

ACC

10000/142/289

10/142/289

PARDONS & CONDITIONAL LIBERTY
SEPT. 1943 - SEPT. 1946

1003

Declassified E.O. 12356 Section 3.3/HND No.

785016

E.C. MM 1978
VP - CH Sec
C.L.A. 12/1978

Note concu-
rence on p. 2

69
WJ

CE

17/1111

Aug 16 1946

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

MEMO FOR THE CHIEF COMMISSIONER:

1. There is attached (Pleg I) a letter received from the Procura Generale Militare wherein a question is propounded to the Legal Sub Commission, the answer to which lies with the Chief Commissioner.

2. My letter (Pleg B) A.F. Haters authorized the granting of conditional liberty by the Italian Government to AMG cases, in the same manner, to the same degree and on the same terms as prisoners sentenced by Italian Courts for similar offenses receive that privilege. In conformity with such letter this Sub Commission authorized in writing the exercise of such powers by the Italian Government. A system was thereafter actually worked out whereby the powers granted would be used effectively, and the results have been pleasing to each.

3. It is here to be observed that the letter from A.F. Haters assumed that conditional liberty was being applied in 'similar offences', - i.e., Italian cases involving Allied interests. Such assumption was not based on fact. Italian cases involving Allied interests from the commencement of occupation have been catalogued by the Allies and the Italian Government as 'Allied Interest' cases and have been treated as being on a parallel level with AMG cases. As a matter of cold fact, the recent Italian Amnesty excludes from its provisions Italian cases falling in this category.

4. Because of the assumption that 'Conditional liberty' was being granted to Italian cases involving Allied interests, and the plain mandate in the letter to apply conditional liberty in like manner to AMG cases, it has been concluded by the Italian Government that it was the clear intent of the letter that conditional liberty should be henceforth applied to Italian Allied

100

74

Donnerstag

17/VIII

John K. Stubbs
JOHN K. STUBBS,
Colonel, Infantry,
Chief Legal Advisor.

3

VP.CAS.

Withdrawal from the South involves that there will be no B-20s to check petition

the Minister in Italian Court case affecting allied interests. We have therefore

agreed that the Min. should have complete jurisdiction in such cases but must

be prepared to justify any act of emergency if called on to do so. The

attaching directive sets out this policy (except the last sentence).

Supposed

~~Unduly~~
CA

idea.

8 Apr. 45

1007

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

785016

TO : Political Sec. (thru CAS).

1. This sub-commission has been asked whether the Italian Government's decree of Amnesty of 5 April 1944 is effective in the Island of Capraia, northwest of Elba, or whether applications for amnesty have to be submitted to the Allied Commission.

2. The answer to this question depends upon whether the island is subject to the authority of the Allied Military Government or of the Italian Government.

3. The island consists of a penal settlement which has at all material times been and is now being administered by the normal Italian personnel. We are informed that Allied troops made a landing on the 19 Oct 44 on this island but then departed. It is not known whether or not military government was ever proclaimed on the island though it is believed that it was not.

4. Technically, it would appear that in these circumstances the island is subject to the Italian Government. It is however in the area of territory which is still Military Government Territory and the Director of the Penal Settlement on the island appears to regard himself as subject to military government in which view the Minister of Justice concurs.

5. May we have your opinion please.

Legal S/C
17 Feb 45.

72

W. E. Bohrens
W. E. BOHRENS,
Colonel,
Deputy Chief Legal Advisor.

Legal 3/c.

2

Establishments Section state that Allied Military Government is exercised on the island. In consequence, the procedure under A.M.G. should prevail.

WUB.

20 Feb., 1946.

71

1010

403011

PROCURA GENERALE MILITARE

PHESD IL

TRIBUNALE SUPREMO MILITARE

3238 P. G.

N.

Risposta al foglio del

Roma, 12

settembre

1940

N.

Allegati N.

57A

Oggetto: provvedimenti di liberazione condizionale.-

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale

R O M A

Con riferimento agli accordi presi tra codesta Sotto-
commissione legale ed il ministro di Grazia e Giustizia ed
alla lettera AC/4030/1/4 del 19 agosto 1940 diretta a questa
Procura Generale, prego, per incarico del ministero della
Guerra, codesta Sottocommissione di voler manifestare il
proprio punto di vista sulla questione della liberazione
condizionale nei riguardi dei condannati.

Uno specifico accordo sembra necessario, perche i
provvedimenti di liberazione condizionale nei riguardi dei
militari non sono di competenza del ministro di Grazia e
Giustizia, ma dei ministri militari, dei quali dipendono i
militari condannati.

Con riferimento agli accordi presi tra codesta Sottocommissione legale ed il Ministero di Grazia e Giustizia ed alla lettera AC/4030/1/L del 19 agosto 1940 diretta a questa Procura Generale, prego, per incarico del Ministero della Guerra, codesta sottocommissione di voler manifestare il proprio punto di vista sulla questione della liberazione condizionale nei riguardi dei condannati.

Uno specifico accordo sembra necessario, perche i provvedimenti di liberazione condizionale nei riguardi dei militari non sono di competenza del Ministero di Grazia e Giustizia, ma dei ministri militari, dei quali dipendono i militari condannati.

A parere di questa Procura Generale l'accordo potrebbe essere concordato nei seguenti termini, del tutto analoghi a quelli dell'accordo già intervenuto tra codesta sottocommissione ed il Ministero di Grazia e Giustizia:

1°) - PER I MILITARI CONDENNATI DALLO COMITATO ALLENATO COMPERANTE AD EMERGERE IL PROVVEDIMENTO DI LIBERAZIONE CONDIZIONALE E' IL MINISTERO DA CUI DIPENDE IL MINISTERO, OSSERVATO IL DISPOSITO DELL'ART. 71 C.P.M. DI F. MODIFICATO DALLA LEGGE 21.6.1942 N° 821, E PER LA EMISSIONE DELLE SINGOLE PRATIQUE DA PARTE DEL GIUDICE DI SOVRASINTESA, IL QUALE CUORE, INOLTRE

Copy to 4199

dere alla pratica carattere di urgenza al fine di evitare che i militari condannati continuino a rimanere esclusi da un bene-
ficio di cui usufruiscono i condannati civili.

LA PROSECUTION GENERALE MILITAIRE

(U. BONNATI)

W. Denny

LEGAL COUNCIL COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
SEP 14 1948	

TRANSLATION

PROCURA GENERALE MILITARE

12 September 1946.

No. 3238 P.G.

SUBJECT : Provisions for "Conditional Liberty".

TO : ALLIED COMMISSION-Legal Sub-Commission.

With reference to the agreements reached between the Legal Sub-Commission and the Minister of Pardon and Justice and letter AC/4030/1/L dated 19 Aug 46 addressed to the General Military Procurator, on request of the Minister of War, I hereby request the Legal Sub-Commission to express its point of view on the question of "Conditional Liberty" in favour of the prisoners.

As the question of "conditional liberty" in respect of military personnel does not come within the jurisdiction of the Ministry of Justice, but is a concern of the military Ministers, I think a specific agreement should be reached.

This Office is of opinion that the above agreement might be reached in the same manner as for the previous one already reached between the Legal Sub-Commission and the Minister of Justice:

1. The proper authority to grant conditional liberty to military personnel tried by Allied Military Courts is the Unit to which they belong (See Art. 71 M.P.C., modified by law No. 327, 27 June 1942) together with the "Giudice di Sorveglianza" who will collect all the necessary information from the Allied Commission regarding the charges and the sentence.

2. For those civilians who were tried by Italian Military Courts for offences against Allied Forces, the proper authority is always the Military Minister and Art. 176 and Subsequent of the Penal Code should be observed.

The Legal Sub-Commission is kindly requested to give this matter speedy action in order that a further delay in granting "conditional liberty" to the above categories of persons may be avoided.

IL PROCURATORE GENERALE MILITARE
(Signed) Bersari

50A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AC/4030/1/L

JKS/ns
19 August 1946

SUBJECT : Clemency.

TO : Procura Generale Militare,
ROMA.

1. See your letter 2958 P.G. of 9 August 1946.

2. The Minister of Grace and Justice has been notified that prisoners sentenced by AMG Courts may be granted conditional liberty in the same manner, to the same degree and on the same terms as prisoners, sentenced by Italian courts for similar offences, receive that privilege.

3. It will be observed that the powers granted are based on the assumption that conditional liberty is being granted by the Minister of Grace and Justice in similar cases, - that is, cases wherein persons have been sentenced by Italian Courts for offences against the Allies.

4. We see no reason why the powers granted to the Minister of Grace and Justice should not be extended to persons sentenced by Italian Military Courts for offences against the Allies.

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

C O P Y

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

49A^B

G-5 : 014.5

30 April 1946

SUBJECT : Clemency.

TO : Headquarters, Allied Commission,
APO 394.

Reference your AS/1079/1/1 of 4 April 1946.

1. You may inform the Italian Government that prisoners sentenced by AMG Courts may be granted conditional liberty in the same manner, to the same degree and on the same terms as prisoners, sentenced by Italian Courts for similar offenses, receive that privilege.

2. This privilege may be applied at once in suitable cases to prisoners who have already served a sufficient proportion of their sentence to justify consideration for a grant of conditional liberty.

3. The other measures by which sentences may be reduced, mentioned in paragraph 7 of your letter, will be the subject of a separate communication.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

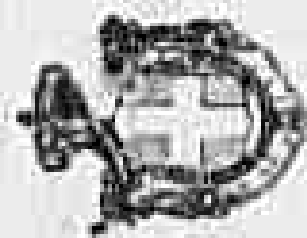
87

Sgd.:

A.D. HARRISON
Brigadier General, G.E.C.
Assistant Chief of Staff, G-5.

*a true copy
Harrison
Col. Inf*

mc/



PROCURA GENERALE MILITARE
PRESSO IL
TRIBUNALE SUPREMO MILITARE

N. 2058 P.G. 1^a rep.

Risposta al foglio del

Roma, li 9 agosto 1946

N. Allegati N.

Oggetto: Giurisdizione per la concessione della liberazione condizionale, grazia e cessazione misure di sicurezza. -

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale

R O M A
Via Vittorio Veneto

Con la presente si fa riferimento agli accordi verbali intercorsi tra il Ministro Guardasigilli italiano e la Commissione Alleata circa l'attribuzione della competenza all'autorità giudiziaria italiana dell'istruttoria e definizione delle istanze per liberazione condizionale, per grazia e per la cessazione delle misure di sicurezza, avanzate da coloro che sono stati condannati dal giudice ordinario italiano, per reati in danno degli Alleati.

Si prega codesta Commissione di precisare se, in analogia a tali accordi e in deroga alle direttive emanate d'ordine dell'Ammiraglio Stone agli uffici legali provinciali alleati, con circolare A.C.4030/I/L del 10.4.1945, l'istruttoria

Indicare sempre nella risposta la data e il numero della presente.

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale

R O M A
Via Vittorio Veneto

Con la presente si fa riferimento agli accordi verbali intercorsi tra il Ministro Guardasigilli italiano e la Commissione Alleata circa l'attribuzione della competenza all'autorità giudiziaria italiana dell'istruttoria e definizione delle istanze per liberazione condizionale, per grazia e per la cessazione delle misure di sicurezza, avanzate da coloro che sono stati condannati dal giudice ordinario italiano, per reati in danno degli Alleati.

Si prega codesta Commissione di precisare se, in analogia a tali accordi e in deroga alle direttive emanate d'ordine dell'Ammiraglio Stone agli uffici legali provinciali alleati, con circolare A.C.4030/I/L del 10.4.1945, l'istruttoria e la definizione delle pratiche di liberazione condizionale, grazia e cessazione di misure di sicurezza, interessanti condannati da Tribunali militari per reati in danno delle Forze Armate alleate, siano da ritenersi, senz'altro, di competenza del magistrato militare italiano.

