

10000/136/320

ACC

10000/136/320

LEGAL AFFAIRS, GENERAL
NOV. 1946 - JAN. 1947

G. M. C. Form 363 (Old No. 400)
Revised July 26, 1948

LIST OF PAPERS

2602/CC

Office of the
Chief Commissioner

File under No. 2602 LEGAL AFFAIRS - GENERAL

ALLIED COMMISSION

From 18 Nov 46
To

Vol. V Page 2

~~SECRET~~
Confidential

SERIAL NUMBER	FROM—	DATE	TO—	SYNOPSIS
378	Ltr 6536/65/EC	20 Dec 46	Toth	Infrm Toth of action being taken re ltr 855/46 of 13 Dec
379	Cbl AG3/00170	5 Jan 47	Sec	Req Questura officials as witnesses re Banks case
379a	Ltr 146508/SA	9 Jan 47	CC	Returning memo re offences against heads of foreign states
380	Ltr CC2602	10 Jan 47	Baratone	Ack of ltr re Tenuta agricola - forestale at San Rossore
381	Ltr SD/140.40	16 Jan 47	CC	Report on Astuni Pietro
382	Ltr CC2602	21 Jan 47	Valletta	Frwd of Valletta ltr re Gen Lyers encl
383	Cbl 6118	21 Jan 47	Br transit camp France	Re detention of Sgt Robinson
384	Ltr CC 2602	24 Jan 47	Carroll	Re appealing of sentence of death on Captain Simonitti
385	Ltr 2602	24 Jan 47	Judge Adv Gen	Re req for clemency for Capt Simonitti
385a	Cbl AG3/01529	25 Jan 47	Sec Div	Kesserling trial commences 10 Feb
386	Ltr CC 2602	27 Jan 47	Key	Frwd of police report on Astuni
386	Cbl FC/AC	28 Jan 47	Legal Div	Req info whether prov comm power to convene general courts

REC-8

INSTRUCTIONS.—When papers on a subject become numerous, list them briefly and brief entries made on this form.

~~SECRET~~
Confidential

Q. Form 353 (Old No. 400)
Revised July 24, 1948

LIST OF PAPERS

2602/CC

Office of the
Chief Commissioner

File under No. 2602 LEGAL AFFAIRS - GENERAL

ALLIED COMMISSION

From: 18 Nov 46
To :

SECRET

Vol. V Page 1

1-5749

SERIAL NUMBER	FROM—	DATE	TO—	SYNOPSIS
366	Ltr AG/4005/L	18 Nov 46	AFHQ	Jurisdiction over offences committed by Allied Nationals
367	Ltr 6536/48/EC	25 Nov 46	Min of For Affs	Request arrest of Durcansky
368	Ltr 6536/49/EC	25 Nov 46	Pauliny-Toth	Frwdng info re arres order fr Durcansky
369	Ltr of Ind Carr 6536/50/EC	28 Nov 46	Off of TJA, MTOUSA	Request what reply to be made to Pauliny-Toth's ltr of 27 Nov 46 No. 7981/46 which is Encl.
370	Ltr 6536/52/EC	30 Nov 46	Pauliny Toth	Infr Toth of action being taken re Durcansky
370a	Cbl AG3/00416	1 Dec 46	Security	Req statments for petitions re Ardeatine case
*371***Ltr 6536/53/EC 11-4 Dec 46 50*				
371	Ltr Stone	10 Dec 46	Klein	Report on investigation of Scorsone
372	Memo Hannaford	10 Dec 46	CC	Offenses against heads of states
373	Ltr FES/El	12 Dec 46	CC	Removal of furniture fr Royal Palace
374	Cbl AG3/00453	12 Dec 46	Security	Reluctant to accede to req for Bardi and Follestrini
375	Cbl AG3/00807	14 Dec 46	Security	Authority for interrogation of Kappler and Mackensen
376	Ltr Stone	16 Dec 46	Cappa	Infrm Cappa action being taken re removal of furniture from Palace
377	Ltr 6536/55/EC	16 Dec 46	Toth	Re handover of war criminal Durcansky
377a	Ltr 6536/74/EC	23 Dec 46	Toth	Ack of ltr 8703/46 of 17 Dec 46

INSTRUCTIONS.—When papers on a subject become numerous they will be numbered serially and brief entries made on this form.

Confidential

PC/AC/JAN
JAN.281530A

H/9481

JAN.291030

ROUTINE

HQ ANG UDINE PROVINCE
HQ ALCOM (LEGAL DIVISION)

UNCLASSIFIED.

Has provincial commissioner power to convene general courts.

AC DIST

ACTION
INFOLEGAL
CHIEF COMMISSIONER
EX COMM
FLOAT
FILE

2602/12

B

7

EP82

(389)

AG3/01529
JAN 25 1140A

H/9391
JAN 27 1000

CHQ CME

IMPORTANT

ACSEC HQ ALCOM AFHQ

CONFIDENTIAL

CONFIDENTIAL:

Trial of Kesserling commences 10 February 47 at Assise Court Venice,
Request you cable 86 Area repeated this HQ if accomodation required for
Italian observers or if travelling daily from Padua. Your cable 6075 of 17 January
refers.

AO DIST

ACTION - SECURITY

INFO - CHIEF COMMISSIONER

EX COMAR

FILE

SKELETON

CONFIDENTIAL

(4852)

2608/42

CC-2602

27 January 1947

Dear Mr. Key:

Forwarded herewith, for whatever disposition you may consider appropriate, is a document addressed to President Truman by the Grand Master of the "Massoneria Universale di Rito Scozzese Antico e Accettato", Pietro Astoni-Messineo.

After receiving the attached confidential police report, I decided that I would merely file both documents. However, I have now been informed that a delegation from this organization may call on you and thought it best that these papers should at least have been received by you.

Very truly yours,

MILBY W. STONE
Rear Admiral, USNR
Chief Commissioner

Mr. David McK. Key.
Charge d'Affaires a.i.
American Embassy,
Rome.

- CONFIDENTIAL -

2602/cc

REG

(386)

CC 2602

24 January 1947.

SUBJECT: Request for Clemency in case of Captain Italo SIMONITTI.
TO : Judge Advocate General, MTOUSA, APO 512, U.S. Army.

1. Forwarded herewith is a letter from the Secretariat of State of the Vatican enclosing petitions for clemency in the case of Captain Italo SIMONITTI who was condemned by an American military tribunal to be executed on 27 January.

2. I have both orally and in writing explained to Monsignor Carroll that the evidence in this case was such that I felt there was no basis for expecting modification of the tribunal's decision. Monsignor Carroll understands the situation but explained that he felt it was his duty to forward the petitions notwithstanding.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

1 Incl:
Ltr N.141063/SA,
20 Jan 47, with incls.

2602/u

(485)

CC 2602

24 January 1947.

My dear Monsignor Carroll:

I wish to acknowledge your letter of 20 January which enclosed the petitions appealing the sentence of death adjudged by the American Military Tribunal on Captain Italo Simonitti.

Since the offense was one which falls in the category of war crimes, it is beyond the competence of the Allied Commission. Accordingly, I have forwarded it to the Theatre Judge Advocate General for his consideration, although, as I have informed you orally, the evidence in this case is such that I feel there is no possibility of the Tribunal's sentence being modified.

Sincerely,

Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

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

2602/uc

(1947)

G-1 (B) HQ AIDON

211750 January 1947

BRITISH TRANSIT CAMP CALAIS FRANCE

6118

UNCLASSIFIED

PARA ONE PD SUGAR THREE TWO FIVE FOUR SEVEN TWO ONE STAFF SERJEANT ROBINSON KING
REMA REMA ROYAL ARMY SERVICE CORPS DESPATCHED ON RELEASE EX ROME SIX ONE NINE
JANUARY PD

PARA TWO PD REQUEST YOU DETAIN AT CALAIS AND RETURN VILLAGE BY FASTEST MEANS PD
PARA THREE PD STAFF SERJEANT ROBINSON REQUIRED ROME FOR INVESTIGATION AND POSSIBLE
DISCIPLINARY ACTION

PRIORITY

G-1 (B)

516

JOHN R. HAYES
MAJOR AGO
ADJUTANT

2604/00

(1383)

IMAS/2602/CS

25 February 1947.

My dear Professor Valletta:

With reference to your letter of 14 January concerning General Leyers, I have now been advised by Lieutenant General Lucius D. Clay, Deputy Military Governor for Germany, that your letter and that of Grand Ufficiale Bonelli have been transmitted to the Commanding General of the United States Forces, European Theater, for incorporation in the permanent file pertaining to General Leyers where they will be available for study when his case is reviewed.

Very sincerely yours,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief
Italian Military Affairs Section

Professor V. Valletta
President and Managing Director
Fiat Company
Turin.

IMAS/262/CS

25 February 1947.

My dear Professor Valletta:

With reference to your letter of 14 January concerning General Leyers, I have now been advised by Lieutenant General Lucius D. Clay, Deputy Military Governor for Germany, that your letter and that of Grand Ufficiale Bonelli have been transmitted to the Commanding General of the United States Forces, European Theater, for incorporation in the permanent file pertaining to General Leyers where they will be available for study when his case is reviewed.

