

ACC

10000/142/542

00/142/542

AMNESTIES OF AMG OFFENSES
OCT. 1945 - JAN. 1947

16th January 1947

MINUTE NO. 3

To: Chief Legal Adviser.

With reference to Minute 2, please have letter drafted for signature by Chief Commissioner at an early date.



M. CARR, Brigadier.
Executive Commissioner.

21 January 1947

MINUTE NO. 4

To Executive Commissioner:

1. As directed, there has been prepared for the signature of the Chief Commissioner a recommendation on the views set out in Minute 1.
2. May I call your attention to the report of Colonel Carnes, which is set forth in Page 1.
3. It is apparent that the implementation of the Italian Amnesty Decree is not looked on with favor by Colonel Bowen. I take it that it is his opinion that the new Government and not A.M.G. should grant amnesty, presumably because of the precedent of the Italians in 1921.
4. The proposal on A.M.G. cases was warmly received.
5. I deem it advisable to call these facts to your attention, prior to despatching the letter, in order that you may be informed of the position of Colonel Bowen.

151

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4. The proposal on A.M.S. cases has warmly received.
5. I deem it advisable to call these points to your attention, prior to despatching the letter, in order that you may be informed of the position of Colonel Bowen.

W. W. W. W.
 W. W. W. W.
 Colonel, Infantry
 Chief Legal Adviser

5

Chief Commissioner

Please see Minute 5 of Page B.
 Letter enclosed is submitted for signature
 unless you feel some modification should be
 made in it. S.C.A.O. V.G. & West.

W. W. W. W.

22/1/47

W. W. W. W.

MEMO TO THE CHIEF COMMISSIONER:

1. As requested, I have prepared for your approval a reply to the letter of the Vatican, which is enclosed in this file.
2. Oddly enough, this letter came to me as I was preparing a memorandum to you on the matter of policy to be pursued in Venezia Giulia not only with reference to the Italian Amnesty but on Allied Military Government sentences as well.
3. As you know, we have re-examined and adjusted Allied Military Government sentences imposed by us in Italy except those imposed in Venezia Giulia. Being a going concern, it would be unwise to relax the deterrent effect which our sentences carry in the current administration of this area.
4. On the other hand, on R Day, not only will Venezia Giulia Military Government end but the power on our part further to review the cases likewise will end. It behooves us, therefore, to be prepared to act in this behalf before R Day.
5. Anticipating this need, I have dispatched Colonel Carnas to Trieste to canvass the situation with Colonel Bowman and his legal officers. The power to deal with sentences less than two years is vested in Venezia Giulia. The power to deal with sentences over two years is vested in the Allied Commission. Colonel Carnas is bringing back to Rome the records of the sentences of more than two years. These number about twenty.
6. My present idea is as follows: Simultaneously, and in unison, Venezia Giulia will review the two year and less sentences, and I will review the more than two year sentences. No modification will be announced in any sentence, however, prior to a given date.
7. On a given day, - immediately before R Day, - by General Order Venezia Giulia can implement the Italian Amnesty decree. Simultaneous with the issuance of the General Order, an announcement can be made of the decisions determined upon to the review of the Allied Military Government sentences. Thus, in

Further to review the cases likewise will be sent to us, therefore, to be prepared to act in this behalf before R Day.

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7. On a given day, - immediately before R Day, - by General Order Venezia Giulia can implement the Italian Amnesty decree. Simultaneous with the issuance of the General Order, an announcement can be made of the decisions determined upon in the review of the Allied Military Government cases. Thus in one announcement, we can tidy up Venezia Giulia to the same extent and in the same manner as we have done elsewhere in Italy.

8. The above is a solution and not necessarily the solution.

9. I am setting out in Page A the data as reflected in our files with regard to the Italian Amnesty decree. I am of the opinion that this decree should be implemented before the curtain is rung down in Venezia Giulia, postponing the issuance of the order, however, until such time as the end of AMG admin-

E.C. - C.L.H.
2
No draft letter to G-5 recom-
mending the action proposed in the
supported by para 6, 7, 9 & 11
J.D.C.

13 Feb 47

Page 2.

istration is certain. I am also of the opinion that many of our AMG detourment sentences should be modified ere we cease our functions. There can be no doubt that they are on the rugged side.

10. In theory at least, as a commissioned officer, I am supposed to use my imagination and talents in meeting the unprecedented problems with which the Legal Division is confronted in the liquidation of the administration of occupational law in Italy. In the instant case I have sought to anticipate a solution of this problem. Since writing this report initially, the letter of A. F. Hqtrs., G-5, dated 6 January 1947, has been received. It calls for the initiation of ruthless tearing down of activities. An exception is made in work that is essential. As opinions may differ on what is essential, I content myself with calling this situation to your attention. I find it embarrassing to make a recommendation that we proceed with the review of these cases, as I want no suspicion that we are seeking to perpetuate ourselves as seemingly is being done by other Branches.