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	

AUG 13 1946

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

m. 63.7.7

1019
Declassified E.O. 12356 Section 3.3/HND No. 785016

Subject Jurisdiction for granting of conditional I
liberty, pardon and repeal of security measures

Reference is made to the verbal agreements between the Italian Minister of Justice and the A.C., investing the Italian Judicial Authority with the powers to investigate and decide upon applications for conditional liberty, for pardon and repeal of security measures, lodged by persons sentenced by an ordinary Italian judge for offences against the Allies.

This Legal S/C is hereby requested to indicate in accordance with such agreements and in derogation of the provisions issued by order of Admiral Stone and forwarded to all the Allied Provincial Legal Offices with circular letter AC/4030/1/L of the 10th April 1945, whether the investigation and the decision of cases on con-

of security
by an ordinary Italian judge for offences against
the Allies.

This Legal S/C is hereby requested to indicate in accordance with such agreements and in derogation of the provisions issued by order of Admiral Stone and forwarded to all the Allied Provincial Legal Offices with circular letter AC/4030/1/L of the 10th April 1945, whether the investigation and the decision of cases on conditional liberty, pardon and repeal of security measures, relating to persons sentenced by Italian Military Courts for offences against the Allies, have to be also considered as coming within the province of the Italian Military Magistrate.

General Military Prosecutor

Signed: U. BORSARI


HEADQUARTERS ALLIED COMMISSION
APC 194
LEGAL SUB-COMMISSION

12/10/44

12 December 1944.

SUBJECT: Case of ERRA Garandio sentenced for activity on behalf of Turkey.

TO: Folad (A)
Folad (B)

1. The Italian Ministry of Justice has drawn the attention of this Sub-Commission to the case of ERRA Garandio, native of and resident of the island of Leros who was sentenced by the Court of Assize, sitting at the island of Rhodes on 24 April 1938, for disclosing military information to a Turkish Officer on 6 Aug. 1938 and for unauthorized departure on the same day from Leros for Turkey in a stolen boat.

2. According to Art. 32 (B) of the "Long Terms" "Persons of whatever nationality who have been placed under..... sentence on account of their dealings or sympathies with the United Nations will be released under the direction of the United Nations".

3. To the knowledge of this Sub-Commission the right under Art. 32 (B) has hitherto been exercised solely for the benefit of prisoners held on account of their activities in the interest of those United Nations who had been at war with Italy e.g. France and Great Britain.

4. Whilst the prisoner claims in his petition that he was engaged in espionage on behalf of the Soviet Union the available record which unfortunately is not complete does not substantiate this allegation. On the other hand it appears certain that military information has supplied to Turkey which is one of the United Nations.

5. Your advice is requested whether as a matter of policy the Ministry should be asked to arrange for the release of the prisoner in this case.

6. The file with prisoner's petition and enclosures is attached for your perusal and return please.

G. C. HARRISON,
Lt. Col.,
Deputy Chief Legal Advisor.

Copy to: 16/4030/1/L.

4033/1
INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Originator's Reference: FX53587

Date/Time of Origin: 191700A

Message Centre No: G/3931

Date Time Rec'd Nov. 200900A

Precedence: IMPORTANT

FROM: AFHQ SIGNED SACRED CITE PHGEG.

TO: ALCOM ROME

SECRET.

REF YOUR AC4030/1/L NOVEMBER 3. POWER TO PARDON PERSONS SENTENCED TO DEATH BY ITALIAN COURTS IN AMG IS SUBJECT.

1°) EXCEPT IN CASES COVERED BY FOLLOWING PARAGRAPH THE POLICY OF THIS H.Q. IS TO TAKE NO ACTION EXCEPT ON ADVICE OF MINISTRY OF JUSTICE.

2°) WHERE ALLIED FORCES HAVE KNOWLEDGE OF FACTS NOT KNOWN TO ITALIAN COURT OR MINISTRY OF JUSTICE AND MISCARriage OF JUSTICE IS IMMINENT YOU WILL FORWARD THE APPEAL TO THIS H.Q. TOGETHER WITH THE VIEWS OF THE MINISTRY OF JUSTICE AND A STATEMENT OF THE FACTS NOT KNOWN ITALIAN AUTHORITIES AND YOUR RECOMMENDATIONS.

DOWN GRADED
TO
UNCLASSIFIED

Col. Inf.
Chief Judicial Officer.
for Chief Civil Affairs Officer.

A.C. DISTRIBUTION.
ACTION - LEGAL S/C
INFO - C. COMMISSIONER
EX. COMMISSIONER
C.A. SECTION
FILE

CHQ	
DOLO	
Chis. Affairs	
CJO	
Italian Section	
CL. RKS	
20 NOV 1945	

SECRET

BF 6 MT
7/12/45

USA

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4030/1/L

5 Nov 45

SUBJECT : Pardons in Italian Courts in AMG Territory
TO : AFHQ, G-5 Section

Will you please substitute the attached proforma for that included
in ~~ex~~ AC/4030/1/L of 3 Nov.

FOR THE CHIEF COMMISSIONER:

M. CAHE, Brig,
VP CA Section

Copies to: Files: AC/4092/1/L
AC/4020/L

ALLIED FORCE HEADQUARTERS
Office of the Commander-in-Chief

I, WILLIAM D. MORGAN, DDB, USO, MC, Lieutenant General, Supreme Allied Commander Mediterranean Theatre of Operations and Military Governor of all Italian territory which is, or from time to time may become, subject to Allied Military Government, do hereby delegate to HENRY W. STONE, Rear Admiral, USNR, and to any Officer not below the rank of Colonel from time to time appointed by him in writing for that purpose, full power and authority to pardon persons sentenced to death by Italian Courts sitting in territory under Allied Military Government or to substitute for such sentence, such other sentence as may appear appropriate.

WILLIAM D. MORGAN
LIEUTENANT-GENERAL,
SUPREME ALLIED COMMANDER,
MEDITERRANEAN THEATER.

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

3 November 1945

ME/1030/VL

SUBJECT: Pardons in Italian Courts in AMG Territory

TO: AFAC, C-5 Section

1. The present procedure with regard to the review of cases tried by Italian Courts in AMG territory is for the petitions to be submitted through the usual legal channels and ultimately to this Headquarters. The power of pardoning offenses in occupied Italy vests, of course, in the Supreme Commander, and on his behalf the Chief Legal Advisor has been exercising the power of review.

2. As a practical expression of co-operation it has been the practice of the CIA to submit the petitions for clemency to the Minister of Justice, who is the normal authority for dealing with similar petitions arising from territory under Italian administration. The Minister of Justice then advises the CIA as to how he would deal with that particular petition if he had jurisdiction and in practice the CIA accepts that advice and gives directions accordingly. It is recognized by the Italian Government and this Headquarters that the opinion expressed by the Minister of Justice is purely advisory and that the CIA is not bound to accept such advice.

3. With the advent of the Special Court of Assize the death sentence, which was previously for all practical purposes non-existent, was restored for offenses by collaborators in North Italy and a number of petitions against sentence of death are now being received. The established procedure has so far been followed and no clemency has as yet been exercised except in accordance with advice of the Minister of Justice. Sentences of death by the Italian Courts under Italian law have been carried out after an appeal has been dismissed by the Italian Courts and a subsequent petition has been "rejected" by the Minister of Justice.

4. In the case of AMG courts the Supreme Commander has restricted the power of confirming death sentences to such person as to whom he may delegate that power in writing.

5. If the Supreme Allied Commander desires to restrict the power of pardoning persons sentenced by Italian Courts by delegating the same may the attached order please be signed. In this event it would be intended that the present procedure should continue, that being in effect the same as that which obtains in territory under Italian administration.

6. Action upon a number of petitions against the sentence of death is suspended pending decision as to the Supreme Commander's wishes upon this point.

Page - 2 -

7. May the matter please be treated as urgent as prolonged failure to carry out these sentences is likely to cause political comment in North Italy.

For the Chief Commissioner :

M. GARN, Brig.,
VF CA Section.

Incl: Order of delegation.

Copies to: Files - AC/4092/1/L

AC/4020/L

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ALLIED FORCE HEADQUARTERS
Office of the Commander-in-Chief

Cancelled *rec*
HBA

I, WILLIAM D. MORGAN, K.C.B., D.S.O., M.C., Lieutenant-General, Supreme Allied Commander Mediterranean Theatre of Operations and Military Governor of all Italian territory which is, or from time to time may become, subject to Allied Military Government, do hereby delegate to ELLERY W. STONE, Rear Admiral, USAR, and to any officer not below the rank of Colonel from time to time appointed by him in writing for that purpose, full power and authority to pardon persons sentenced by Italian Courts in Allied Military Government territory or to commute, reduce or remit sentences imposed by such courts.

WILLIAM D. MORGAN
LIEUTENANT-GENERAL,
SUPREME ALLIED COMMANDER,
MEDITERRANEAN THEATRE.

58

Dated: November 1945

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4030/1/L.

GCH/pa.
5 Oct 45.

SUBJECT : Release of Prisoners convicted prior to liberation.
TO : Regional Commissioner (Attn: R.L.O.),
VENEZIE Region.

1. Reference your RXII/LC/UDY/R/UL of 24 August 1945, you will find enclosed copy of the Minister's reply to the query raised by you.
2. No doubt you will instruct Italian judicial officials concerned to act in accordance with the Minister's instructions.

By command of Rear Admiral STONE :

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

Incl.



Roma 2 ottobre 1945

Mod. 1345 MG

Ministero di Grazia e Giustizia
Divisione

per gli Affari di Giustizia
Ufficio 60
Tel. N° 143926.25.9

42A
Alla Commissione Al-
leata - Sottocommis-
sione Legale -

R O M A

Registrazione del 25.9.1945
Nu. 3° 4030/1.1

Oggetto: Rilascio di detenuti condannati pri-
ma della liberazione.

Questo Ministero condivide pienamente
il parere manifestato da codesta Commissio-
ne sul quesito proposto dal Commissario
Regionale del Veneto in merito ai detenu-
ti condannati sotto l'impero del sedicen-
te governo della repubblica sociale italia-
na.

La materia è infatti regolata dal de-
creto Legislativo Luogotenenziale 5 otto-
bre 1944 n. 249.

Con detto decreto (art. 1 n. 4. e art.
5) sono senz'altro dichiarate prive di ef-
ficacia le sentenze pronunziate in appli-
cazione di norme di carattere penale emanate
dal detto governo e quelle emesse nella
persecuzione dei delitti previsti dal ti-
tolo I del libro II, dall'art. 415, dallo
art. 503 e delle contravvenzioni previste
dagli art. 656 e 656 del codice penale. Inol-
tre (art. 6 del citato decreto), a richie-
sta della parte interessata o anche del pro-
curatore generale, la Corte d'Appello com-

petente può dichiarare inefficaci le sentenze in materia penale allorchè sussistano fondate ragioni per ritenere che sulla decisione abbia influito la situazione politica del momento.

In quest'ultima disposizione rientra indubbiamente il caso di condanne pronunziate a causa dell'influenza tedesca sulle corti italiane; e pertanto i detenuti che ritengano di essere stati condannati per tale motivo possono promuovere il riesame di cui al citato art. 6 e saranno liberati ove la Corte dichiari l'inefficacia della sentenza di condanna.

per il MINISTRO

LEGAL SUB COMMISSION	
CIO	
DCLO	
Chief Counsel	
CJO	
LEGAL COUNSEL	
CL MS	
5 OCT 1945	

(40A)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/403/1/L.

/rlp.
28 August 1945.