Very sincerely yours,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief

Italian Military Affairs Section

Professor V. Valletta
President and Managing Director
Fiat Company
Turin.

ALLIED FORCE HEADQUARTERS

Italian Military Affairs Section

APO 794

DRAFT

25 February 1947

My dear Professor Valletta;

With reference to your letter of 14 January concerning General Leyers, I have now been advised by *Deputy Military Governor for Germany,* Lieutenant General Lucius D. Clay, that your letter and that of Grand Ufficiale Bonelli have been transmitted to the Commanding General of the United States Forces, European Theater for incorporation in the permanent file pertaining to General Leyers where they will be available for study when his case is reviewed.

Very sincerely yours,

ELLERY W. STONE
Rear Admiral USNR
Chief
Italian Military Affairs Section

Professor V. Valletta
President and Managing Director
Fiab Company
Turin

FEB 24 1947

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Office of the Deputy Military Governor
APO 742

5 February 1947

Rear Admiral Ellery W. Stone, USNR
Chief Commissioner
Headquarters Allied Commission
APO 734

Dear Admiral Stone:

Thank you very much for your letter dated 21 January 1947. A
transmitting the letters regarding the German General Leyers. These
letters are being transmitted to the Commanding General, United States
Forces, European Theater, for incorporation in the permanent file per-
taining to this individual where they will be available for study
when his case is reviewed under the provisions of Control Council
Directive No. 38.

Sincerely,



LUCIUS D. CLAY
Lieutenant General, U. S. Army
Deputy Military Governor

RE-8

MEMO FOR THE CHIEF COMMISSIONER

OFFENCES AGAINST THE HONOUR OF HEADS OF

FOREIGN STATES

From the enquiries made at the Ministry of Justice and the Secretariate of the Presidenza no new legislation has been passed or any draft decree prepared to modify the present legislation in connection with the above.

Therefore in matter of libel and slander against Foreign Sovereigns, Art. 297 of the Penal Code -

"Whoever, in the territory of the State, commits an offence against the honour or the prestige of the head of a foreign State shall be punished with penal servitude from 1 to 3 years"

- still applies.

It is presumed that Italian pressmen are careful not to attack the Pope personally in their Articles, but confine themselves to vague formulae such as the Vatican, the Holy See, the Church and the Religion.

However under Art. 402 and 403 libels against the religion of the State are also punishable.

"Whoever publicly reviles the religion of the State shall be punished with penal servitude up to 1 year"

"Whoever publicly insults the State religion by means of reviling a person who professes it shall be punished with penal servitude up to 2 years.

A term of penal servitude from 1 to 3 years shall be inflicted.

2602/ii

2602/20

Therefore in matter of libel and slander against Foreign Sovereigns, Art. 297 of the Penal Code -

"Whoever, in the territory of the State, commits an offence against the honour or the prestige of the Head of a foreign State shall be punished with penal servitude from 1 to 3 years"

- still applies.

It is presumed that Italian pressmen are careful not to attack the Pope personally in their Articles, but confine themselves to vague formulae such as the Vatican, the Holy See, the Church and the Religion.

However under Art. 402 and 403 libels against the religion of the State are also punishable.

"Whoever publicly reviles the religion of the State shall be punished with penal servitude up to 1 year"

"Whoever publicly insults the State religion by means of reviling a person who professes it shall be punished with penal servitude up to 2 years."

A term of penal servitude from 1 to 3 years shall be inflicted on a person who insults the State religion by means of reviling a minister of the Catholic faith"

It seems therefore that the Courts of the Republic of Italy have ample jurisdiction to mete adequate punishment to persons who commit these offences.

Under these conditions the matter appears to be more one of procedure than one of law.

It would be up to the "Munzio Apostolico" as diplomatic Envoy of the Holy See at the Quirinale to make representations

Viminale

Spain

to the Italian Government requesting that the Public Prosecutor be instructed to initiate the necessary judicial proceedings.

Italian Government cannot refused such request under present International Custom and practice.

Nor can the Procuratore della Repubblica (Public Prosecutor) refused to act on such instructions as his rights to do so which existed in the past has been abolished sometime ago.

C. G. Hannaford

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

RE-2

CC-2602

27 January 1947

Dear Mr. Key:

Forwarded herewith, for whatever disposition you may consider appropriate, is a document addressed to President Truman by the Grand Master of the "Massoneria Universale di Rito Scozzese Antico e Accettato", Pietro Astuni-Messineo.

After receiving the attached confidential police report, I decided that I would merely file both documents. However, I have now been informed that a delegation from this organization may call on you and thought it best that these papers should at least have been received by you.

Very truly yours,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Mr. David McK. Key.
Charge d'Affaires a.i.
American Embassy,
Rome.

- CONFIDENTIAL -

Spare
2602/cc

CC-3602

27 January 1947

Dear Mr. Key:

Forwarded herewith, for whatever disposition you may consider appropriate, is a document addressed to President Truman by the Grand Master of the "Massoneria Universale di Rito Scozzese Antico e Accettato", Pietro Astuni-Messineo.

After receiving the attached confidential police report, I decided that I would merely file both documents. However, I have now been informed that a delegation from this organization may call on you and thought it best that these papers should at least have been received by you.

Very truly yours,

HARRY W. WYOM
Rear Admiral, USNR
Chief Commissioner

Mr. David McK. Key.
Chargé d'Affaires a.i.
American Embassy,
Rome.

- CONFIDENTIAL -

SPAR E
2602/20

CC 2602

24 January 1947.

SUBJECT: Request for Clemency in case of Captain Italo SIMONITTI.
TO : Judge Advocate General, MTOUSA, APO 512, U.S. Army.

1. Forwarded herewith is a letter from the Secretariat of State of the Vatican enclosing petitions for clemency in the case of Captain Italo SIMONITTI who was condemned by an American military tribunal to be executed on 27 January.

2. I have both orally and in writing explained to Monsignor Carroll that the evidence in this case was such that I felt there was no basis for expecting modification of the tribunal's decision. Monsignor Carroll understands the situation but explained that he felt it was his duty to forward the petitions notwithstanding.

18/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

1 Incl:
Ltr N.141063/SA,
20 Jan 47, with incls.

2602/ce

5 Page

CC 2602

24 January 1947.

SUBJECT: Request for Clemency in case of Captain Italo SIMONITTI.

TO : Judge Advocate General, MTOUSA, APO 512, U.S. Army.

1. Forwarded herewith is a letter from the Secretariat of State of the Vatican enclosing petitions for clemency in the case of Captain Italo SIMONITTI who was condemned by an American military tribunal to be executed on 27 January.

2. I have both orally and in writing explained to Monsignor Carroll that the evidence in this case was such that I felt there was no basis for expecting modification of the tribunal's decision. Monsignor Carroll understands the situation but explained that he felt it was his duty to forward the petitions notwithstanding.

[S/ Ellery W. Stone]

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

1 Incl:
Ltr N.141063/SA,
20 Jan 47, with incls.



Spare
2602/4

CC 2602

24 January 1947.

My dear Monsignor Carroll:

I wish to acknowledge your letter of 20 January which enclosed the petitions appealing the sentence of death adjudged by the American Military Tribunal on Captain Italo Simonitti.

Since the offense was one which falls in the category of war crimes, it is beyond the competence of the Allied Commission. Accordingly, I have forwarded it to the Theatre Judge Advocate General for his consideration, although, as I have informed you orally, the evidence in this case is such that I feel there is no possibility of the Tribunal's sentence being modified.

Sincerely,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

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

Spares
2602/4

CC 2602

24 January 1947.

My dear Monsignor Carroll:

I wish to acknowledge your letter of 20 January which enclosed the petitions appealing the sentence of death adjudged by the American Military Tribunal on Captain Italo Simonitti.

Since the offense was one which falls in the category of war crimes, it is beyond the competence of the Allied Commission. Accordingly, I have forwarded it to the Theatre Judge Advocate General for his consideration, although, as I have informed you orally, the evidence in this case is such that I feel there is no possibility of the Tribunal's sentence being modified.

Sincerely,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

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

CC 2205-1/cc

23 January 1947.

SUBJECT: Evacuation of Hospital Patients from POLA.

TO : G-5 AFHQ.

1. There is forwarded herewith a translation of a letter dated 2 January from the President of the Council of Ministers requesting the use of a hospital ship for the evacuation of hospital patients from POLA.

2. I have been advised orally that the Italian Red Cross or the Italian Government would be prepared to charter the hospital ship requested if this were necessary to avoid political repercussions for the Allies. They will further be prepared to fly the Red Cross flag, if necessary, and are prepared to supply doctors and nurses (sanitary crew) for the hospital ship if the use of one can be obtained.

3. It is believed that the provision of a hospital ship would be an act of mercy and that therefore every effort should be made to grant this request if at all practicable.

4. May I be advised as to the nature of the reply I should make to the President of the Council of Ministers.

/s/ M. CARR, BRIGADIER
FOR

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Incl.