11. In the case of the Legal Division, one point must not be overlooked. Unlike other Branches, the activities of the Legal Division are controlled by law. Under International Law, with the coming of Peace, our powers under occupational law come to their natural end. By delegation from the Military Governor, we administer Occupational Law. Any needful exercise of such powers must be done ere the powers lapse on R Day. Even if the Military Governor ordered the continuation thereof after R Day, the order would fail for want of power. It follows, therefore, that whatever action is to be taken hereon, if any, must be taken before R Day out of necessity of law.

12 June 46



JOHN A. WEBER
Colonel, Infantry
Chief Legal Advisor

785016

Ex. Comm.

Draft at 17. Any comments please?
by P. B.

10/5/77

St. Catharines

P.S. / am 2D same as sent to me

Buy. Jew, who was really only an

a/Power

me

216
17.11.17
Qud

C. A. SECTION.

1

Letter signed & returned for dispatch copies

have been withdrawn for CO & EC plus 197.

Chf of Comptroller,

Enclosed letter is submitted for signature.

五

I have discussed this matter with Col. Hanaford.

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannaford's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders. -45A.

The total number of cases affected, as stated in our letter to AFHQ, is small and estimated to number about 12.

Col. Webber is still in Florence and doubtless you will wish to discuss this matter with him on his return.

Chief Commissioner.

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M. Carr
M. CARR,
Brigadier,
A/Executive Commissioner.

4 Oct 1946.

CA Sec

Letter signed & returned for despatch. Copy for CC files has been withdrawn.

11/8/10

1.8

56.

Letter signed & returned for despatch. Copy
have been withdrawn for CC files. 13/7.

MINUTE 51

TO : Executive Commissioner
VP CA Section

The Amnesty decree just issued by the Italian Government was the subject of a conference with Brig. DRW, Cols. Bowman and Robertson and Lt. Col. Hanneford.

It was ^{agreed} decided, until further instructions were received from AFHQ not to publish a general order embodying the provisions of the decree for political as well as practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere *farce*.

On the other hand it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be appointed ~~to~~ a locality situated on the wrong side of the line.

11 July 46.

G. S. Hanneford ¹⁷⁶²
DEIA

V.P.C.A.S. - 52.

177

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11 July 46.

G.S. Hammond
Hlae
DEHA

V.P.C.A.S. - 52.

177

We should, I think, follow up our Hamburg

letter to DEHA with a recommendation about

V.G. as recorded above. Would you submit for

CC?

53. Dr. Lutz

V.P.C.A.

Draft submitted as requested of EC.

Wyle S/C
15 June 46.

G.S. Hammond
Hlae
DEHA

MINUTE 21

Legal Sub-Commission

Your attention is drawn to 31 (a) (b) and (c). These documents show the present view point and opinions of the U.S. and British Governments on the question of clemency. The documents are copies only but AFHQ will no doubt raise the matter at an early date with ^{the} H.Q.

It is considered that these documents should be examined and the policy of A.C. determined now, so that this H.Q. may be in a position to state its case so soon as it hears from AFHQ.

4 June 1946

William Leahy May
 W. CARR, Brig.
 VP CA Section.

Chief Commissioner.

22

Attached is submitted for signature
~~information~~

176

CLA, Brig Carr 79 agree. Then made 2 pencil amendments. Debar leave for V.C. 1100 hrs 6/7 AM (5/7)

23

4 June 1946

Chief Commissioner.

12

Approval
Attached is submitted for signature
~~information~~

176

CLA, Brie Carr 79 agree. Then under 2 pencil
amendments. Below leave for V.G. 1100 hrs 6/7 11/5/7

23

Ex. Comm

Letter enclosed for signature by C.C.

8/7/46

Max Bayader
V.R.C.A.S

49.

CA. Sec

Letter returned for dispatch. Copies have been
withdrawn for cc over files. Ex. Com under
Polads to be added to distribution.

50.

Legal 87.

File volumes. Please surplus 48
"The Inquiry" 1947
J.R. Keane C.A. Section

William Keane May

M. Carr, Brig.
VP CA Section.

20

10/5/46

Memo to V P. C.A. Section:

Sometime ago I discussed this matter with a British officer from G.5 who visited the office, and he said that a policy would be announced thereon for our guidance. I learn he was re-deployed one month later! No announcement of policy has been forthcoming.