SUBJECT : Release of prisoners convicted prior to liberation.

TO : Minister of Pardon and Justice.

1. Enclosed herewith is a copy of a communication on the above subject received from RLO Venezia Region and of the answer thereto by this sub-commission.

2. It would be appreciated if you could state whether you agree with the view of this sub-commission and give any further advice you deem appropriate in this matter.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

64

2 Incls: Copy of letter RXII/LE/MDI/B/02 of 21 Aug 45;
" " " AC/4030/1/L of 28 Aug 45.

COPY
rlpHEADQUARTERS
VENETIAN REGION
ALLIED MILITARY GOVERNMENT
APO 394

24 August 1945.

TO : Chief Legal Advisor, Legal Sub-Commission,
Hq, AC.

SUBJECT : Release of prisoners convicted prior to liberation.

File No. : EXII/LE/UGI/B/02.

1. Provincial Legal Officer Udine reports that there are a few prisoners who were prior to liberation sentenced by Italian Courts under Italian law to prison terms which were obviously imposed by reason of German domination of the Italian Courts. These were cases in which no question arose as to the protection of the public.

2. He considers that prisoners who come within this category should be released. Is there any way in which this can be done other than by the submission of a Petition for Pardon?

/sgd/ P. BACKHOUSE
Major,
Regional Legal Officer,
Venetian Region.

39A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/14030/1/1.

/rlp.
28 August 1945.

SUBJECT : Release of prisoners convicted prior to liberation.

TO : Regional Commissioner (Attn: Regional Legal Officer),
Venezia Region.

1. The question raised in your RXII/LX/UNI/B/C2 of 24 August 1945 was submitted to the Ministry for advice.
2. In the opinion of this sub-commission the sentences referred to in your letter, fall within the scope of D.L. 249 of 5 October 1944 published in Gazzetta Ufficiale No. 70 of 18 October 1944. You might wish to draw the attention of the Procuratore Generale to this decree.
3. A copy of a translation of the decree is enclosed herewith for your information.

By command of Rear Admiral STONE:

G. G. MANTAFORD,
Lt. Col.,
Officer i/o Italian Branch,
for Chief Legal Advisor.

52

Incl: Copy of translation of Decree.

Copy to: Minister of War and Justice.

PB/go

38A

HEADQUARTERS
VENEZIE REGION
ALLIED MILITARY GOVERNMENT
APO 394

24 August 1945.

TO : Chief Legal Adviser, Legal Sub-Commission,
HQ., AC.

SUBJECT : Release of Prisoners convicted prior to liberation.

File No : RXII/LE/Ud1/B/02.

1. Provincial Legal Officer Udine reports that there are a few prisoners who were prior to liberation sentenced by Italian Courts under Italian law to prison terms which were obviously imposed by reason of German domination of the Italian Courts. These were cases in which no question arose as to the protection of the public.
2. He considers that prisoners who come within this category should be released. Is there any way in which this can be done other than by the submission of a Petition for Pardon?

51



Major,
Regional Legal Officer,
Venezie Region.

DCLD

Chief Counsel

CIO

Major

S. J.

Write to N of J
quoting them

W

HEADQUARTERS ALLIED COMMISSION

APO 304

CIVIL AFFAIRS SECTION

(rlu)

10 April 1945.

AG/4030/1/L.

SUBJECT: Jurisdiction for granting of Conditional Liberty, Pardon and Repeal of Security Measures.

TO

1. Regional Commissioner (Attn: Regional Legal Officer), AUSTRIA-MARITIME, TOSCANA, UMBRIA, LIGURIA, FRIULI, LOMBARDIA, and VENETIE REGIONS;
5600th 5th and 8th Armies, IV Corps.

P.C. Naples Bureau (Att. Sec.)

1. The Chief Commissioner has delegated to the Chief Legal Advisor the power to grant or deny any petition for conditional liberty, pardon or repeal of security measure in regard to offenses tried by Italian civil or military courts whenever such petition is within the competence of the Allied authorities.

2. The previous agreement reached with the Minister of Justice and the Procura-tore Generale Militare delimiting the Allied and Italian competence in this field has now been modified as hereunder.

3. Any petition concerning an offense which was tried by an Allied Military Court, whether in Military Government Territory or Italian Government Territory, will continue to be dealt with exclusively by the Allied Commission (see Consolidated Instructions for Allied Military Courts, Art. 33).

4. Petitions in regard to offenses which were tried in Italian civil or military courts before the establishment of or during Allied Military Government will be dealt with as follows:

a. Where such courts are in territory which is still administered by the Allied Military Government the petition will be dealt with by the Allied Commission.

b. Where such courts are in territory restored to the Italian Government, the petition will be within the exclusive competence of the Italian Government provided, however, that if the sentenced person is located in Allied Military Government Territory, the petition will still be dealt with by the Allied Commission.

5. In para. 4 (a) and in cases falling within the proviso of para. 4 (b), the following machinery for dealing with the petitions will be adopted:

a. A petition filed by the petitioner with the competent local Italian authority (Procuratore del Regno, Procuratore Generale, Pretor, Procuratore Militare, or the case may be, through the Director of Prison if the petitioner is in prison) will be investigated by the Italian officials as prescribed by Italian law. The case file will be transmitted by the Italian authority to the Provincial Legal Office, which will forward it to the Legal Sub-Commission, HQ Allied Commission, then

4. Petitions in regard to offenses which were tried in Italian civil or military courts before the establishment of or during Allied Military Government will be dealt with as follows:

a. Where such courts are in territory which is still administered by the Allied Military Government the petition will be dealt with by the Allied Commission.

b. Where such courts are in territory restored to the Italian Government, the petition will be within the exclusive competence of the Italian Government provided, however, that if the sentenced person is located in Allied Military Government territory, the petition will still be dealt with by the Allied Commission.

5. In para. 4 (a) and in cases falling within the proviso of para. 4 (b), the following machinery for dealing with the petitions will be adopted:

a. A petition filed by the petitioner with the competent local Italian authority (Procuratore del Regno, Procuratore Generale, Pretor, Procuratore Militare, as the case may be, through the Director of Prison if the petitioner is in prison) will be investigated by the Italian officials as prescribed by Italian law. The complete file will be transmitted by the Italian authority to the Provincial Legal Officer or who in turn will forward it to the Legal Sub-Commission, Hq Allied Commission thru the usual channels (Regional Legal Officer).

b. However, if the petition concerns a case involving an offence which is in any way connected with Allied property or personnel, the Regional Legal Officer will, before transmitting the file, attach his opinion as to whether and why the petition should be granted or denied.

c. After consulting the Minister of Justice or the Procuratore Generale Militare as the case may be, the Chief Legal Advisor will grant or reject the petition. and in turn will issue an order which will be forwarded to the Regional Legal Officer, to execute it, if the petition is granted, or to notify the petitioner that his petition has been denied.

6. This directive cancels directive AC/4030/1/1 of 29 April 1944.

7. This directive is issued for distribution to HQs.

By command of Rear Admiral STONE:

G R. H. H. H.

G. B. UPJOHN, PRIS.
V. C. S. G. S. Hq AC.

*Copy sent to: Ministry of Justice
Mr G. C. Walker.*



REGNO
PROCURA GENERALE MILITARE DEL RE IMPERATORE

FRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 1053 P. G.
Risposta a nota del

Roma, 11
N.

7 aprile 1945

Alleg.

Oggetto: Domande di grazia e liberazione condizionale.

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale

= ROMA =

Con riferimento alla lettera 43/4030/
I/L. resta inteso che le domande di grazia
o liberazione condizionale di persone condan-
nate per reati contro gli interessi e le
persone degli Alleati dei Tribunali Milita-
ri sedenti nel Territorio sottoposto al Go-
verno Italiano non verranno più trasmesse a
codesta Sotto-Commissione per il parere.

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

49

U. Borsari

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4030/1/L.

/rlp.
31 March 1945.

SUBJECT : Petitions for pardon and conditional liberty.

TO : H.E., the Procuratore Generale Militare, Via Acquasparta 2, Rome.

1. Your Excellency will note from the enclosed letter directed to H.E., the Minister of Pardon and Justice that a modification has been agreed upon in the procedure in respect of the above petitions concerning cases adjudicated by Italian civil courts.

2. In order to ensure a uniform procedure for cases tried by civil and military tribunals, it is suggested that the agreement entered into with Your Excellency and confirmed in letter AC/4030/1/L of 29 Dec 44 be amended as follows.

3. The Italian authorities will henceforth exercise exclusive jurisdiction over the petitions for pardon or conditional liberty in respect of sentences imposed in cases affecting Allied interests and personnel by Italian Military Tribunals sitting in Italian Government Territory. Accordingly, it will not be necessary to refer such petitions to this sub-commission for recommendation.

4. In all other respects, the agreement with Your Excellency confirmed in letter AC/4030/1/L of 29 Dec 44 will stand without change.

48

Incl.

W. E. BERGINS,
Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
31 March 1945.

AC/4030/1/1.

SUBJECT : Jurisdiction over petitions for pardon and conditional liberty.
TO : H.E., the Minister of Pardon and Justice.

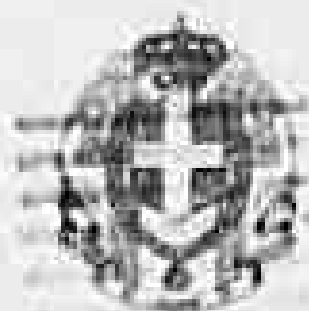
1. In confirmation of today's conversation with Your Excellency, it is agreed that the Italian authorities will henceforth exercise exclusive jurisdiction over the petitions for pardon, conditional liberty or repeal of security measures in respect of sentences imposed on cases of offences against Allied interests by Italian Courts in Italian Government Territory. It is understood that the Ministry will at any time be prepared to show cause for their action on a petition should an Allied authority request information.

2. In all other respects, the agreement reached at Salerno in March 1944 on this subject and reaffirmed in AC/4030/1/1 of 7 Oct 44 will remain unchanged.

F. E. BARNETT,
Colonel,
Deputy Chief Legal Advisor.

47

Copy to: H.E., the Procuratore Generale Militare,
via Acquasparta 2, Rome.



Ministero Giustizia

DIREZIONE GENERALE
PER GLI ISTITUTI DI PREVENZIONE E DI PENA

Ala Commissione Alente
Sottocommissione Legale
ROMA

Ufficio VI

Aut. N.

10331-9

Allegati N.3

Rapporto N.

Oggetto: Applicazione anticipata del R.D. di
amnistia del 5-4-1944 n. 96 all'Isola
di Capraia.

La direzione della casa di pena di Capraia
con lettera che si alliga in copia, ha presen-
tato a questo Ministero il quesito relativo al-
l'applicazione in quel territorio del R.D. di
amnistia del 5-4-1944 n. 96.

I competenti uffici di questo Ministero in-
terpellati in proposito hanno, con la nota che
si alliga in copia, concordemente espresso il
parere che la competenza a decidere spetta a
questa On. Commissione.

Per quanto di competenza quindi si trasmet-
tono gli atti a questa On. Commissione per i
provvedimenti che crederà adottare.

Si gradirà un cortese cenno di riscontro.

46

Per il MINISTRO

Curia

76 FEB 1945

COPIADirezione della Colonia Agricola di
Capràia

0338

Caprăia isola 5/12/1944

N. 133 Tit. 3 Fasc. 6

Al Ministero di Grazia e Giustizia
Direz. Gen. Istituti di prev. e di pens.
ROMAOGGETTO: Applicazione del R.D. di amnistia e di indul-
genza 5/1/1944 n. 95.

Soltanto era questa Direzione a venire a cono-
scenza del suddetto R.D. la cui applicazione però
non è estesa a questo territorio.