Copy to: U.S. Ambassador
British Ambassador
Ex Com
CC Files
Navy S/C

[Spare]
[2205-1/cc]

CC-2602

21 January 1947

My dear Professor Valletta:

I wish to acknowledge your letter of January 14th with its enclosure. I have forwarded both these documents to the appropriate authorities in Germany.

Very sincerely yours,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Professor V. Valletta
President and Managing Director
Fiat Company
Turin

24

Spares
2602/uc

CC-2602

21 January 1947

My dear Professor Valletta:

I wish to acknowledge your letter of January 14th with its enclosure. I have forwarded both these documents to the appropriate authorities in Germany.

Very sincerely yours,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Professor V. Valletta
President and Managing Director
Fiat Company
Turin



CC-2602

21 January 1947

My dear General Clay:

A letter from Professor Valletta, President and Managing Director of the Fiat Company, with an enclosure pertaining to General Lyers, is forwarded herewith for such disposition as you deem appropriate.

Very sincerely yours,

ELMER W. STONE
Rear Admiral, USNR
Chief Commissioner

Lt General Lucius C. Clay
Commander
United States Forces, European Theatre
APO 757, US Army

Spares

2602/c

CC-2602

21 January 1947

My dear General Clay:

A letter from Professor Valletta, President and Managing Director of the Fiat Company, with an enclosure pertaining to General Lyers, is forwarded herewith for such disposition as you deem appropriate.

Very sincerely yours,

ELMER W. STONE
Rear Admiral, USNR
Chief Commissioner

Lt General Lucius C. Clay
Commander
United States Forces, European Theatre
APO 757, US Army

File

CC-2602

21 January 1947

My dear General Clay:

A letter from Professor Valletta, President and Managing Director of the Fiat Company, with an ~~enclosure~~ pertaining to General Lyers, is forwarded herewith for such disposition as you deem appropriate.

Very sincerely yours,

ELMER W. STONE
Rear Admiral, USNR
Chief Commissioner

Lt General Lucius C. Clay
Commander
United States Forces, European Theatre
APO 757, US Army

2602/uc

(486)

the 14th January 1947

H.E. Ellery W. Stone
Rear Admiral, USNR - Chief Commissioner HQ.A.C.
APO 794 - R O N A.

My dear Admiral,

I think my duty as an act of justice to draw your personal attention on the position of Gen. Leyers, as his case was lately pointed out to me in a letter of our Director, who more particularly followed and still follows, for reasons of his charge, the relations with Germany.

The facts set forth in the letter herewith enclosed are quite and exactly true and I must further add that the very serious difficulties we had with the German S.S. could be overcome not only owing to the great daring and unflinching courage of all Fiat men, but also thanks to the personal comprehension that in every place and occasion Gen. Leyers showed for our feelings. Without his intervention many of us would no longer be alive.

I consider therefore I am fulfilling a strict duty to point out to you, as the Supreme Chief in Italy of Allied justice, the present case which I deem truly fit for particular attention

With my best regards,

I remain,

sincerely yours

2602/12

2602/10

as his case was already known to the Director, who more particularly followed and still follows, for reasons of his charge, the relations with Germany.

The facts set forth in the letter herewith enclosed are quite and exactly true and I must further add that the very serious difficulties we had with the German S.S. could be overcome not only owing to the great daring and unflinching courage of all Fiat men, but also thanks to the personal comprehension that in every place and occasion Gen. Leyers showed for our feelings. Without his intervention many of us would no longer be alive.

I consider therefore I am fulfilling a strict duty to point out to you, as the Supreme Chief in Italy of Allied Justice, the present case which I deem truly fit for particular attention

With my best regards,

I remain,

sincerely yours

Enclosure: 1 letter and translation of same

(198)

Translation

Turin, the 12th January 1947

Dear Professor,

During my trip in Germany I visited Gen. Leyers, who is confined for more than a year, together with many other Generals, in barracks at Garmisch-Partenkirchen without any specific charge.

I think my duty to remind you of the action of Gen. Leyers during the time he was in Italy as the head of Ruk, in order to mitigate, in the sphere of his possibility, the orders coming from Gerlin, especially concerning transfer of machinery and workpeople to Germany, and during the last months to avoid destroyals that were commanded from Berlin; you will bring to mind, just to refer to some specific facts, that he personally objected to the razing out of the Aeronautical Fiat Works (Aeronautica d'Italia), after the wreckage with explosive of a shed by the operating troops, and succeeded to avoid such drastic measures being applied to the Fiat Mirafiori Works, etc. He repeatedly exercised a benevolent pressure with SS H.Q. at Milan in order to prevent the arrest already decided of Fiat Directors amongst which foremost yours own, - as well as the deportations which SS had already begun with the sad episode in the Susa valley, and the mass deportation of workmen. You will doubtless also recollect his action with the German Authorities at Fasano in order to obtain the required improvement of the victualling conditions of the workmen.

His task, extremely difficult, always from the very beginning was intended to temper the severe and very exacting orders from Berlin with senses of humanity and comprehension of the local situations.

Just to refer to an episode, you will remember that during the conference held with the very formidable Staatsrat Schieber, an SS General who came on purpose from Berlin to promote a campaign against the partisans, you had the courage to defend them openly maintaining the "THE PATRIOTS WERE SOLDIERS FAITHFUL TO THEIR ALLEGIANCE". You found then in Gen Leyers a stout defender.

We may conscientiously declare that if the Italian industry in the North and NE were saved, we owe much to the ability and support of Gen. Leyers and it is also due to his sense of humanity if many deportations were avoided and many people was released.

2602/u

2602/u

were commanded from Berlin; you will bring to me, after the razing to some specific facts, that he personally objected to the razing out of the Aeronautical Fiat Works (Aeronautica d'Italia), after the wreckage with explosive of a shed by the operating troops, and succeeded to avoid such drastic measures being applied to the Fiat Mirafiori Works, etc. He repeatedly exercised a benevolent pressure with SS H.Q. at Milan in order to prevent the arrest already decided of Fiat Directors amongst which foremost yours own, - as well as the deportations which SS had already begun with the sad episode in the Susa valley, and the mass deportation of workmen. You will doubtless also recollect his action with the German Authorities at Fasano in order to obtain the required improvement of the victualling conditions of the workmen.

His task, extremely difficult, always from the very beginning was intended to temper the severe and very exacting orders from Berlin with senses of humanity and comprehension of the local situations.

Just to refer to an episode, you will remember that during the conference held with the very formidable Staatsrat Schieber, an SS General who came on purpose from Berlin to promote a campaign against the partisans, you had the courage to defend them openly maintaining the "THE PATRIOTS WERE SOLDIERS FAITHFUL TO THEIR ALLEGIANCE". You found then in Gen Leyers a stout defender.

We may conscientiously declare that if the Italian industry in the North and NE were saved, we owe much to the ability and support of Gen. Leyers and it is also due to his sense of humanity if many deportations were avoided and many people was released.

I think therefore only fair an intervention from Italian quarters in favour of General Leyers as a common matter of gra-

(b)(7)(D)

- 2 -

tefulness and equity.

I remain,

Yours truly

Signed: Piero Bonelli

To
Prof. V. Valletta
President and Managing Director of Fiat Co.
Torino

CC-2602

21 January 1947

My dear Professor Valletta:

I wish to acknowledge your letter of January 14th with its enclosure. I have forwarded both these documents to the appropriate authorities in Germany.

Very sincerely yours,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Professor V. Valletta
President and Managing Director
Fiat Company
Turin

(384)

CONFIDENTIAL

HEADQUARTERS ALLIED COMMISSION
A.P.O. 794
PUBLIC SAFETY DIVISION
SECURITY SUB DIVISION

no action
file

REF : SD/140.40

16 January 1947

SUBJECT : ASTUNI Pietro

TO : Chief Commissioner

1. With reference to attached letter from A.U.T.O. S.A.G. dated 1 January 1947 and signed "Pietro Astuni Messineo".

2. The above named is identical with ASTUNI Pietro, son of Federico and Gloria ASTUNI (nee MESSINEO), born at Palermo on 25.1.1895, now resident at 51, Via G. Avezzana, ROME. He arrived in ROME shortly after 4 June 1944 from Salerno. He is the National Secretary of the "Partito Agrario Italiano", offices of which are situated at his residence. The party appears equivalent to the "Peasant Party".

3. He has a criminal record at the Questura of SALERNO, for fraud, assaulting public officials, adopting false titles, extortion, pretences, rape, corruption of young persons etc. He has been subject of police observation and sentenced to "confino" on account of his criminal activities.

4. In 1941, although a native of Sicily he was forbidden to remain on the island.

5. ASTUNI was able to appoint himself as General Secretary of "MASSONERIA DI RITO SCOZZESE" (Masonry of Scottish Rites), the lodge was situated in Via della Mercede, Palazzo Bernini, ROME. Some dissension arose between him and other lodge members, and in February 1945 he was obliged to resign and return his membership cards and the official seals of the lodge. He was denounced to the Italian authorities in May of the same year for selling the membership cards.

