Chief Commissioner:

A. W. Kaisely.

Brigadier,
Executive Commissioner.

Copy to:- Legal Sub-Commission.

See 7-227

see M.209.

321

PA 6/5

Declassified E.O. 12356 Section 3.3/NND No. 785017

207

Ref : 2604/206/EO 18 May 1946.

SUBJECT: Attached Proceedings of the Extraordinary Court of Assize, Trieste.

TO : The Secretary,
Council of Foreign Ministers,
Paris.

-906

In accordance with the request of the Italian Minister of Grace and Justice, I am forwarding for your information a copy of the proceedings of the Extraordinary Court of Assize of Trieste against BACCOLIS Giorgio.

For the Chief Commissioner,

M. S. LUSH
Brigadier
Executive Commissioner

Copy to: Legal S/C.

M 209

3213

Declassified E.O. 12356 Section 3.3/NND No. 785017

fm 485/2 A MANO CON RICEVUTA

206

MINISTERO DI GRAZIA E GIUSTIZIA

Direzione Generale degli Affari Penali delle Grazie della Statistica e del Casellario

Ufficio I° A.P.
Prot. N° 283.32/966/46
Risposta al f. N°
del

Roma 9 aprile 1946

/. Alla COMMISSIONE Alleata - Sotto-commissione Legale

ROMA

OGGETTO Procedimento contro BACCOLIS Giorgio - Istanza dell'Ufficio del P.M. presso la Corte Straordinaria d'Assise di Trieste.

all.I fasc.

e per conosc: all'UFFICIO COLLEGAMENTO
Gabinetto

SEDE

Di seguito alle note del 20.11.945 e 10.3.c.a. n. 131/807/2772 relative all'oggetto, si trasmette, per l'ulteriore inoltro, l'unito fascicolo contenente una istanza dell'Ufficio del P.M. presso la Corte d'Assise Straordinaria di Trieste, redatta anche in lingua inglese, e destinata alla Conferenza dei Sostituti dei Ministri degli Esteri della Gran Bretagna, degli Stati Uniti d'America e dell'U.R.S.S..

L'istanza in parola è diretta ad ottenere la liberazione del Colonnello del Genio Navale PONZO Mario, del Capitano di Corvetta PODESTA' Luigi e del Capitano della Marina Mercantile BERGERA Arturo, internati in Iugoslavia, od in linea subordinata la traduzione dei medesimi a Trieste per rendere le loro deposizioni nel processo contro BACCOLI Giorgio imputato di intelligenza e corrispondenza col nemico.

Si prega codesta On. Sottocommissione di voler far co

Au 207.

./.

3212

Declassified E.O. 12356 Section 3.3/NND No. 785017

noscere quale seguito sarà dato alla richiesta di cui trattasi, ed i provvedimenti che saranno stati adottati.

pel MINISTRO

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 / 98

EC 100 ~~208~~

Translation

Rome, 2 May 1946.

MAY 9 1946

The writer is the former Governor of the Eritrea from Dec. 1937 to June 1940, from this last date up till 3 April 1941 Vice Governor General of Etiopia in Addis Abeba, with the Vicere Duca di Aosta.

Having returned last year from imprisonment in Kenia, on account of my high p sition I did not have any superiors who could make reference to my activity: the only one who could have done so was the deceased Duca d'Aosta.

My personal papers, together with the curriculum-vitae of my career, transported to Northern Italy has been lost.

To-day there is no trace existing of my long colonial career. My other superiors are also deceased, consequently there is no possibility of there being issued a judgement upon my work.

An ample documentation gathered by myself has been lost, together with my luggage and my library which was left in Addis Abeba.

My long sojourn in the Colony (from 1920 to 1945) caused me to loose contact with the bureaucratic and political world, for which reason I am quite unknown in the higher spheres.

For the above reasons I am obliged to turn to the high sense of justice and humanity of Your Excellency, and to pray you to invite the Allied Authorities in occupation, to collect all the elements of opinion upon my work, which, in my present situation, are indispensable, from the Italian or the native population of the Eritrea and of Addis Abeba.

Also on account of having served for many years in Cirenaica - 8 years in Barce, 6 in Derna and 3 in Bengasi - I beg your enquires be extended to the indigene population of these

To : Admiral Ellery W. STONE
Chief Commissioner, A.C.

ROME

3211

./..

E.C. DIST - 9 May
Action: C A Pol. [illegible]
Info : CC
EC

(AB)

(CAPT K)

2159

Declassified E.O. 12356 Section 3.3/NND No. 785017

places, (there being no longer any Italians in Cirenaica).

Enquiries may be made extensively in Cirenaica because my name is known in the most remote regions of the Beduin camps, and resounded with love and respect as a simbol of justice and humanity.

Having arrived towards the closing of my life, in a condition of poverty, after 27 years as Colonist my only aspiration is that my name shall remain pure and honoured and that it may be known that I served faithfully - not fascism, but Italy, and that I served for the higher ends of the Nation and the population.

The High Commissioner for the Epuration has already expressed opinion in my regards, saying that my comportment throughout the whole of my career has been one of humility, dignity, honesty and straightforwardness, but this opinion is not sufficient for me. I attribute greater importance to the judgement of the local population, procured by a foreign authority.

I find to-day the strength to live, in the pride of having accomplished my duty, following the dictates of conscience rather than orders of the Government , and feel assured that you will grant my prayer.

With the greatest consideration I express my gratitude

/s/ Dr. Giuseppe Daodiace

- Governatore di Colonia-

Via Panama No. 110 - ROMA 3210

(AB)

Declassified E.O. 12356 Section 3.3/NND No. 785017

2604 / 98

EC 303

TRANSLATION

67490/66838.2.4.2.
PC.

Rome, 3 May 1946.

MAY 6 1946

THE PRESIDENT OF THE COUNCIL OF MINISTERS

Dear Admiral,

Having received several requests from various parts to intervene in favor of seven young partisans who on 6 July 1945 were sentenced by the Allied Military Tribunal in Ferrara to one year of prison for the abusive possession of pistols and of a hand grenade, I take the liberty to draw your attention to this case so that in consideration of the excellent precedents of these men who have fought for the cause of liberty, of their perfect behavior in prison and of the fact that they have already served part of the term, you may - if you wish - intervene with the competent Allied authorities in order to obtain, with an act of clemency, the immediate release of the partisans, allowing them to return as soon as possible to their families.

With kindest regards,

Yours truly,

De Gasperis.

3209

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission
Rome.

EC DIST - 6 May

(CAPT K)

2161