Per aderire alle insistenti richieste dei de-
tenuti qui ristretti, si prospetta la speciale si-
tuazione dell'isola relativamente all'applicazione
di tale indulto.

L'isola, come ha riferito con nota riservata
edierma al Direttore Generale, non è stata mai oc-
cupata e governata dal nemico e venne invece occupata
da truppe alleate il 19 ottobre 1943. Non sembra
quindi che essa debba seguire la sorte del rimanente
territorio della provincia, che invece è rimasta,
fino alla liberazione da parte degli alleati, sotto
il governo repubblicano.

Prego vivamente il Ministero di prendere in
esame il quesito proposto e di darmi risposta in-
scritta per tacitare e tranquillizzare i detenuti
interessati.

Con osservanza

IL 1° SEGRETARIO DIRIGENTE
(S/te Dr. Luigi Soldano)

COPIA

330

MINISTERO DELLA GIUSTIZIA
 Gabinetto del Ministro
UFFICIO INVESTIGATIVO

Roma, 5 febbraio 1945

Test. 131

Visp. al Reg. 27/1/1945
 Numero 129542-2

Alla Direzione Generale

per gli Istituti di Prev. e di Penn.

ROMA

OGGETTO: Applicazione anticipata del R.D. di amnistia del 5-4-1944
 n. 96 all'Isola di Capraia.

Questo Ufficio ha esaminato la nota di codesta Direzione Generale e la risposta della Direzione Generale degli Archivi Centrali e questa presuppone.

La soluzione data in tale risposta è concisa pienamente dell'Ufficio scrivente.

Infatti, se l'isola di Capraia non fu mai occupata dai tedeschi, lo fu invece dagli alleati, come si rileva dalla nota del Direttore della colonia agricola, anteriormente all'emanazione del decreto di amnistia. Essa fu tuttora parte di territorio sotto potestà di governo diretto dell'occupante e, per conseguenza, al problema dell'amnistia

1044

ROMA

OGGETTO: Applicazione anticipata del R.D. di amnistia del 5-4-1944
n. 96 all'isola di Capraia.

Questa Ufficio ha esaminato la nota di questa Direzione Generale e la risposta della Direzione Generale degli Affari Penali al quesito prospettato.

La soluzione data in tale risposta è condivisa pienamente dall'ufficio scrivente.

Infatti, se l'isola di Capraia non fu mai occupata dai tedeschi, lo fu invece dagli alleati, come si rileva dalla nota del direttore della polizia appiccata, anteriormente all'emissione del decreto di amnistia. Essa fu tutta parte di territorio sottoposto al governo diretto dall'occupante e, per conseguenza, il problema dell'applicazione dell'amnistia in detta isola è di competenza del Governo Militare Alleato.

IL V. CAPO DELL'UFFICIO LEGISLATIVO

R/to Lampis

32D

Direzione Generale degli Affari Penali
della Granse della Statistics e del
Cancellario

Roma 17-1-1945

UFF. Segreteria
Risp. al fogl. 134937.9
del 4-1-1945

Alla Direzione Generale
per gli Istituti di prevenzione e di pena

S. S. D. E.

OCCASIONE: Applicazione anticipata del R.D. di amnistia
del 5.4.1944 n. 96 all'isola di Capraia.

Con riferimento alla nota sopraindicata concernente il quesito pre-
posto della Direzione della Colonia agricola di Capraia circa la oppor-
tunità di applicare nel territorio dell'isola il R.D. 5-4-1944 n. 96
senza attendere la restituzione della intera provincia alla Amministre-
zione Italiana, dato che l'isola stessa non fu mai occupata da truppe
tedesche, perché occupato dagli alleati sin dal 12-10-1943, si fa pre-
sentare che un provvedimento del genere esorbita della competenza del Go-
verno italiano, dato che l'isola stessa fa parte di una provincia sot-
tosta al controllo del governo militare alleato.

Però come sta On. Direzione Generale potrebbe promettere alla Com-
missione Amnistia le condizioni dell'isola facendo presente l'opportuni-
tà dell'applicazione anticipata dell'amnistia n. 96 del 1944, richie-
dendo l'emergenza di una ordinanza che disponga in tal senso.

43

42

Con riferimento alle note soprastanziate concernenti il quesito proposto dalla Direzione della Colonia agricola di Capreia circa la opportunità di applicare nel territorio dell'isola il R.D. 5-4-1944 N.96 senza attendere la costituzione della intera provincia allo Amministrazione Italiana, dato che l'isola stessa per la sua occupazione da truppe germaniche, per la occupazione degli allenti già del 19-10-1943, si fa presente che un provvedimento del genere esorbita delle competenze del governo italiano, dato che l'isola stessa fa parte di una provincia sovietica.

Però, osservato che il governo italiano, per presentare alla Commissione Generale, per la presentazione dell'isola facende opportune l'opportunità di un provvedimento di amnistia n.96 del 1944 a richiesta dell'applicazione anticipata che disponga in tal senso.

IL DIRETTORE GENERALE

V.to all'esigibile

SUBJECT : Advanced application of Royal Decree No. 96 of 5 April 1944
of amnesty
to the Island of CAPRAIA. (TUSCANY)

An inquiry was made to the Ministry of Justice by the Director of the Prison at CAPRAIA concerning the application of the above decree in the territory of that Island.

The offices of the Ministry are of opinion that this is a matter which concerns the Allied Commission.

HEADQUARTERS ALLIED COMMISSION
APC 394
LEGAL SUB-COMMISSION

32A

AC/4030/L.

ART/ap.
2 February 1945.

SUBJECT : Pardon of BALDINI Nicolò
and SPIZZICHINO Osvaldo.

TO : Regional Commissioner, TOSCANA Region
(Attn: Regional Legal Officer).

1. Reference is made to your RVIII/19/8000 dated 30 Jan 45 transmitting basic letter from P.L.O. Grosseto Province dated 27 Jan 45.

2. Attention is drawn to para 5 (c) of this Sub-Commission's directive AC/4030/1/L of 28 Apr 44 which clearly lays down the procedure to be followed in agreement with the Italian Government.

3. In such cases no order of a P.C. is required to render executory a pardon granted by order of the Chief Commissioner AC; indeed the substitution of a P.C.'s order for the original signed by the CLA might create a technical difficulty as the result of the effect of Art. 1 of R.D.L. No. 31 of 11 Feb 44 providing for the lapse of AMG orders on the restoration of territory.

4. Moreover, for the same reason it is essential that the original order be placed in the hands of the Procuratore del Regno so that the record may be properly substantiated.

5. Please have a care, therefore, to observe the correct procedure in future and take necessary steps to make good the record in the above cases.

By command of Rear Admiral. STONE:

Self

A. M. THACKRAH, Lt. Colonel,
Italian Branch,
for Chief Legal Advisor

Copy to : AC/4030/1/L.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

31A

AC/4030/D.

ES/pe.
4 Jan 45.

SUBJECT : Petition for Pardon and Conditional Liberty in respect
of cases involving Allied interests.

TO : Regional Commissioner, SICILIA Region.
(Attn: Regional Legal Officer).

1. Reference is made to your RLK 013.05 of 28 December 1944.

2. As you are no doubt aware the decree granting amnesty for common military and rationing offences (R.D. No. 96 of 5 April 1944) and the decree extending such amnesty to offences committed during the Allied Military Government in restored territories (D.L. No. 263 of 5 Oct 1944) exclude from the benefit of amnesty all sentences in cases adjudicated by Italian Courts and affecting Allied interests. This exception has been enacted precisely for the reasons set out in para 2 of your letter. For the same reasons an agreement has been entered into with the Minister of Justice that no petitions for pardon or conditional liberty in Italian Court cases affecting Allied interests will be acted upon by Italian authorities without approval of this Sub-Commission.

3. Unless in very special circumstances.

5. As in the past you will be given opportunity to express your opinion on each individual petition of the above type.

By command of Rear Admiral STONE :

Copy to: AC/4030/H/L.

G. G. HANNAFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4030/H

ES/at.
29 December 1944.

SUBJECT : Petitions for Pardon and Conditional Liberty.

TO : A.E. the Procuratore Generale Militare,
Via degli Acquasparta, 2 ROME.

Following to day's conversation with Col. Berutti, Sostituto Procuratore Generale Militare, it has been agreed that petitions for pardon and conditional liberty for all cases adjudicated by Italian Military Tribunals and

(a) affecting Allied interests and personnel or
(b) disposed of by Military Tribunals sitting in Allied Military Government Territory at the time such petitions are made shall be submitted to this Sub-Commission, after they have been fully investigated.

G. S. HANNAFORD,
Lt. Col.,
Italian Branch,
for Chief Legal Advisor.

C O P I A

29A

MINISTERO DI GRAZIA E GIUSTIZIA
 Direz. Generale degli Affari
 Penali, delle Grazie della
 Statistica e del Casellario

Roma, 20 dicembre 1944

Ufficio 1
 Prot. n. 2660/131/26

Risposta al f. del 12.12.44
 Div. A C N. 4030/1-L

OGGETTO: Annullamento di sentenze del Tribunale Speciale.

ALLA COMMISSIONE ALLENATA
 Sotto Commissione Legale

R O M A

1. Le sentenze del Tribunale Speciale per la Difesa dello Stato, istituito con la legge 25.11.1926, n. 2008, e soppresso con R. Decreto Legge 29.7.1943, n. 668, sono soggette a speciale revisione in forza del decreto L.L. 5.10.1944, n. 716 (Gazzetta Ufficiale n. 65 del 1944).
2. Questa D.L.L. stabilisce una procedura per la revisione per la quale non è obbligatoria la presentazione di documenti; l'Art. 6 avverte soltanto che la istanza va presentata alla cancelleria della Corte di Appello competente, unitamente ai "documenti che la parte ritiene di esibire".
3. Mancando i documenti ufficiali del caso la parte può esibire atti notori, attestazioni private autenticate e quanto altro possa giovare a dimostrare il fondamento della tesi che adduce a sostegno della chiesta revisione.

Pel M I N I S T R O

f.ma illegibile

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

28A

AG/4030/1/L.

/mt.
12 December 1944.

SUBJECT : Annulment of sentences of Tribunale Speciale.
TO : H.E. The Minister of Grace and Justice.

1. By D.L.L. of 27 July 44, all sentences of the above mentioned Court pronounced for political motives are to be annulled.

2. This decree however sets out a procedure of appeal necessitating the production of official documents, which in many cases have been taken away to the North or even destroyed.

3. This Sub-Commission has been approached on several occasions by Allied and also Italian citizens requesting advice. Could your Excellency give a ruling as to the procedure to be followed in cases similar to those mentioned in para 2.

36

C. G. RASHFORD,
Lt. Col.,
Officer i/o Italian Branch,
for Chief Legal Advisor.

Weather Ministry 12-12-44

Via Savoia 80
Rome

29A

1st December 1944

To the Head Quarters

ALLIED MILITARY GOVERNMENT

R C M E

RE: Manfred PEDICINI, aged 29, son of the late General Raffaele Pedicini and of Audrey WHITAKER, of Palermo.

I was arrested on the 16th November 1941 by the Reali Carabinieri on behalf of the Comando Supremo, Contro Spionaggio, because a letter or mine addressed to Mr Gilson Blake, American Consul and secretary to Ambassador Phillips, had been found in possession of Dr Woolf, chaplain of St Paul's Church, Via Nazionale.

The exact contents was :

The commander of the naval squadron accompanying the convoy that was totally destroyed has been referred to the Supreme Military Court. The German High Command wanted to have him shot at once because 5000 Germans had been lost.

General Friccolo has resigned from office as he wishes to be independent and does not intend to receive orders from the Germans. Told the Duce so.