6. ASTUNI afterwards formed the "Massoneria Universale di Rito Scozzese Antico e Accettato" but hid it under the title of "Centro di Ricostruzione Nazionale", located at Largo Fontanella Borghese 19, ROME. this is the letter heading and address given on basic communication. On formation he appointed himself as "Grand Master" (Gran Sovrano).

7. In September 1946, the Questura became interested in the "Centro di Ricostruzione Nazionale" and uncovered the existence of this so called

CONFIDENTIAL

(481)

8 CONFIDENTIAL 3

Masonic Lodge with ASTUNI at its head.

8. The following is recorded of him in the ROME Questura:-

- (i) Continued fraud between December 1945 and July 1946.
- (ii) Attempted arrest of a person without legal authority in August 1946.
- (iii) Using his position as "Grand Master" to incur debts which he has not discharged, he influenced magistrates, editors of newspapers in ROME not to report the legal proceedings.

9. The Ministry of Interior has been informed of ASTUNI using his position, as described above, and the Questura has recommended to the Ministry that the "Centro di Ricostruzione Nazionale" in ROME and other places be closed. The Questura has been instructed that it is necessary to await the findings of the Court on the circumstances shown in para 8 (iii) above.



A.H. ELLIS,
Captain,
Security Sub Division.

CONFIDENTIAL

(30)

CONFIDENTIAL

HEADQUARTERS ALLIED COMMISSION
A.P.O. #294
PUBLIC SAFETY DIVISION
SECURITY SUB DIVISION

REF : SD/140.40

16 January 1947.

SUBJECT : ASTUNI Pietro

TO : Chief Commissioner

1. With reference to attached letter from A.G.T.O. S.A.G. dated 1 January 1947 and signed "Pietro Astuni Messineo".
2. The above name is identical with ASTUNI Pietro, son of Federico and Gloria ASTUNI (nee MESSINEO), born at Palermo on 25.1. 1895, now resident at 51, Via C. Avezzana, ROME. He arrived in ROME shortly after 4 June 1944 from Palermo. He is the National Secretary of the "Partito Agrario Italiano", offices of which are situated at his residence. The party appears equivalent to the "Peasant Party".
3. He has a criminal record at the Questura of SALERNO, for fraud, assaulting public officials, adopting false titles, extortion, false pretences, rape, corruption of young persons etc. He has been the subject of police observation and sentenced to "confinio" on account of his criminal activities.
4. In 1941, although a native of Sicily he was forbidden to remain on the island.
5. ASTUNI was able to appoint himself as General Secretary of "MASONERIA DI RITO SCOZZESE" (Masonry of Scottish Rites), the lodge was situated in Via della Mercede, Palazzo Bernini, ROME. Some dissension arose between him and other lodge members, and in February 1945 he was obliged to resign and return his membership cards and the official seals of the lodge. He was denounced to the Italian authorities in May of the same year for selling the membership cards.
6. ASTUNI afterwards formed the "Massoneria Universale di Rito Scozzese Antico e Accettato" but hid it under the title of "Centro di Ricostruzione Nazionale", located at Largo Fontanella Borghese, 19 ROME. This is the letter heading and address given on basic communication. On formation he appointed himself as "Grand Master" (Gran Sovrano).
7. In September 1946, the Questura became interested in the

CONFIDENTIAL

"Centro di Ricostruzione Nazionale" and uncovered the existence of this so-called Masonic Lodge with ASTUNI at its head.

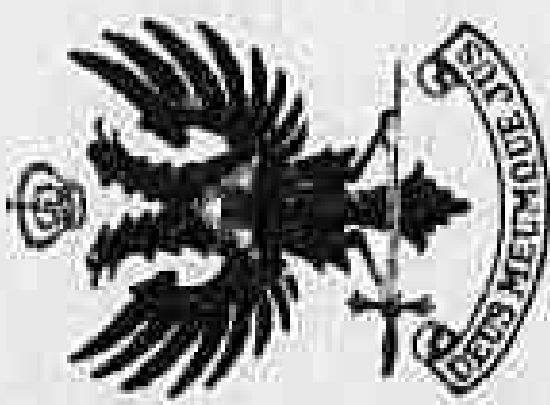
8. The following is recorded of him in the Rome Questura:-

- (I) Continued fraud between December 1945 and July 1946.
- (II) Attempted arrest of a person without legal authority in August 1946.
- (III) Using his position as "Grand Master" to incur debts which he has not discharged, he influenced magistrates, editors of newspapers in ROME not to report the legal proceedings.

9. The Ministry of Interior has been informed of ASTUNI using his position, as described above, and the Questura has recommended to the Ministry that the "Centro di Ricostruzione Nazionale" in ROME and other places be closed. The Questura has been instructed that it is necessary to await the findings of the Court on the circumstances shown in para 8 (III) above.

A. H. ELLIS,
Captain,
Security Sub Division

CONFIDENTIAL.



**A.: U.: T.: O. S.: A.: G.:
MASSONERIA UNIVERSALE DI RITO SCOZZESE ANTICO E ACCETTATO**

**SUPREMO CONSIGLIO DEL 33° ED ULTIMO GRADO NELLA GIURISDIZIONE D'ITALIA
EREDE LEGITTIMO DELLA MASSONERIA DI PIAZZA DEL GESU. 47 - ROMA**

T.: U.: P.:

Zenit di Roma, 25 gennaio 1947
(PUNTO GEOMETRICO NOTO AI SOU REGI DELLA MASSONERIA)

a S. E. l' Ammiraglio Stone

Roma

*Ho l'onore di comunicarLe che lunedì
prossimo, 27 gennaio, alle ore 12, una commissione
ne del nostro Ordine e Rito, composta dai Pot. Fr.:*

*Pasquale Gaglione Barba 33:
conte Mariano Gentili 33:
Comm. Enrico di Venanzio 33:
dott. Giovanni Pellegrino 33:*

*si presenterà all'8. V. per porgerle ossequio
e sottometterle la preghiera di conoscere - sia
pure a mezzo di un suo funzionario della
8. V. delegato - se venne inoltrato a S. E. Lu-
man il messaggio in data 1° gennaio del
nostro Sovrano Gr. Comm. e Gran Maestro
Pietro Astuni-Messineo, fatto pervenire allo*

usbo alla 8. V.

a S. S. l'Annunziaglie Stone

Roma

Ho l'onore di comunicarLe che lunedì
prossimo, 24 gennaio, alle ore 12, una commissio-
ne del nostro Ordine e Rito, composta dai Pot. Fr.:

Gaspare Gaglione Barba 33.:

conte Mariano Gentili 33.:

com. Enrico di Venanzio 33.:

dott. Giovanni Pellegrino 33.:

si presenterà all' S. V. per porgerle ossequio
e sottometterle la preghiera di conoscere sia
pure a mezzo di un suo funzionario dalla
S. V. delegato - se viene inoltrato a S. S. In-
nanzi il messaggio in data 1° gennaio del
nostro Sovrano Gr. Com. e Gran Maestro
Pietro Astuni - Messineo, fallo pervenire allo
uopo alla S. V.

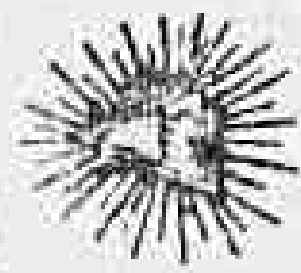
Con devota osservanza

RG

IL GRAN SEGRETARIO GRANCAPO



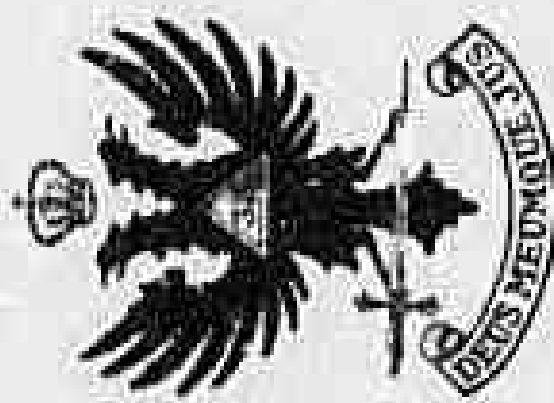
Survey



**A.: U.: T.: C.: S.: A.: G.:
MASSONERIA UNIVERSALE DI RITO SCOZZESE ANTICO E ACCETTATO**

SUPREMO CONSIGLIO DEL 33° ED ULTIMO GRADO NELLA GIURISDIZIONE D'ITALIA
EREDE LEGITTIMO DELLA MASSONERIA DI PIAZZA DEL GESÙ. 47 - ROMA

T.: U.: P.:



Zenit di Roma, 21 gennaio 1947 E. V.
(PUNTO GEOMETRICO NOTO AI SOGLI FIDELI DELLA MASSONERIA)

a S. E. L'Ammiraglio *Spone*
Roma

2602/10

Nella mia qualità di Capo della
Massoneria di Rito Scozzese Antico ed
Accettato prego l'E. V. perché cortesemente
disponga di farmi comunicare se viene
trasmesse a S. E. Brunani il mio esposto,
in data 1° gennaio corrente, per impedire
che, con sollecito intervento, la frode che
si tende compiere dal Governo Italiano
contro la mondiale Massoneria, ricorra
senza alle leggi di tutti i paesi de-
mocratici del mondo.

Lei elevata osservanza e vir' un-
graziarvi.

Il Sopr. Gran Comm. E Gran Maestro,

A. V. N. T. L. R. O. S. I.

2602/11

nella mia qualità di Capo della
 Massoneria di Rito Scorsese e Suetico ed
 accettate prego l' S. S. perché cortesemente
 disponga di farne comunicare se venne
 trasmesso a S. S. Brunan il suo esposto,
 in data 1° gennaio corrente, per impedire
 re, con sollecito intervento, la frode che
 si tende compiere dal Governo Italiano
 contro la mondiale massoneria, ricono-
 sciuta dalle leggi di tutti i paesi de-
 mocratici del Mondo.

con devota osservanza e mio res-
 graziamenti.

Il Sovr. Gran Comm. E Gran Maestro,


Pietro Antonio Maffei

Roma, largo Fontanella Borghese
 11.2.19

J. De

HEADQUARTERS ALLIED COMMISSION

Office of the Chief Commissioner

APO 794

CC-2602

10 January, 1947

My dear Doctor Baratone:

I wish to acknowledge your letter of 5th January, concerning the Tenuta agricola-forestale of San Rossore.

A translation of your letter has been forwarded to Allied Force Headquarters for their action and I shall advise you as soon as a reply is received.

Sincerely yours,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Doctor P. Baratone,
Commissario dei Beni
Demaniali già Dotazione
della Corona
Via del Quirinale

File

5050

2602/cc

(Handwritten signature)



Vatican City, January 9, 1947

N. 146508/SA

Dear Admiral Stone,

I am returning to you herewith the memorandum 372
"Offences Against the Honour of Heads of Foreign
States".

Please accept my sincere thanks for your
kindness in making this document available.

With best wishes and kindest personal regards,
I remain,

Sincerely yours,

Walter S. Carroll

Rt. Rev. Mons. Walter S. Carroll
Secretariat of State of His Holiness

Admiral Ellery Stone
Chief Commissioner
Allied Commission
Via Veneto,

Enclosure 1

Rome

7

AC3/00170

HPT

H/8950
JAN 050330

IMMEDIATE

THE CIP

ACORD H. ALDOM INFO H. 86. ATRA

CONFIDENTIAL

CONFIDENTIAL

SUBJECT BANKS CASE NO 2. FOLLOWING OFFICIALS OF QUESTURA REVISED AS WITNESSES TO PRODUCE STATEMENT OF SANTIAGO FRANCISCO AT WAR CRIMES TRIAL TO BE HELD IN OR NEAR VERON 20 JAN 47. EITHERONE, LIEUT CAVALLANO SEVERINO OR TWO, BRIGADIERE CRISTO UGO PLEASE ASCERTAIN WHICH OFFICIAL WILL BE AVAILABLE AND WE WILL NOTIFY LOCATION OF TRIAL. FOR EASY REFERENCE OUR FY 70248 OF 22 AUG 46 REOPEN. ALSO REQUIRED AS WITNESS BRIGADIERE CARLO PORTINO UNDERSTOOD ATTACHED TO QUESTURA BANK. ACK

AC DIST

ACTION : PRIORITY 2

INFO : CHIEF COMMISSIONER

EX COMMISSIONER

LEGAL

FILE

SECURITY

CONFIDENTIAL

1/97/

2602/01

Ref. 6536/65/EC.

20 December 1946.

Dear Sir,

With reference to your letter No. 855/46 of 15 December 1946 I am taking the matter up immediately with Allied Force Headquarters and will inform you of the result of my letter as soon as a reply is received.

Very sincerely

/s/ Ellery W. Stone

ELLEMY W. STONE,
Rear Admiral, USNR
Chief Commissioner

Hon. Jan Pauliny-Toth,
Minister of Czechoslovakia,
Czechoslovakian Legation,
Rome.

50-1

(378)

Secret

Ref.: 6536/74/80

23 December, 1946

Dear Sir,

I acknowledge with thanks receipt of your letter No. 3705/46 of 17 of December, 1946.

I am taking the matter up with Allied Force Headquarters and will inform you of the result of my letter as soon as the reply is received.

The case of Dr. Stanislav Meciar mentioned in your letter under reference has already been referred to higher Authorities as I have informed you with my letter 6536/65/80 of 19 of December.

Very sincerely,

W. E. Stone

MURPHY W. STONE
Rear Admiral, USNR
Chief Commissioner

Hon. Jan Pauliny-Toth,
Minister of Czechoslovakia,
Czechoslovakian Legation,
Rome.

5820
Confidential

377a

DEC 15 1946

CC.

SECRETRef: 6536/57/EC/6 December, 1946

Dear Sir,

I refer to your letter 7981/46 of 27th November and to my letter 6536/52/EC of 30th November 1946.

I have been instructed to inform you that the method and place of hand over of Ferdinand DURCANSKY, should he be arrested, is a matter for your Government to arrange directly with the Italian Government.

Very sincerely,

/s/ Henry W. Stone

HENRY W. STONE
Rear Admiral, USNR
Chief Commissioner

Hon. Jan PAULINY-TOTH,
Minister of Czechoslovakia,
Czechoslovakian Legation,
ROME.

Copy to Public Safety Div.

RQ50

16 December 1946

Dear Avv. Cappa:

Further to my letter of 1 November 46 concerning the property belonging to the Royal Palace at Caserta, I have received information from AFHQ today that the matter is still under investigation but it is hoped that a reply may be forthcoming shortly.

Very sincerely yours,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Avv. Paolo Cappa,
Il Sottosegretario di Stato alla
Presidenza del Consiglio dei Ministri,
Roma

CEEX COMM

5050

SECRET

AG3/00807
DEC.NFTDEC 13 1945
H/8501
DEC.140900
IMMEDIATE

GHQ CMF
ACSEC.HQ ALCON -INFO-AFHQ FOR G-5 SECTION -HQ RAAC (EE) -
32 MIL PRIS AND DETN BKS (WAR CRIMINALS WING) ROME -

SECRET

Reference your 5773 of 12 Dec.

Authority is given for Kappler, Mackensen, and Maeltzer to
be interrogated at 32 Mil Pris and Detn Bks Rome by Allied
Legal Officer of your Commission on question submitted by
Ministry of Justice. Detailed arrangements to be made with
HQ RAAC. Interrogation must be completed by December 18.

A.C.DISTRIBUTION

ACTION -SECURITY (2)&LEGAL (2)

INFO -C.COMMISSIONER

EX.COMMISSIONER

FILE

SKELETON

KOA

Confidential

DEC 14 1945

NOV 21 1946

DEC 12 1946

AG 3/00653
DEC EPT

SECRET

H/8468
121130

IMMEDIATE

GHQ C.M.F.

ACTION ACSEC HQ ALCON

SECRET.

~~Trial~~ OF BARDI AND POLLASTRINI. YOUR 5746 OF 7 DECEMBER.THIS HQ RELUCTANT ACCEDE TO REQUEST OF MINISTER OF JUSTICE IN VIEW
POSSIBILITY OF PUBLIC DISORDER. CAN ONLY BE CONSIDERED IFA. FULL DETAILS OF EVIDENCE EXPECTED TO BE PRODUCED BY MACKENSEN
MAELTZER AND KAPPLER ARE FURNISHED BY MINISTRY OF JUSTICE TO THIS HQB. ITALIAN GOVERNMENT WILL GUARANTEE SAFE CUSTODY OF THESE MEN
DURING PERIOD IN WHICH THEY ARE TO BE IN ITALIAN HANDS.

6602/EC

AC DIST

ACTION SECURITY 2.

INFO C. COMM.

EX. COMM.

FILE

SKELETON

5858

Confidential

DEC 12 1946

C.COMM

DEC 10 1946

4263

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

Ref : FES/DI

17 December 1946

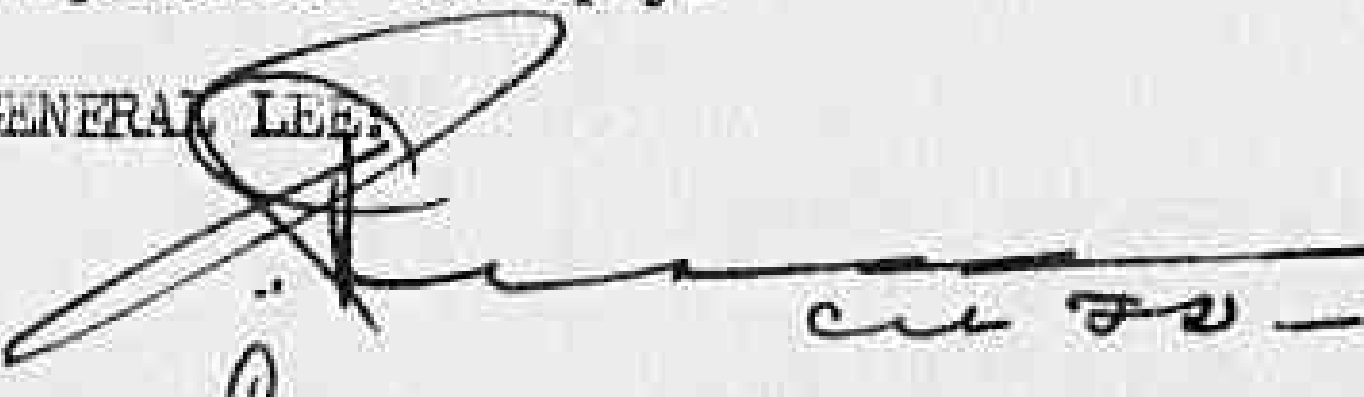
SUBJECT: Removal of Furniture from the Royal Palace, CASERTA.