General Cavallero has also tried to be independent; is said to be in contrast with the Germans but has had to submit to their orders.

Four airports in Sicily and Southern Italy have been taken over by the Germans who have sent 700 planes there.

I was arrested on the 18th November 1941 by the Iraqi carabinieri on behalf of the Comando Supremo, Centro Spionaggio, because a letter of mine addressed to Mr Wilson Blake, American Consul and secretary to Ambassador Phillips, had been found in possession of Dr Wolff, chaplain of St Paul's Church, Via Nazionale.

The exact contents was :

The commander of the naval squadron accompanying the convoy that was totally destroyed has been referred to the Supreme Military Court. The German High Command wanted to have him shot at once because 5000 Germans had been lost.

General Pricolo has resigned from office as he wishes to be independent and does not intend to receive orders from the Germans. Told the Luce so.

General Cavallero has also tried to be independent; is said to be in contrast with the Germans but was had to submit to their orders.

Four airports in Sicily and Southern Italy have been taken over by the Germans who have sent 700 planes there.

The naval and Air Commands have been united, and placed under the German High Command.

In Rome there will soon be a meeting of all the Arabs under the Grand Mufti, in order to declare the independence of the Arabs under Italian protection.

" Crisis at the Foreign Office and Russo will probably resign. "

My home was searched by the Carabinieri who found, " Blackmail or War " by Geneviève Rabouin, an antifascist book, a variety annotations concerning personalities and institutions of the regime, numerous letters to my Mother in which I criticized the Italian attitude and showed myself contrary to the war against England.

The Carabinieri in their report denouncing me

wrote as follows : -

" Mrs Whitaker Pedicini notwithstanding the fact that she has been the wife of an Italian general and is an Italian citizen, has maintained her English feelings and a burning and unquenchable desire for everything that is British. A blind and unflinching faith in everything that is British; all-concealed contempt of Italy and her institutions. These are the sentiments which she forced on her son and which are the basis of his education. The Pedicini family always talks English at home: the mentality, the way of thought, the outlook on life are all equally English. Manfred Pedicini went to school in England, the New Beacon Sevenoaks, Kent. When he writes to his mother he does so in English. His character is reserved, he has no friends and has nothing in common with his brother officers who avoid him. It is evident that the education he has had at home - where unfortunately Mrs Whitaker reigns supreme - has influenced his political views, and has driven him to the unbelievable point of betraying his country, purely and solely because of his attachment to everything that is Anglo-Saxon, as he has never worked for money. It is proved that Pedicini has not acted for any pecuniary interests. "

During the interrogations by the Carabinieri I

wrote as follows : -

Mrs Whitaker Pedicini notwithstanding the fact that she has been the wife of an Italian general and is an Italian citizen, has maintained her English feelings and a turning and unquenchable mania for everything that is British. A blind and unflinching faith in everything that is British; all-concealed contempt of Italy and her institutions. These are the sentiments which she forced on her son and which are the basis of his education.

The Pedicini family always talks English at home: the mentality, the way of thought, the outlook on life are all equally English.

Manfred Pedicini went to school in England, the New Beacon Sevenoaks, Kent. When he writes to his mother he does so in English.

His character is reserved, he has no friends and has nothing in common with his brother officers who avoid him.

It is evident that the education he has had at home - where unfortunately Mrs Whitaker reigns supreme - has influenced his political views, and has driven him to the unrelenting point of betraying his country, purely and solely because of his attachment to everything that is Anglo-Saxon, as he has never worked for money.

It is proved that Pedicini has not acted for any pecuniary interests.

During the interrogations by the Carabinieri I

accepted all accusations made against me because they threatened to arrest my Mother if I did not (she was accused of being my accomplice by a soldier of my regiment, and agent provocateur) and so I even signed admissions without any foundation and sheets containing blank spaces, and confessed that I had given other news of the same character.

I was condemned by the fascist tribunale speciale

per la difesa dello Stato on the 11th May 1942 to 30 years imprisonment :

10 years for the articles 110 and 258 C.P.
24 years for the articles 110 and 262 C.P.

I was in prison till the 5th June 1944 when I escaped during a bombardment .

In reference to the decree of the Lieutenant General of the Realm of the 27th July 1944 and according to the decree of the 25th November 1944 my sentence should be annulled .

Witnesses who know about my case are :

Sir John Serrao	my defending lawyer
General Francesco Traina	Italian Military Court
Pastore Anselmo Ammenti	Methodist Church Via Firenze Rome

I have numerous relations in the Fighting Forces amongst whom :

Maj. General J.A.C. Whitaker, Coldstream Guards, War Office .

Manfred Dickson Whitaker

29B

I am a French subject and I was arrested by the R.R.C.C. contro-spionaggio of Genoa, on the 9th Oct. 1941 on the charge of suspected espionage.

This charge was based on 2 letters found at the Ministère de la Marine 2ème Bureau, Paris, written in 1934 by the French Naval Attaché of the Rome Embassy in order to help me receive the order de la Légion d'Honneur. No specific proof though ever existed.

I was sentenced on the 20th July 1942 by the fascist Tribunale Speciale per la difesa dello Stato to 15 years imprisonment for the article 262 C.P. and expulsion from Italy.

I escaped from prison during a bombardment on the 5th June 1944.

In reference to the decree of the Lieutenant General of the Realm of the 27th July 1944 and according to the decree of the 25th Nov. 1944 my sentence should be annulled.

All documents of my trial have been taken away by the fascists but the following can bear witness:

Avv. Domenico D'AMICO - my defending lawyer -
Via Nazionale 69 - Rome -
M. Louis GABRIEL, Commercial Counsellor of the
French Delegation, Palazzo
Farnese - Rome -
Comm. Gaetano D'AMELIO, C.I.P. - Rome -

I am at present working with HQ. AMG. Lazio Umbria Region and I have been granted the Officer status with the rank of Major.

June 1944.

In reference to the decree of the Lieutenant General of the Realm of the 27th July 1944 and according to the decree of the 25th Nov. 1944 my sentence should be annulled.

All documents of my trial have been taken away by the fascists but the following can bear witness:

Avv. Domenico D'AMICO - my defending lawyer -
Via Nazionale 69 - Rome -
M. Louis GABRIEL, Commercial Counsellor of the
French Delegation, Palazzo
Farnese - Rome -
Comm. Gaetano D'AMELIO, C.I.P. - Rome -

I am at present working with HQ. AMG. Lazio Umbria Region and I have been granted the Officer status with the rank of Major.

Robert J. CHILD

Robert J. Child

Via Uffici del Vicario, 21/8

Rome, December 12th, 1944

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

(27A)

ES/pa.
7 Oct 44.

ACC/4030/1/L.

SUBJECT : Jurisdiction over petitions for pardon and
Conditional Liberty.

TO : H.E. The Minister of Pardon and Justice.

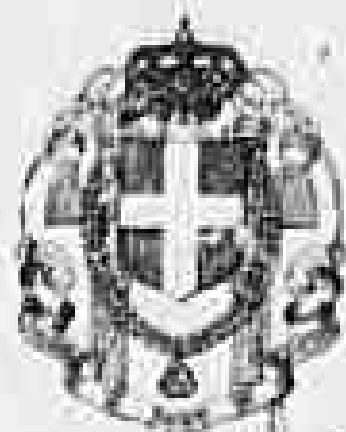
1. This Sub-Commission concurs with Ministry's Prot. No. 7194/268
of 3 October 1944.

2. It is understood that the jurisdiction of Italian authorities
does not extend to cases tried at any time or at any place by Allied
Military Courts. Furthermore, as set out in this Sub-Commission's letter
of 30 March 1944, last para it is agreed that "when the offense is connected
with Allied property or personnel the Allied authorities (i.e. the legal
Sub-Commission) will be consulted" before an action is taken on the peti-
tion. Finally, it results from the agreement reached at Salerno last
March on this subject that if the petitioner resides or is detained in
Military Government Territory it will be for the Allied authorities to
pass upon the petition on the recommendation of the Ministry.

31

Arey

A. R. THACKERAY,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

4030/1
MINISTERO DI GRAZIA E GIUSTIZIA

Cabinetto di S. E. il Ministro

Ufficio Collegamento con l'ACC.

Roma, 3 ottobre 1944

Aut. N. 181/288

OGGETTO: Competenza a decidere in tema di grazia e liberazione condizionale relativamente a reati commessi durante l'amministrazione Alleata.

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale
Roma

A seguito di quanto discusso nei precedenti incontri sulla materia in oggetto si prega di voler aderire alla parziale modifica della competenza in materia di grazie e liberazioni condizionali, quale fu concordata a Salerno, nel senso di autorizzare il Governo italiano a decidere nei casi di grazie e liberazioni condizionali per reati commessi durante l'amministrazione Alleata in territorio poi restituito (Attualmente il Governo italiano si limita a dare il suo parere all'ACC.).

Quanto sopra si chiede in armonia a quanto deciso circa il recente provvedimento di estensione dell'amnistia.

29 Resta inteso che saranno sempre riservate alla competenza dell'Acc. quelle istanze per reati giudicati dai tribunali alleati, o commessi comunque in danno delle Forze Alleate.

Si resta in attesa di un cortese riscontro.

L'UFFICIALE DI COLLEGAMENTO

Bouilh

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

(25A)

HTW/pa.
27 Aug 44.

ACC/1030/1/L.

SUBJECT : Conditional Liberty.

TO : RLO (thru RO) Region 3.

1. Reference your L-3005 dated 24 August 1944.
2. The answer is definitely NO.

RICHARD R. WILSON,
Colonel, GAC,
Acting Chief Legal Officer.

HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394, U.S. Army

L-3005

24 August 1944.

Subject : Conditional Liberty.

To ; CLO, Legal Sub-Commission, A.C.C.

1. The question has been asked whether, in Italian Government Territory, an Italian Court can grant conditional liberty, in accordance with Italian law, to a person sentenced to imprisonment by an Allied Military Court. Paragraph 2, c, i, of A.C.C. Executive Memorandum No. 72, dated 28 July 1944, would appear to imply that an Italian Court can grant conditional liberty in such a case, but a definite ruling will be appreciated.

For the Regional Commissioner:

28
GAB/cm*G.A. Bamlet*

G.A. BAMLET,
Major, G.L.,
Actg. Reg. Legal Officer.

LEGAL SUBCOM

Legal Counsel

Section

NOTES

23 Jun 44

(23)

Subject : Petitions for repeal of security measures.
" " deferment of execution of penalty
Applications requesting authorization to initiate
criminal proceedings.

TO : Sgt. Stein.

The following policy will be used in granting or denying the above types of petitions and applications:

a) Petitions for repeal of security measures will be granted or denied by directive to Regional Legal Officer concerned, over Lt. Col. Thackrah's signature and upon recommendation of the Ministry of Pardon and Justice.

As described in subpara (a)

b) The same procedure will be followed for ~~the~~ Petitions concerning deferment of execution of penalty.

c) Authorizations to initiate criminal proceedings will be granted or denied by Regional Legal Officer concerned. Certain observations, however, may be made by this Subcommittee.

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

M/ST

28 May 1944

ACC/4030/1/1

SUBJECT: Instructions to legal officers on transfer of territories.
Court Records.

TO: 1. ELOC (thru HQs) Regions 1, 2, 3, 6 and 7.

1. Reference our letter ACC/4030/1/1 of 23/5/44.

2. Delete para 5.

3. Substitute: *5. In all cases however in which sentence of over one years imprisonment was imposed, particulars are required for transmission to the Italian Ministry of Justice via this HQ and they should be forwarded to this HQ (if this has not already been done) on a form similar to Form 13 of "Consolidated Instructions for Allied Military Courts".

T. Asperman
Capt

for G. R. UPJMS, Colonel
Chief Legal Officer.