TO : Chief Commissioner,
Allied Commission,
APO 794.

 1. The matter contained in your no reference number letter of 1 November 1946 on the above subject is still under investigation.

2. It is hoped to soon be in a position to reply.

BY COMMAND OF LIEUTENANT GENERAL LEE


for A. L. HAMBLIN,
Colonel, GSC,
Assistant Chief of Staff, G-5.

ALH/CHF/jto

5055

MEMO FOR THE DEPT. COM. - 10/16/46

OFFICIAL ADDRESS: THE HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES

From the inquiries made at the Ministry of Justice and the Secretariat of the President, no new legislation has been passed or any draft decree prepared to modify the present legislation in connection with the above.

Wherefore in order of 11th and 12th of October against Foreign Sovereigns, Art. 257 of the Penal Code -

"Whoever, in the territory of the State, commits an offense against the honor or the prestige of the head of a foreign State shall be punished with penal servitude from 1 to 3 years."

- still applies.

It is presumed that Italian pressmen are careful not to attack the Pope personally in their articles, but confine themselves to vague formulas such as the Vatican, the Holy See, the Church and the Religion.

However under Art. 402 and 403 which speak against the Religion of the State are also punishable.

"Whoever publicly reviles the Religion of the State shall be punished with penal servitude up to 1 year"

"Whoever publicly insults the State Religion by means of reviling a person who professes it shall be punished with penal servitude up to 2 years."

A case of penal servitude from 1 to 3 years shall be inflicted on a person who insults the State Religion by means of reviling

7607/ce

10 Dec 46

4607/ce

therefore in the letter of 11/1/1963 under against Foreign Sovereigns, Art. 257 of the Penal Code.

Moreover, in the territory of the State, commit an offense against the honor or the prestige of the head of a foreign State shall be punished with penal servitude from 1 to 3 years.

- still applies.

It is proven that Italian prisoners are careful not to attack the Pope personally in their articles, but confine themselves to vague formulas such as the Vatican, the Holy See, the Church and the Religion.

Moreover under Art. 402 and 403 libels against the Religion of the State are also punishable.

Whoever publicly reviles the Religion of the State shall be punished with penal servitude up to 1 year.

Whoever publicly insults the State Religion by means of reviling a person who professes it shall be punished with a fine or with penal servitude up to 2 years.

A sort of penal servitude from 1 to 7 years shall be inflicted on a person who insults the State Religion by means of reviling a Minister of the Catholic faith.

It seems therefore that the Courts of the Republic of Italy have ample jurisdiction to mete adequate punishment to persons who commit these offenses.

Under these conditions the matter appears to be more one of procedure than one of law.

It would be up to the "Ministero Apostolico" as diplomatic envoy of the Holy See at the ~~Vatican~~ *Vimale* to make representations.

D

(44-112)

to the Italian Government requesting that the Public Prosecutor be instructed to initiate the necessary judicial proceedings.

Italian Government cannot refuse such request under present International Custom and practice.

Nor can the Procuratore della Repubblica (Public Prosecutor) refuse to act on such instructions as his right to do so which existed in the past has been abolished sometime ago.

S.O. HANNAPOND,

Lt. Colonel,
Deputy Chief Legal Advisor.

2032

G.C. HARRINGTON,
Lt. Colonel,
Deputy Chief Legal Advisor.

2063

2063

10 December 1946.

Hon. Arthur C. KLEIN, M.C.
Suite 401, House Office Building,
Washington, D.C.

Re : Francesco SCORSONE

My dear Mr. Klein :

Investigation made by this Commission has revealed the fact that on 9 November 1943 one Francesco Scorsone was tried by an Allied Military Government Court in the Province of Palermo, Italy, on the charge of obtaining flour on false documents, and sentenced to a term of 5 years imprisonment and payment of a fine of 50,000 Lire. It is believed that this is the man about whom you have made inquiry in your letter of 17 October 1946.

The records in this case show further that upon review, on 23 July 1945, this sentence was reduced to end 1 August 1945, whether or not the fine had been paid by that time, but that thereafter it was discovered that through outside assistance Francesco Scorsone had been released from jail on 3 February 1944, on a forged Allied Military Government order, and that consequently a new warrant had been issued for his arrest as a fugitive from justice, in order that he might be returned to serve his unexpired prison sentence. According to recent inquiry made regarding this matter he has not yet been taken into custody on this warrant. When he is so apprehended he will be subject to trial under the Italian Penal Code, by the Italian authorities, on the additional charge of escaping jail. In this connection he has, of course, placed himself beyond Allied Military Government control.

96/5/100

1371

- 2 -

The Amnesty granted offenders by the Italian Government some time ago, to which you make reference in your letter, had no application to Allied Military Government cases.

I believe that the foregoing briefly states the present status of this case. If I may be of further service in this connection I would be pleased to have you call upon me.

Sincerely yours,

/s/ Ellery W. Stone

ELLEWY W. STONE
Rear Admiral, USNR
Chief Commissioner.

5021

(371)

D. 9. 1946

AG3/00416

CONFIDENTIAL

H/8402

DEC 081500

GHQ CMF

ROUTINE

ACSEC HQ ALCON INFO HQ RAAC (BE)

CONFIDENTIAL

Ardeatine case. Accused are pressing for statement from following for inclusion in petitions.

1. Capt Bossi Fredirigotti. One time (?) head of German broadcasting station in Rome. Now believed in Buntico South Tyrol. To state that warning was broadcast to civil population of consequences of outrages prior to bomb outrage in Via Rassella on 24 March 44.

2. At trial of Koch in Milan on 28 June 46 witness Blas Guglielmo said Via Rassella bomb outrage instigated by Italian partisan leader Togliatti. Statement of Blas required. If statement obtained forward latest to HQ RAAC.

AC DIST

ACTION : SECURITY 2

INFO: CHIEF COMMISSIONER

EX COMMISSIONER

FILE

SKELETON

NO - 0

DEC 8 - 1946

CCRef: 6536/52/ECSECRET30 November, 1946.

Dear Sir:

449 I acknowledge with thanks receipt of your letter
No. 7981/46 of 27th November, 1946.

Your proposals as to the way of extradition and
handing over to the Czechoslovakian Authorities of Ferdinand
DURCANSKY, should he be arrested, have been submitted to
higher authorities for decision and I shall inform you of the
result in due course.

Very sincerely,

/s/ EMERY W. STONE
EMERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Hon. Jan PAULINY-TOTH,
Minister of Czechoslovakia,
Czechoslovakian Legation,
ROME.

2602/cc

5050

970

TOP SECRET

NOV 29 1946

6536/50/EC

2nd Ind.

23 November 1946.

Office of the Chief Commissioner, H.Q. Allied Commission, APO 794, U.S. Army.

TO: Office of the Theater Judge Advocate, Headquarters AFUSA, APO 512, US Army.

367

1. With reference to 2a of 1st Ind. The Italian Ministry of Foreign Affairs was informed by letter dated 25 November 1946 that the Czechoslovak subject FERDINAND DUCANSEY is named on the United Nations War Crimes List No. 44 of October 1946.

By the same letter the Ministry of Foreign Affairs was requested pursuant to Article 29 of the Long Armistice Terms to arrest and detain DUCANSEY for the dispositions of the Allied authorities.

The Ministry was asked to treat the matter as urgent and to notify this Commission immediately of arrest and place of detention.

2. With reference to 2b of 1st Ind. The Minister of Czechoslovakia was informed by letter dated 25 November 1946 that information had been received that FERDINAND DUCANSEY is named on United Nations War Crimes List No. 44 of October 1946.

He was also informed that appropriate steps were being taken for the arrest and detention of DUCANSEY.

He was asked to advise this Commission immediately as to what disposition was desired of DUCANSEY ~~and~~ ^{should} he be arrested and detained by the Allied authorities in Italy.

A reply dated 27 November 1946 has now been received from the Minister of Czechoslovakia and a copy of his reply is attached.

Can this Commission please be advised as to what reply should be made to the Minister of Czechoslovakia.

No information has yet been received from the Italian authorities as to whether DUCANSEY has been traced and arrested.

FOR THE CHIEF COMMISSIONER:

1/s/ M. CARR.

Brigadier.

Executive Commissioner.

10/21

Copy to: Chief Comm
Public Safety Div.

RCCO

TOP SECRET

Ex Com's office states that they will acknowledge Dr. Pauling's letter.

369

9

C O P Y

NOV 29 1946

LEGATION DE LA REPUBLIQUE TCHOSLOVAQUE

No. 7981/46

Rome, 27 November, 1946.

Ref: 6536/49/20.

S E C R E T

Excellency,

I thank you very much for your kind letter concerning Dr. Ferdinand DUREANSKY.

The Czechoslovak Government should need urgently Dureansky first to testify in the trial of the former puppet president of Slovakia Dr. Tiso which is to begin on the 2nd of December and then to be tried as war criminal by the National Tribunal in Bratislava where he had perpetrated the crimes.

I should be very obliged to Your Excellency if you might consider these ways of extradition of the above named:

1) His transportation via Austria to a place on the Czechoslovak frontier and the previous notification of this place that arrangements might be made for his transmission to the Czechoslovak authorities.

2) His transportation to a place on the line of the Soviet occupation zone in Austria with the same notification.

3) The sending of a special Czechoslovak plane to Rome with police constables of our own which might transport Dureansky directly to Czechoslovakia.

4) Or any other means which you might consider, Excellency, more suitable for the purpose of handing over Dureansky more rapidly to the Czechoslovak authorities.

In expecting your answer, I remain, Your Excellency.

Very sincerely yours,

(Signed)
(Typed)Jan Pauliny-Toth.
Dr. JAN PAULINY-TOTH,
Minister of Czechoslovakia
in Italy.H.E. ALLERY W. STONE,
Rear Admiral, USNR.
Chief Commissioner, Rome.

Copy to Sec. Branch

Ref: 6536/49/EC

SECRET

26 November, 1946.

Dear Sir:

With reference to your letter No. 7337/46 of 7th November 1946, information has been received from higher authority that Dr. Ferdinand DURCANSKY is named on United Nations War Crimes List No. 44 of October 1946.

Appropriate steps are being taken for the arrest and detention of DURCANSKY.

Will you please advise this Commission immediately as to what disposition is desired of DURCANSKY should he be arrested and detained by the Allied Authorities in Italy.

4504/46

Very sincerely,

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Hon. Jan PAULINY-TOTH,
Minister of Czechoslovakia,
Czechoslovakian Legation,
Rome.

FORG

*Copy to Security Branch
Att. Hq.*

368

Copy for the C.C.

Ref: 6536/48/EC

SECRET

25th November, 1946.

SUBJECT : FERDINAND DURCANSKY
War Criminal.

TO : The Ministry of Foreign Affairs,
ROME.

With reference to your memorandum 16/37966 of 15th November 1946, information has now been received by this Commission from higher authority, that the Czech. subject Ferdinand DURCANSKY is named on the United Nations War Crimes List No.44 of October 1946.

It is requested that pursuant to Article 29 of the Long Armistice Terms you arrest and detain DURCANSKY for the dispositions of the Allied Authorities.

It would be appreciated if this matter could be treated as urgent and that as soon as the arrest is effected, this Commission be informed immediately of the place of detention.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: Public Safety (Security Branch)
Polad A
" B

see 369

RC55

*The original letter
was blind*

*120
26/11*

367

CONFIDENTIAL

Ref.: 12/4504/1.

18 November 1946.

SUBJECT : Jurisdiction over offenses by Allied Nationals.

TO : Allied Force Headquarters.
(Attention: G-5 Section)

1. I refer to your G-5.01 of 11 October 1946 on the subject of trial of Allied Nationals accused of committing offenses in A.S.G. territory.

2. I am enclosing a copy of a memorandum on this subject prepared by the Chief Legal Advisor of this Commission.

3. Not being in possession of any of the original directives which may have been issued in regard to the powers of the Military Governor in this Theatre, I am unable to express an opinion as to whether the Courts established by the Military Governor can have jurisdiction over Allied Nationals.

Proclamation No. 1 would appear to cover Allied Nationals but in the light of the enclosed memorandum there would seem to be some doubt as to the validity of the Proclamation in this respect.

In general, it would appear that the directives dealing with jurisdiction under A.S.G. tend only to cover nationals of the territory under Government.

Since the question raised is one of national laws of the U.S. and the U.K. and not of international law, I suggest that it is for the Judge Advocate General to advise on the powers possessed in this respect by the Supreme Allied Commander in his capacity as Military Governor. It may be that the Supreme Allied Commander should seek directions from higher authority in this matter.

4. The letter from the ECAC Venezia Giulia refers only to American and British Nationals. The problem, however, would appear to arise in the case of all Allied Nationals and it would appear inequitable if the Allied Military Government did not take jurisdiction over all Allied Nationals in respect of violations of MG Proclamations and of Civil law if it assumed it over American and British Nationals.

RCC

5. As regards American Merchant Seamen, a ruling has been conveyed recently to the Italian Government by the American Embassy to the effect that the cases of American Merchant Seamen, except those who come under the jurisdiction of the U.S. military authorities, accused of violating Italian laws in Italy, will be considered as triable by Italian authorities.

The note, however, does state that jurisdiction over American seamen in the port of Genoa or other ports in Italian waters will continue to be determined by U.S. authorities. A copy of this ruling was furnished to your headquarters under this communication's letter 100/13/122/2541 of 7 November 1944.

As regards British Merchant Seamen, the present position is that they are not protected by the provisions of the Convention of Restoration of Territory to Italy. British seamen, nor by any agreement to which the Italian Government are a party. Under international law therefore seamen are triable at present by Italian courts for offenses committed on Italian territory. The fact that the Foreign Office are of opinion that British seamen should not be tried by Italian courts but come under the provisions of Articles 10 and 11 of the Draft Civil and Military Affairs Agreement is not at present relevant as the Civil Affairs Agreement has not been signed.

British seamen under English law are subject to Defense Regulations 47 and 48 and triable by British courts. The Italian State is not legally concerned with British internal regulations and has an unquestionable right to exercise its full jurisdiction over persons who commit offenses in its territory where Italian sovereignty has been fully restored, unless they accept to abandon such jurisdiction by agreement. As far as the Italian authorities have held their hand, not because of lack of jurisdiction but for reasons of policy.

The British Embassy in Rome has brought these facts to the notice of the British Foreign Office and has requested further instructions in view of the definite position taken by the United States in this matter.

6. Having regard to the foregoing, I do not consider that I am presently able to draft the proposed reply to U.S. Consul Giulio letter 100/13/122/2541 of 2 October 1944.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: C.C. _____
R.C.
Polad (A)
Polad (B)

2050

1366

The note, however, does state that jurisdiction over American women in the port of Genoa or other ports in Italy is Italian. It will continue to be determined by U.S. authorities. A copy of this ruling was forwarded to your headquarters under this communication's letter 5606/13/12 of 7 November 1946.

As regards Italian Maritime Customs, the present position is that they are not protected by the taxation or system of supervision of territory to Italian Administration, nor by any agreement to which the Italian Government is a party. Under international law therefore, no one is liable at present by Italian Customs for offenses committed on Italian territory. The fact that the foreign offices are of opinion that British women should not be tried by Italian Courts but come under the provisions of a statute to one of the great Civil and Military Affairs Agreement is not at present relevant as the Civil Affairs Agreement has not been signed.

British women under English law are subject to Defense Regulations 47 A2 and 47A20 by British Courts. The Italian State is not legally concerned with British informal regulations and has an unquestionable right to exercise its full jurisdiction over persons who commit offenses in territory where Italian Government has been fully restored, unless they except to abandon such jurisdiction by agreement. As far as Italian authorities have held their hand, not because of lack of jurisdiction but for reasons of policy.

The British Embassy to Rome has brought these facts to the notice of the British Foreign Office and has requested further instructions in view of the Maritime position taken by the United States in this matter.

6. Having regard to the foregoing, I do not consider that I am presently able to draft the proposed reply to U.S. General Giulio letter 56/12/12/12/12 of 2 October 1946.

/s/ Ellery W. Stone

ELDERY W. STONE
Deputy Chief, USMA
Chief, Consular

Copy to: C.C.

RQNS

their reports to the Bureau and the Bureau of the
Italian authorities have held their hand, not because of lack of
jurisdiction but for reasons of policy.

The British Embassy in Rome has brought these facts to the notice
of the British Foreign Office and has requested further instructions
in view of the domestic position taken by the United States in this
matter.

6. Having regard to the foregoing, I do not consider that I am
presently able to draft the proposed reply to the N.S. Technical Office
Letter MS/12/12/12/12 of 2 October 1964.

Copy to: C.C.

E.C.

Polad (A)

Polad (B)

(B66)

Ms/ Ellery W. Stone

ALBERT W. STONE
Rear Admiral, USN
Chief Communications

RC52

jurisdiction but for reasons of policy.
The British Embassy in Rome has brought these facts to the notice of the British Foreign Office and has requested further instructions in view of the definite position taken by the United States in this matter.

6. Having regard to the foregoing, I do not consider that I am presently able to draft the proposed reply to G.S. Venezuela Giulia letter NY/12/122/2341 of 2 October 1961.