20

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rtp.
23 May 1944.

ACC/4030/1/L

SUBJECT : Instructions to legal officers on transfer of territories. Court Records.

TO : Regional Legal Officer (THIR: Regional Commissioner), Region I.

1. Reference Executive Memorandum No. 7 para. 2 (a) and (f) (1) and (11) and your letter THIR 013. 22/10 of 14/3/44, para. 3. (12)

2. You will already have received Memorandum ACC/4030/1/L of 24/1/44 and Memorandum ACC/4030/1/L of 28/1/44, both issued from this HQ, concerning the grant of conditional (not provisional) liberty. (17)

3. Enclosed herewith are copies in English and Italian of an instruction dated 24/4/44 issued by the Ministry of Justice to all Procuratori del Re on the same subject. (19)

4. It has been agreed with the Italian authorities that no UK records shall be handed over to them or examined by them. You will please ensure that this instruction is understood by Provincial Legal Officers.

5. It has, however, been decided that in all cases in which sentence of over one year's imprisonment was imposed, the Italian authorities shall be provided with the following particulars:

- a. name of accused
- b. address
- c. age
- d. place where trial held
- e. offense
- f. date of conviction
- g. sentence
- h. place of confinement

6. Will you please issue any necessary instructions to Provincial Legal Officers accordingly?

GERARD H. UPFORD,
Colonel,
Chief Legal Officer.



1032/1
MINISTERO DI GRAZIA E GIUSTIZIA (19)

DIREZIONE GENERALE AFFARI PENALI
Ufficio

Protocollo N. 26013

Risposta al foglio N.

Salerno 11, 24.4.44

del

OGGETTO: Ulteriori disposizioni in materia di grazia e di liberazione condizionale.

ALLA LL.ME. I PROCURATORI GENERALI

~~~~~

In seguito ad ulteriori accordi con la Commissione alleata di Controllo, Sottocommissione Legale, e in parziale modifica di quanto comunicato con circolare 25007 del 23.3. u.s., in ordine alla competenza in materia di grazia e di liberazione condizionale si dispone quanto segue:

1°) - Per i reati giudicati dai tribunali alleati, sia in territorio occupato che non occupato, la competenza spetta al governo alleato.

2°) - Per i reati giudicati da autorità giudiziaria italiana durante l'amministrazione alleata, ove l'autorità giudiziaria sia tuttora in territorio amministrato dall'A.M.G. la competenza è del governo alleato; ove invece l'autorità giudiziaria sia in territorio restituito all'amministrazione italiana, la competenza spetta all'autorità italiana, ma, qualora il reato sia connesso con danneggiamento alle proprietà e alle persone degli alleati, dovranno essere prima sentite le autorità alleate.

3°) - Per i reati giudicati da autorità giudiziaria prima dell'occupazione alleata, ove il territorio in cui ha sede l'autorità giudiziaria sia tornato all'amministrazione italiana, la competenza è dell'autorità italiana; ove invece il territorio sia tuttora amministrato dall'A.M.G. o gli imputati o condannati siano in territorio sottoposto all'A.M.G. l'istruttoria viene espletata dalle autorità italiane e

la pratica viene trasmessa, con il parere, all'auto-  
rità alleata per la decisione.

Quanto sopra si comunica perché sia tenuto pre-  
sente nella ricezione e nella istruzione delle doman-  
de di grazia e di liberazione condizionale.

Si prega accusare ricevuta.

IL MINISTRO

f. M. V. Lla

f. r. c.  
P  
M

Polygon, Pardon  
file

4030/1

(18A)

MEMORANDUM

SUBJECT : Petitions for Pardon.

TO : Chief Legal Officer.

1. In pursuance to your instructions the Ministry will be requested to examine each petition for pardon coming from AMG territory on its merits and as if the recent amnesty decree would not exist.

2. It now appears that although the Penal Code does not provide for it a custom has developed for the King to grant a conditional pardon only. The Ministry is not too anxious that we follow this custom but of course they would prefer if we would do so.

3. Two alternatives are open:

(a) to continue granting the unconditional pardon with the view that after we move out of Italy the Italians can deal with the individual cases as they see fit;

(b) take our usual attitude of minimum interference with Italian law and adopt the Italian practice. In such case the form for the grant of pardon could read as follows (the 2nd para of the form below is a translation of the Italian form):

23

1. Upon request of the Italian Government I hereby order that the petition for pardon of the below listed petitioner be granted forthwith.

2. Should, however, the below listed petitioner commit another offence within five years after the date of this order, the pardon shall be considered revoked and the pardoned penalty fully executed after the sentence of condemnation for the new offence shall have become definitive."

E.S.

Maj Ham concurs with the above  
A point in meeting on 18 May that Security will indicate  
on each case whether pardon should be unconditional  
or not.

REAR REPAIRS  
ALLIED COMBAT COMMISSION  
Local Summarization  
J20 394

ACC/4030/1/E

SUBJECT: Jurisdiction for granting of conditional liberty and pardon.

TO : War Reliefs 1, 2, 3, 4, 5, 6 & 7 (for attn RIA).  
J20 or 5th & 6th Divisions (for attn RIA).

1. The Chief Commissioner having delegated to the Chief Legal Officer the power to grant or deny any petition for conditional liberty or pardon in regard to offences tried by Italian Courts which are within the competence of the Allied authorities according to the rules set out in the subsequent paragraph, the following arrangement has been reached with the Italian Minister of Pardon and Justice in connection therewith.

2. Petitions for conditional liberty and pardon concerning offences which were tried by Allied Military Courts whether in occupied or in unoccupied territory will be dealt with exclusively by A.C.C.

3. Petitions in regard to offences which were tried in Italian Courts during the Allied occupation will be dealt with as follows:

(a) Where such courts are "in territory" which is still occupied by the Allied Forces the petition will be dealt with exclusively by A.C.C.

(b) Where such courts are in territory restored to the Italian Government; but where the offence is within the competence of the Italian Administration, A.C.C. will be first consulted.

4. Petitions concerning offences in which sentences were imposed by Italian Courts before the Allied occupation will be dealt with as follows:

(a) Where the territory in which the court is located has been restored to Italian Administration the petition will be within the competence of the Italian Government.

(b) Where the territory in which the court is located is still occupied or the sentenced person is in territory still occupied the petition will be dealt with by A.C.C.

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regard to offences tried by Italian Courts which are subject to the rules set out in the subsequent paragraphs, the following arrangement has been reached with the Italian Minister of Justice and Justice in connection therewith.

2. Petitions for conditional liberty and pardon concerning offences which were tried by Allied Military Courts whether in occupied or in unoccupied territory will be dealt with exclusively by A.C.C.

3. Petitions in regard to offences which were tried in Italian Courts during the Allied occupation will be dealt with as follows:

(a) Where such courts are in territory which is still occupied by the Allied Forces the petition will be dealt with exclusively by A.C.C.

(b) Where such courts are in territory restored to the Italian Administration the petitions will be within the competence of the Italian Government; but where the offence is in any way connected with Allied property or personnel, A.C.C. will be first consulted.

4. Petitions concerning offences in which sentences were imposed by Italian Courts before the Allied occupation will be dealt with as follows:

(a) Where the territory in which the court is located has been restored to Italian Administration the petition will be within the competence of the Italian Government.

(b) Where the territory in which the court is located is still occupied or the sentenced person is in territory still occupied the petition will be dealt with by A.C.C.

5. In paras 3(a) & 4(b) above the following machinery for transmittal of petitions for pardon or conditional liberty will be adopted:

(a) Petitions from prisoners will be forwarded by Procuratori del Re or Directors of Prison to the Provincial Legal Officer with the opinions in writing of the merit of the case.

(b) Such petitions will be transmitted in turn by the Provincial Legal Officer to the Local Subcommission A.C.C., III, through the usual channels (Regional Legal Officer).

(c) After consultation the Minister of Justice the Chief Legal Officer will grant or reject the prisoner's application and communicate his decision to the Regional Legal Officer.

(c) If the pardon or conditional freedom is granted, the Regional Legal Officer will issue the necessary order. If it is rejected the prisoner will be informed through the Procuratore del Re. No reason will be given for the decision taken.

6. Cases falling within para. 3(b) will be dealt with by the Minister of Justice in consultation with the AGO and the latter will ask for such recommendations or reports from the HIO concerned as may be necessary.

7. This directive cancels para 3 of Executive Memo No. 4 dated 7 Feb. 1944.

G.R. 11

G. R. LINTON  
Colonel  
Chief Legal Officer.

Copy to: Executive Commissioner  
V.P. Admin. Section

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
AGC 394

16A

AGC/AG30/1/L

24 April 1944

MEMORANDUM

SUBJECT: Competence for granting of conditional liberty and pardon.

TO : See Distribution List.

1. Offences which were tried by Allied tribunals whether in occupied or in unoccupied territory: competence of the Allied Military Government.
2. Offences which were tried by Italian Courts during the Allied Administrations:
  - (a) Where such Courts are in territory which is still administered by AMG: competence of the Allied Military Government.
  - (b) Where such Courts are in territory restored to the Italian Administration: competence of the Italian Government; but when the offence is connected with Allied property or personnel the Allied authorities will be first consulted.

3. Offences which were tried by Italian courts before the Allied occupation:
  - (a) Where the territory in which the Court is located has been restored to Italian Administration: competence of Italian Government.
  - (b) Where the territory in which the Court is located is still administered by the AMG or the defendants are in territory still subject to AMG: the investigation of the petition will be carried out by Italian authorities and the file transmitted with recommendation to Allied authorities for decision.

Note: In para 3(a) the competence of the Italian Government is determined because of the geographical location of the Court. There may be cases where the prisoner sentenced by such Court is retained in a jail situated in AMG territory. In such case the Italian Government will approach the Allied authority whose decision will be final.

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ACC/4030/1/L

MEMORANDUM

SUBJECT: Competence for granting of conditional liberty and pardon.

TO :

1. Offences which were tried by Allied Tribunals whether in occupied or in unoccupied territory; competence of the Allied Military Government.

2. Offences which were tried by Italian Courts during the Allied Administrations;

(a) where such Courts are in territory which is still administered by AMG : competence of the Allied Military Government.

(b) where such Courts are in territory restored to the Italian Administration; competence of the Italian Government; but when the offence is connected with Allied property or personnel the Allied authorities will be first consulted.

3. Offences which were tried by Italian courts before the Allied occupation;

(a) where the territory *in which the Court is located* has been restored to Italian Administration; competence of Italian Government.

(b) where the territory in which the Court is located is still administered by the AMG or the defendants are in territory still subject to AMG; the investigation of the petition will be carried out by Italian authorities and the file transmitted with recommendation to Allied authorities for decision.

(b) where such Courts are in territory restored to the Italian Administration; competence of the Italian Government; but when the offence is connected with Allied property or personnel the Allied authorities will be first consulted.

3. Offences which were tried by Italian courts before the Allied

occupation;

(a) where the territory *has been restored to Italian Administration*; competence of Italian Government.

(b) where the territory in which the Court is located is still

administered by the AMG or the defendants are in territory still subject to

the investigation of the petition will be carried out by Italian

authorities and the file transmitted with recommendation to Allied authorities for decision.

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
R O 394

15A  
HRT/gaf

ACC/4041/L

30 March 1944.

SUBJECT: Jurisdiction in Matter of Pardon and Conditional Freedom.

TO : H.E. The Minister of Pardon and Justice.

Your Excellency's Memorandum on this subject has greatly contributed to clarifying the situation in regard to the respective jurisdictions of the Allied Military Authorities and the Italian Government, and it is with much pleasure that an accord in principle is hereby confirmed.

However, there remain two points on which amplification appears necessary, namely under para (1) "Offences judged by Allied Courts"; add "whether in occupied or unoccupied territory" before the words "Competence of Allied Government".

And under para (2b) "Offences judged by Italian Courts during Allied Administration";

(b) "where the courts are in territory restored to Italian Administration; competence of the Italian Government" add "but when the offence is connected with Allied property or personnel the Allied authorities will be first consulted".

G. R. UPJOHN, Colonel  
Chief Legal Officer.

## PRO MEMORIA

CASISTICA PER LA COMPETENZA CIRCA LA CONCESSIONE DELLA LIBERAZIONE  
CONDIZIONALE DELLA PRIMA

- 1) Reati giudicati dai Tribunali Alleati: competenza del Governo Alleato
- 2) Reati giudicati dai tribunali italiani durante l'Amministrazione Alleata
- a) ove i Tribunali siano tutt'ora in territorio amministrato dall'A.M.G.: competenza del Governo Alleato.
- b) ove i Tribunali siano in territorio restituito all'Amministrazione italiana: competenza del Governo italiano.
- 3) Reati giudicati dai Tribunali italiani prima dell'occupazione Alleata
- a) ove il territorio sia ritornato all'amministrazione italiana: competenza del Governo italiano.
- b) ove il territorio ove ha sede il Tribunale sia tutt'ora amministrato dall'A.M.G. o i condannati siano in territorio sottoposto all'A.M.G.: l'istruttoria viene completata dall'autorità italiana e la pratica viene trasmessa con il parere all'autorità alleata per la decisione

PRO = MEMORIA

4041

4041

13

Consistenza per le domande di grazia sovrana e risoluzione delle relative pratiche :

1) REATI GIUDICATI DAI TRIBUNALI ALLEATI : competenza del Governo Alleato.

2) REATI GIUDICATI DAI TRIBUNALI ITALIANI DURANTE L'AMMINISTRAZIONE

ALLEATA :

- a) ove i Tribunali siano tutt'ora in territorio amministrato dall'A.M.G. : competenza del Governo Alleato.
- b) ove i tribunali siano in territorio restituito alla am-  
ministrazione italiana : competenza del Governo Italiano

3) REATI GIUDICATI DAI TRIBUNALI ITALIANI PRIMA DELL'OCCUPAZIONE ALLEATA :

- a) ove il territorio sia ritornato all'amministrazione italiana : competenza del Governo Italiano.
- b) ove il territorio dove ha sede il tribunale sia tutt'ora amministrato dall'A.M.G. o gli imputati siano in territorio sottoposto all'A.M.G. : l'istruttoria viene completata dall'autorità italiana e la pratica viene trasmessa con il parere all'autorità alleata per la decisione.

aa baa

2) REATI GIUDICATI DAI TRIBUNALI ITALIANI DURANTE IL PERIODO DI AMMINISTRAZIONE ALLEATA :

ALLEATA :

- a) ove i Tribunali siano tutt'ora in territorio amministrato dall'A.M.G. : competenza del Governo Alleato.
- b) ove i tribunali siano in territorio restituito alla amministrazione italiana : competenza del Governo Italiano

3) REATI GIUDICATI DAI TRIBUNALI ITALIANI PRIMA DELL'OCCUPAZIONE ALLEATA :

- a) ove il territorio sia ritornato all'amministrazione italiana : competenza del Governo Italiano.
- b) ove il territorio dove ha sede il tribunale sia tutt'ora amministrato dall'A.M.G. o gli imputati siano in territorio sottoposto all'A.M.G. : l'istruttoria viene completata dall'autorità italiana e la pratica viene trasmessa con il parere all'autorità alleata per la decisione.

go back

COPY

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
AFC 194

EXECUTIVE MEMORANDUM

NUMBER

4)

RIGHT OF PARDON IN OCCUPIED TERRITORY

1. During the period of Military Occupation the exercise of the powers of the Crown of Italy are suspended and all powers of government and jurisdiction in the Occupied Territory and final administrative responsibility are vested in the Military Governor (Proclamation I). Accordingly the power of pardon vested in the King of Italy is suspended during the period of Military Occupation, and in consequence petitions for pardon, should be addressed through channels to the Military Governor and not to the King.

2. The Military Governor may deal with petitions for pardon whether the offence and/or sentence were before or after occupation.

3. The procedure and channels to be pursued are the same as under usual Italian Practice save only that the documents will be forwarded to the Regional Commissioner in lieu of the Minister of Justice, and the Regional Commissioner, acting upon the advice of the R.C.L.O., will forward the same to the C.L.O. HQ ACC for transmission to the Military Governor.

4. The subject of provisional or conditional liberty pending consideration of petition of pardon is fully covered by previous directives (see memorandum on Italian Courts and Legal Set Up, Appendix A).

5. For your information the following is the Italian Procedure in connection with application for pardons and is to be followed subject, however, to the foregoing (i.e. pardons will be addressed to the Military Governor and forwarded to the Regional Commissioner).

The request for Royal Pardon is addressed to the King but forwarded to the Minister of Justice. It must be signed by the prisoner, a near relative, his guardian or his legal attorney.

The request on stamped paper, can be presented to the competent Procuratore del Re or Pretore, as the case may be for transmission to the Minister, with all information available about the case and circumstances.

It can also be done through the Director of the Prison where the prisoner is serving his sentence.



HEADQUARTERS  
ALLIED CONTROL COMMISSION  
(SALERNO DETACHMENT)  
LEGAL SUB-COMMISSION  
APO 394

(11)  
111

ACC/ACM1/L.

SUBJECT : Right of Pardon in Occupied Territory.  
TO : Executive Commissioner.

2 February 1944

May the enclosed please be circulated as per distribution at foot thereof.

GERALD R. UPJOHN,  
Colonel,  
Chief Legal Officer.

See file 28

# REQUEST OF PARDON IN OCCUPIED TERRITORY

1. During the period of Military Occupation the exercise of the powers of the Crown of Italy are suspended and all powers of government and jurisdiction in the Occupied Territory and final administrative responsibility are vested in the Military Governor (Proclamation 1). Accordingly the power of pardon vested in the King of Italy is suspended during the period of Military Occupation, and in consequence petitions for pardon, should be addressed through channels to the Military Governor and not to the King.

2. The Military Governor may deal with petitions for pardon whether the offence and/or sentence were before or after occupation.