/s/ Ellery W. Stone

ELERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: C.C. —
E.C.
Polad (A)
Polad (B)

ROB2

(B6b)

MEMORANDUM FOR THE CHIEF COMMISSIONER :

1. There has been received from G-5, A.F. Headquarters, letter dated 11 October 1946, reference: G-5-234.04.

2. For information, there has been sent to these Headquarters from the S.C.A.O., (Legal Division) Venezia Giulia, letter dated 2 October 1946, reference AMG/LD/122/2941. This letter was addressed to AFHQ G-5.

3. I have examined and studied these two communications. Because of the gravity of the question raised in paragraph 4 (e) of letter from S.C.A.O. Venezia Giulia, and the answer to be given to it, for the consideration of all concerned I feel impelled to make the following observations.

4. The recommendation that "Others (nationals) should be tried by Allied Military Government Courts" (See paragraph 4 (e) of letter of S.C.A.O.) poses a grave question of jurisdiction. Jurisdiction is power. There is no no-man's land in jurisdiction. A Court has, or does not have jurisdiction. If a Court acts beyond its jurisdiction such act is a legal nullity. Lack of jurisdiction may be raised at any time during trial or the serving of sentence.

5. Unless specifically conferred by constitutional grant (the original jurisdiction of the Supreme Court of the United States is a good example) jurisdiction is universally conferred on courts by legislative enactment. If these premises are true, - and they can not be seriously denied, - the question arises "under what legislative authority can it be said that jurisdiction has been conferred on Allied Military Government Courts by Congress and/or Parliament to try Nationals as is proposed in the recommendation?". No such legislation has been enacted and I have no knowledge of the existence of such legislation from the meager sources of the

4. The recommendation that "others (nationals) should be tried by Allied Military Government Courts" (See paragraph 4 (e) of letter of S.C.A.O.) poses a grave question of jurisdiction. Jurisdiction is power. There is no no-man's land in jurisdiction. A Court has, or does not have jurisdiction. If a Court acts beyond its jurisdiction such act is a legal nullity. Lack of jurisdiction may be raised at any time during trial or the serving of sentence.
5. Unless specifically conferred by constitutional grant (the original jurisdiction of the Supreme Court of the United States is a good example) jurisdiction is universally conferred on courts by legislative enactment. If these premises are true, - and they can not be seriously denied, - the question arises "under what legislative authority can it be said that jurisdiction has been conferred on Allied Military Government Courts by Congress and/or Parliament to try Nationals as is proposed in the recommendation?". No such legislation has been enacted and I have no knowledge of the existence of such legislation from the meager sources of information at my command. Quite to the contrary, it seems freely to be admitted that no such legislation exists, and the sole premise upon which the proposal is bottomed is a general power vested in the Military Governor to legislate, presumably on the theory that the failure of the Congress and/or the Parliament in this behalf may be supplied by the Military Governor under his general powers to "maintain law and order" in an occupied territory.
6. The framers of paragraph 4 (e) S.C.A.O. letter, have overlooked or have undervaluated certain premises. The persons whom they seek to subject to Allied Military Government Courts are Nationals of United States and Britain and other Allies. Included are the wives and children of United States and British Military personnel.

(12,66)

American and British Nationals have lost none of the protective guarantees of the United States and British constitutions because they are in Italy. Certainly this is true when they are to be tried by Tribunals of United States and British creation. The most that can be said of them in such case is that they may have aided to their duties and obligations. Then again, they may remain in status quo.

7. Let us take for example the persons covered by Article of War No.2, (U.S.) described in the letter of the SCAG. Now have Americans been dealt with by the Congress? The answer is plain. With the declaration of the State of War, and the subsequent invasion of Italy, a host of Nationals, such as officers, enlisted men, and civilian retainers find themselves in Italy. They commit an act which is violative of Italian Law. Can they be tried under Italian Law by the Italian Courts? The answer is NO. By reason of being the occupying power under a State of War, in the exercise of its lawful powers, Congress has ordained that its laws and its courts shall try such Nationals to the exclusion of alien Italian Sovereignty. And in this connection it is noteworthy to observe that in the exercise of its jurisdiction over such Nationals, the Military Courts of United States follow all the safeguards of the Bill of Rights in the Constitution of the United States to which such Nationals are entitled.

8. At this point it is noteworthy to observe that paragraph 3, (c) and reference "I" of the letter of the S.C.A.O., the exercise of jurisdiction by Italian Courts over Allied Nationals is foreclosed to the Allies. Whereas the Civil Affairs agreement has not been signed, in this connection, if signed, while an order of the military Governor might be ample authority for Allied

a host of Nationals, such as officers, enlisted men, and civilian retainers find themselves in Italy. They commit an act which is violative of Italian Law. Can they be tried under Italian Law by the Italian Courts? The answer is NO. By reason of being the occupying power under a State of War, in the exercise of its lawful powers, Congress has ordained that its laws and its courts shall try such Nationals to the exclusion of alien Italian sovereignty. And in this connection it is noteworthy to observe that in the exercise of its jurisdiction over such Nationals, the Military Courts of United States follow all the safeguards of the Bill of Rights in the Constitution of the United States to which such Nationals are entitled.

8. At this point it is noteworthy to observe that paragraph 3, (c) and reference "I" of the letter of the S.C.A.O., the exercise of jurisdiction by Italian Courts over Allied Nationals is foreclosed to the Allies.

Whereas the Civil Affairs agreement has not been signed, in this connection, if signed, while an order of the Military Governor might be ample authority for Allied Military Government Courts to exercise jurisdiction over Allied Nationals, it is here pointed out that unless

legislative power has been conferred on the Military Governor to make such order in the first instance, a National convicted thereunder might challenge such conviction as being a nullity for lack of jurisdiction. The attempt to exercise a non-existent power by the Military Governor would be a void act in law.

9. If the Military Governor is prepared to say that under the expressed or implied powers given him by the Allies he has power to define offences and fix punishment therefore and to establish courts empowered to exercise jurisdiction over Nationals who have offended such laws, then the answer to be prepared for Allied Force Headquarters is simple enough, and may be expressed in a few lines.

(1466)

10. If, on the other hand, the Military Governor is lacking in such power, no matter how expedient the proposed remedy may be, the power to prescribe such remedy is elsewhere, - perhaps in Congress or Parliament as far as American and British Nationals are concerned - and until these legislative bodies speak, - as they have done, for example, in Article of War No. 2 (U.S.) there is no valid jurisdiction under which such Nationals may be tried and convicted of occupational offences by Allied Military Government Courts.

11. I do not wish to be understood as saying that the Military Governor cannot act in the manner recommended in paragraph 4 (e) S.C.A.O.'s letter. I am not in possession of the directives which may have been issued in regard to the powers of the Military Governor. It may be that proclamation law promulgated under international law by an invader for its security against a hostile alien people may apply to its nationals other than those described, for example in Article of War No. 2 (U.S.). (There can be no doubt that Congress expressly excluded from such law those described in Article of War No. 2 U.S.). I am not in a position to answer such question and I give no opinion thereon. In my opinion, the matter might well be referred to the respective War Departments of United States and Britain. Such procedure has three virtues.

First: If the powers recommended to be exercised by the Military Governor are non-existent in him, and needful legislation is required, the War Departments are in position to press for such remedy.

Second: The issues presented are equally applicable to Japan, Germany, and Austria as well as Italy and Trieste, and a decision hereon should be uniform.

Third: Concurrence with the recommendation made in paragraph 4 (e) S.C.A.O. letter will have repercussion within United States and Britain that may well become

possession of the directives which may have been issued in regard to the powers of the Military Governor. It may be that proclamation law promulgated under international law by an invader for its security against a hostile alien people may apply to its nationals other than those described, for example in Article of War No. 2 (U.S.). (There can be no doubt that Congress expressly excluded from such law those described in Article of War No. 2 U.S.). I am not in a position to answer such question and I give no opinion thereon. In my opinion, the matter might well be referred to the respective War Departments of United States and Britain. Such procedure has three virtues.

First: If the powers recommended to be exercised by the Military Governor are non-existent in him, and needful legislation is required, the War Departments are in position to press for such remedy.

Second: The issues presented are equally applicable to Japan, Germany, and Austria as well as Italy and Trieste, and a decision hereon should be uniform.

Third: Concurrence with the recommendation made in paragraph 4 (e) S.O.A.O. letter will have repercussion within United States and Britain that may well become political in consequence. It is always to be desired that such consequences be the product of the political as distinguished from the military agencies of government.

12. The premises here raised are of questions of legal refinement. It is hoped that I have expressed my thoughts with clarity. I pass them to you for whatever action, if any, you care to take.


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

(1966)

2602/CC

Q. No. 1. Form 353 (Old No. 400)
Revised July 20, 1918**LIST OF PAPERS**Office of the
Chief Commissioner

File under No. 2602 LEGAL AFFAIRS - GENERAL

ALLIED COMMISSION

From 5 Feb 46
To**SECRET**

B-0753

SERIAL NUMBER	FROM -	DATE	TO -	SYNOPSIS
366	Ltr AC/4005/L	18 Nov 46	AFHQ	Re jurisdiction over offences committed by Allied nationals

5670

INSTRUCTIONS.—When papers on a subject become numerous they should be numbered serially and brief entries made on this form.

SECRET

0 3 5 6