3. The procedure and channels to be pursued are the same as under usual Italian practice save only that the documents will be forwarded to the ICIA in lieu of the Minister of Justice, and the ICIA acting upon the advice of the ICAD, will forward the same to the C.M. HQ AGO for transmission to the Military Governor.

4. The subject of provisional or conditional liberty pending consideration of petition of pardon is fully covered by previous directives (see memorandum on Italian Courts and Legal Set Up, Appendix A).

5. For your information the following is the Italian procedure in connection with application for pardons and is to be followed subject however, to the foregoing (i.e. pardons will be addressed to the Military Governor and forwarded to the ICAD).

The request for Royal Pardon is addressed to the King but forwarded to the Minister of Justice. It must be signed by the prisoner, a near relative, his guardian or his legal attorney.

The request on stamped paper, can be presented to the competent Procureure del Re' or Pretore, as the case may be for transmission to the Minister, with all information available about the case and circumstances.

It can be also done through the Director of the Prison where the prisoner is serving his sentence.

The King acts on the formal recommendation of the Minister.

6. It is the duty of the ICIA to bring the contents of this directive to the notice of all Directors of Prisons, Procureure del Re' and Pretore in his Region.

## REMARKS:

ICIA Region I (ICAD: ICAD)

" " II " "

" " III " "

ICIA Region IV (ICAD: ICAD)

" " V " "

ICIA, 5th Army

" 8th " "

Kings Pardon

Holding

The procedure is as follows  
 The request for Royal Pardon is submitted  
 to the King but forwarded to the  
 Minister of Justice, it must be signed  
 by the prisoner, a near relative, his  
 guardian or his legal attorney.

The request on stamped paper, can be presented  
 to the Prisoner at the Prison, or the  
 case may be, ~~applied~~ transmitted  
 to the Minister, with all information  
 available about the case & therein  
concerns

It can be also done through the Director  
 of the Prison where the prisoner is  
 serving his sentence.

The request or stamped paper, can be provided  
completely  
to the person who is a Police, as the  
case may be, ~~spoke~~ transmission  
to the Minister, with all information  
applicable about the case & Admin

Comments

It can be also done through the Director  
if the person who the person is  
having his status.

The King is on the formal  
recommendation of the Minister

---

King's Park

8

For complete transportation all the furniture & personal  
of the company are packed into the military transport.  
Therefore all <sup>application</sup> ~~application~~ for royal pardon made  
a person allowed by British courts prior to our  
occupation shall be addressed to the Military Government.

2. - Given current procedure applied in following as for the Division of Pensions & Pensions Administration in Pensions are concerned (Act 195 of C.P.P.), Law is the documents will not be forwarded to the Minister of Justice, but to the B.C.A.O. of the Province, where the Region ~~where the Province is~~ <sup>where the Province is</sup> ~~where the Province is~~ <sup>where the Province is</sup> will then recommend the granting or the refusal of funding to the Military Government.

3. It is obvious that the wishes of the RAO would be determined mostly by the comments of the Station official who will forward ~~the matter~~ the application to him. However special care should

Re on Pictore are concerned (Art 595 of C.P.P.), but a  
 the documents will not be forwarded to the  
 Minister of Justice, but to the B.C.A.O. of the  
 Province. ~~There the~~ <sup>where the prisoner is</sup> ~~Prisoner~~ <sup>Prisoner</sup> will  
 recommend the granting of the request of pardon to  
 the Military Government.

3. It is obvious that the views of the B.C.A.O. will  
 be determined mostly by the comments of the  
 station officials who will forward the ~~letter~~  
 the application to him. However, special care should  
 be exercised in cases of ~~serious~~ <sup>serious</sup> ~~political~~ <sup>political</sup> ~~offenders~~  
 and the prisoner's request should not be ~~forwarded~~ <sup>forwarded</sup> ~~with~~

4- See attached ~~for~~ <sup>for</sup> ~~the~~ <sup>the</sup> ~~prisoner's~~ <sup>prisoner's</sup> ~~request~~ <sup>request</sup>

JAN 1944

2309

2265

HEADQUARTERS  
ALLIED MILITARY GOVERNMENT  
LEGAL SUB-COMMISSION

AMG/4075/E

17 January 1944

SUBJECT: Transmission of Documents.

TO : CLO HQ A.G.C., Brindisi.

1. The enclosed is forwarded to you for action as the correspondence originated from you.
2. General instructions in respect of the above have from time to time been issued in Region I. (Memo on Italian Courts refers.)

*Richard H. Wilmer*

R.H. WILMER

Lt. Col. C.A.C.

Deputy Chief Legal Officer.

Encl. Letter from Region II,  
dated 13 Jan. 44. Ref. 2201/31/24.

*Major Parker*

785016

19 JAN 1944

2309

HEADQUARTERS  
ALLIED MILITARY GOVERNMENT  
LEGAL SUB-COMMISSION

AMG/4975/L

17 January 1944

SUBJECT: Transmission of Documents.

TO : CLO HQ A.G.C., Brindisi.

1. The enclosed is forwarded to you for action as the correspondence originated from you.
2. General instructions in respect of the above have from time to time been issued in Region I. (Memo on Italian Courts refers.)

R.H. WILSON  
Lt. Col. C.A.C.  
Deputy Chief Legal Officer.

Encl. Letter from Region II,  
dated 11 Jan. 44. Ref. 2201/34/24.

19 JAN 1944

2327

HEADQUARTERS  
ALLIED MILITARY GOVERNMENT  
REGION 2

HEADQUARTERS

14 JAN 1944

11 Jan. 44

Ref. 2201/34/24

Subject :- Transmission of Documents. AMG.

To :- Chief Legal Officer, Legal Sub-Com. A.C.C.

Reference ACC/L/304 of 8.1.44, it is requested that a ruling may be given on the subject of petitions for pardon addressed to the King of Italy by civil prisoners convicted by the Italian Courts in this Region.

2. The practice is and has been for prisoners to be released pending the results of appeals to the King. There is therefore a growing tendency for every prisoner with a short sentence automatically to appeal for clemency.

3. It would not seem clear that the King's right of pardon extends to any person properly convicted in this Region, and it is felt that a racket might easily develop under which the present Italian Government would be able to release whatever persons it likes, in an area over which it is not as yet supposed to have control.

4. Even should it be held that the King's right of pardon extends at all to Region 2, in order to obviate multiplicity of appeals, it is submitted that the right of pardon should be limited to sentences of over 12 months imprisonment.



D.E.S. COUSINS Lt.Col.,  
R.C.L.C.

## RELEASE AND PARDON UNDER ITALIAN LAW.

### I. RELEASE.

Cod. Pen. It. Art. 176 et seq.

A person is punished to imprisonment of more than 5 years and has completed the half of the time fixed in the sentence can be admitted to the conditional release.

The prescription of Art. 176, although saying "can be admitted" is in the practice of the Italian administration of justice a title to the release, if the rest of the imprisonment will be no more than 5 years.

The conditional release is dependent on the accomplishment of the civil obligations of the condemned, if he don't demonstrate the economical impossibility.

The conditional release is not given at persons condemned at a measure of security. This prescription was before the 25 July 43 also used for political purposes.

The conditional release will be revoked in case of relapse or violation of conditions of the "libertà vigilata" of the Italian law.

After the expiration of all the time of imprisonment fixed in the sentence will be cancelled the punishment by order of the judge.

### II. PARDON.

Cod. Pen. It. 151, Cod. Proc. Pen. It. 591 - 596 and for minor persons till 18 years Cod. Pen. It. 169.

In the Italian administration of justice is the amnesty frequently used. There are two groups: The cases of general-amnesty and the cases of individual cases of amnesty. The general-amnesty is frequently based of political motives.

1093  
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In the Italian administration of Justice is the amnesty frequently used. There are two groups : The cases of general-amnesty und the ~~case~~ of individual cases of amnesty. The general-amnesty is frequently based of political motives. The Italian law mentions the pardon ("perdono giudiziale") only in Art. 169 Cod. Pen. for minor persons till 18 years. Therefore the individual cases of amnesty are to consider as a pardon as it is usual in other laws. The regulations of the Art. 379 and 478 Cod. Proc. Pen. are relating to Art. 169 Cod. Pen. It. and therefore only applicable for minor persons till 18 years. Art. 151 Cod. Pen. has the the following text:

The amnesty extinguishes the offence and, if a sentence has

- 2 -

been passed, causes to execution thereof and the necessary punishments to cease.

In the case of the concurrence of more than one offence, the amnesty shall apply to the individual offences in respect of which it is granted.

The extinction of offences by virtue of amnesty is limited to the offences committed up to and including the day preceding the date of the decree, unless the latter fixes a different date. The amnesty may be made subject to conditions or obligations. The amnesty shall not apply to relapsers, in the cases contemplated in paragraphs 2 to 4 of Art. 99, or to habitual or professional delinquents by tendency, unless the decree provides otherwise.

Art. 174 Cod. Pen. has the following text:

Indult or act of grace condones wholly or in part, the punishment inflicted, or commutes it to another kind of punishment fixed by law. It does not extinguish the accessory penalties, except when the decree fixes otherwise, or the other penal effects of the sentence.

In the case of concurrence of more than one offence, the indult shall apply once only, after the punishments have been cumulated, in accordance with the rules governing the concurrence of offences.

As regards indults, the provisions contained in the last three paragraphs of Art. 151 shall be observed.

The application of amnesty, indult and act of grace is fixed in the Art. 591 - 596 Cod. Proc. Pen. It. Those benefits of the law will be granted "ex officio" or on request of the condemned, his relatives his guardian or his solicitor. The request must be presented to the public prosecutor by the court of appealation. Another authority can also accept the request and is, as the public prosecutor obliged to transmit them to the Ministry of Justice and Grace.

The amnesty, indult or act of grace can be given conditionally and will be revoked in the cases fixed by the law.

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

785016

BEST COPY POSSIBLE

A M G O T

CATANIAOGGETTO: - Riapertura della Corte di Corti ItalianeAl Primo Presidente della Corte d'Appello di CATANIA

Facendo seguito alle istruzioni a Lei già impartite dall'Ufficio Legale della Provincia, io La incarico di reaprire immediatamente tutti i tribunali ordinari soggetti alla giurisdizione della Corte d'Appello di CATANIA per tutte le cause criminali. Adecezione dei casi qui sotto menzionati; questi tribunali ascolteranno e giudicheranno tutte le cause a seconda il Codice Penale italiano ed in conformità con i regolamenti di procedura in essere al 9 luglio 1943. Ciascun tribunale sottoporrà un rapporto settimanale al Procuratore del Re ed al Procuratore Generale, a seconda quale dei due sia direttamente interessato nel tribunale in questione, e nel detto rapporto vi sarà indicata il nome di ogni accusato il reato del quale è stato imputato, il verdetto e la eventuale sentenza. Il Procuratore del Re ed il Procuratore Generale trasmetteranno questi rapporti all'Ufficio Legale della Provincia ove avrà avuto sede il tribunale in questione.

Ogni Procuratore del Re ed il Procuratore Generale trasmetteranno due volte al mese all'Ufficio Legale della Provincia un rapporto sul lavoro del loro rispettivo ufficio. In attesa di ulteriori istruzioni riferentesi a cambiamenti nella procedura penale, le seguenti modificazioni almeno per quanto sia possibile, dovranno essere messe in effetto:

- (a) il termine di attesa fra la data di citazione e la data del giudizio dovrà essere ridotto a 5 giorni,
- (b) gli art. 462 e 463 C.P.P.; dovranno essere modificati in maniera che, nel caso ove i testimoni e le parti fossero assenti o non potessero essere citate a causa dello stato di guerra, il giudice possa dispensare della loro presenza o dia ordine alla lettura delle loro dichiarazioni fatte durante il periodo dell'istruttoria;
- (c) l'art 439 (questioni preliminari connesse ad imputati dello stesso reato) e l'art. 414 (che permette la separazione del giudizio) dovranno essere modificati in maniera tale da permettere un giudizio separato per i condannati.

porato vi sarà indicata il nome di ogni accusato. Il Procuratore è stato imputato, il verdetto e la eventuale sentenza. Il Procuratore del Re ed il Procuratore Generale trasmetteranno questi rapporti all'Ufficiale Legale della Provincia ove avrà avuto sede il tribunale in questione.

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- (c) l'art 439 (questioni preliminari connesse ad imputati dello stesso reato) e l'art. 414 (che permette la separazione del giudizio) dovranno essere modificati in maniera tale da permettere un giudizio separato per i coimputati nel caso non fosse possibile avere la presenza di tutti gli imputati.

(d) il Giudice ed il P.M. dovranno avere il diritto di concedere la libertà provvisoria anche nei casi di cui l'art. 253 C.P.P. quando l'inflessa non è grave e le circostanze in cui il reato è stato commesso non giustificano la continuazione della custodia preventiva dell'imputato. Si fa presente che i provvedimenti dei Proclami N. 13, nei quali trattasi genericamente e specificamente delle leggi e dei decreti discriminatori fascisti, dovranno essere messi in atto con la massima severità. Ove qualche giudice o P.M. avesse dei dubbi sull'applicabilità della proibizione delle leggi o dei decreti summenzionati, egli dovrà consultarsi coll'Ufficiale Legale della sua provincia prima di dare effetto alle leggi od ai decreti.

I seguenti poteri sono riservati al Governo Militare Alleato

- (a) il diritto di rivedere qualsiasi sentenza o verdetto;
- (b) il diritto di un Ufficiale addetto agli Affari Civili;
- (c) un Ufficiale Legale di assistere a qualsiasi seduta del tribunale;
- (d) il diritto, da parte di tutti gli accusati, di fare un Governatore Militare nel caso che essi reclamassero che fosse dovuto all'ostilità del giudice verso le forze dette giudizio fosse nocivo agli interessi, delle medesime

(a) la conferma della sentenza di morte ed il potere di clemenza di cui é investito il Governatore Militare.

Tutti funzionare dei tribunali e del P.M. che avessero abbandonato il loro posto per ragioni di guerra, devono rientrare al più presto possibile, sotto pena di licenziamento. Istruzioni verranno emanate di volta in volta dall'Ufficiale Legale in merito ai vostri procedimenti.

4 Settembre 1943

Data copia a:

203071  
Subject: Liberazione Condizionale

To : All S.C.A.O.'s  
C.A.O.'s (Prov.)

L.O.'s and

C.A.F.O.'s

AMG. H.Q. REGION 2

27th October 1943

1. In further clarification of the H.Q. instruction of 10 October addressed to Legal Officers this directive deals with the procedure which should be followed in seeing that prisoners sentenced by Italian Courts to terms of imprisonment which seem to us unreasonably long are not held for the full term of their imprisonment.

2. Under Italian law (C.P. Art. 176, 144; C.P.P., Art. 585; Law of June 27, 1942) persons who have completed one half of their sentence and have a record of good behaviour in jail, are eligible for Liberazione Condizionale (parole). The procedure through which this is granted starts with the Prison Director, goes to the Giudice di Sorveglianza and Procuratore del Re, and is finally completed at the Ministry of Justice and Grace in Rome.

3. It is of the greatest importance that we see that this machinery continues to operate. The usual procedure should be put in operation in each Province, and the Director of Prisons, Giudice di Sorveglianza and Procuratore should be instructed to prepare as soon as possible their recommendations for release, submitting them to the S.C.A.O. of the Compartimento instead of the Ministry in Rome.

4. The final authority to deny or to allow the recommendations is that of the S.C.A.O. It will, however, be of great utility to him if C.A.F.O.'s and L.O.'s supervise and to the extent that may be necessary, participate in the work of the Director of Prisons, Giudice, and Procuratore.

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5. If it is found that persons who have served less than half of their sentence nevertheless deserve to have petitions for release considered the Italian officials above named should be instructed that they should receive and consider such petitions in the usual way. If the equities of the case are clearly in favor of the prisoner the S.C.A.O. should feel free to order Liberazione condizionale, though Italian law would not permit it.

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Lt. Col. Inf. R.C.A.O.

A3

10 October 43

SUBJECT : Liberazione Condizionale  
TO : Legal Officers, Region II

1. The governing provisions of Italian law concerning the parole of convicted prisoners (liberazione condizionale) are to be found in C.P., Art. 176, 144, C.P.P., Art. 585, and in the law of 27 June 1942.

2. Although no great priority should be given to problems of liberazione condizionale the Procuratore della Legge at each Tribunale should be advised that the normal procedures of its administration should be continued, but that no prisoner should actually be released until the recommendations of the giudice di sorveglianza and Procuratore della Legge have been approved by the Legal Officer for the Compartimento.

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Major, AUS, S.L.O., Region II

Subject: Liberazion Condizionale

ALL L.O.'s

C.A.P.O's (Prov.)

L.O's and

C.A.P.O's

AMG. H.Q. REGION 2

27th October 1943

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Lt.Col. Inf. B.C.A.C. REI

LIBERAZIONE CONDIZIONALE  
Legal Officers, Region 2

41 17 7  
16 October '43

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Major, AUS, S.I.O., Region 2

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