The vice of these cases is that the offense is a war, as distinguished from a penal offense. On the front, I insisted on the policy that if the court was not prepared to inflict the death penalty, the accused should be acquitted, 115 and turned over for internment as a person dangerous to our security. While thus detained, they are persons entitled to be treated in the nature of war prisoners, but no loss of political

rights flow therefrom, such as
attack to a person convicted
as a felon.

Now that the need for
internment is rapidly passing,
the question is, 'What shall we
do with these long term penal
sentences?' For, unlike in
other types of cases, we have
no parallel penal statutes
by which to gage the sentence.
This is not the case of one of our
citizens committing an act of
espionage or sabotage against
our government (treason in
some form) but an act of an
alien acting in behalf of a
de jure or de fact alien cause.

If you agree, please send
forward the letter.

174
Florence

CA Sec. (att Brig. Carr.)

17

Please see DRAFT letter at folio 22A in reply to letter from

AMHQ at folio 21A. Forwarded for approval or otherwise.

pk.

[Signature]

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

Legal Subcommittee

28 Mar 46.

CA Sec. (Att. Brig. Carr.)

18

See letter at 22A for signature please.

[Signature]

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

Legal Sub-Commission

4 April 1946

Legal S/C.

Letter signed file returned
14. *[Signature]* May
for Ca. Section.

5 April.

113

Ex Comm17

Letter enclosed for Signature by Chief
Commissioner.

M. Canby
UPC-25

CNS8/2/45

Issue. Dr. 9/2/45.

18

Copies withdrawn for co-recipients
Letter cancelled by post office 9/2/45.

Legal I.C.

19

File returned. Pl see minute 18 and copy letter in
file 112
11 Feb. 46.

Walter H. H.
Ch. Reel in.

FC.

15

Chief Commissioner:

Approval
signature
information
Attached is submitted for your

I agree, except to question para 6.
Does this include all FBI and CIC arrests? I believe the number of Italians

103
FEB 7 - RECD

910

copy
sent to
CIC
and
FBI
for
info

C. H. Section 12 (Bug Car)

Will you please examine the enclosed draft ^(19A) and give your reactions?

Refal Prot Com.
2 Feb 46.

Stout
Col. J. J.
C. R. B.

- 14 -

TO: Executive Commissioner.

With reference to AFHQ letter at 16A.

At 19A is a draft of a reply which it is suggested should be signed by the Chief Commissioner.

There has been some delay in dealing with this matter, chiefly owing to the necessity of obtaining particulars as to the number of cases affected. Can the matter be dealt with urgently, please.

Tel. Ext. 525.
6 Feb 46.

CRB 6/2 *HS 6/2*

MC
M. CARR, Brig.,
VI CA Section.

Issue As amended in para 6. 15 avoid taking responsibility for 25 cases *MR 7/2*

170

V.P., C. A. Sec.

Please see, for your information, folios 13A and 13B.

Legal Sub-Commission.
27 November 1945.

John K. Weher
JOHN K. WEHER,
Colonel,
Chief Legal Advisor.

Legal

Pls draft reply to CA for CC sign.

You will have to consider separately the question of inclusion of
executive sentences

W. H. H. H.

CAS
28 NOV. 1945
X-525

All a conference at which Polak, A. B. Legal, & CAS
were represented that though the ^{agreement} of 13 B was
not accepted it was for instance is inaccurate to say
that a provision provided the sentence was unjust as to say
that a gift proved that the subject matter of the gift had
been wrongfully determined from the donor. It was felt that
little good would be served by arguing the matter with
HARR. Both Polak's were in favor of an act of clemency
and were suggesting that these embassies would take the
matter up with their respective governments. No further
action was therefore called for

W. H. H. H. 169

7 DEC 1945

5

Ex. Comm

Reference Munk 5 and our discussion on this subject letter enclosed has been redrafted to include points raised.

As regards fines - see para 3(f) of letter. It is the practice to impose a sentence in default of payment if the fine has not been paid and the sentence in default will run. If no sentence in default were passed there would have been some good reason for it. Legal advice that 3(f) should cover this situation in any case. The letter only raises the question of policy and general principles with J.F.H.G. Detailed implementation will require working out later with the Ministry of Justice.

5/1

M. Can / Bogdan
V.P.C.A.

6

NOV 6 REC
11 23

Chief Commissioner.

Attached is submitted for your information/signature/approval
I have discussed & kept 168

Refinery of Tuckee.

57x1

McCam/Brydger
V.P. & A.S.

6.

NOV 6 1968
11 23

Chief Commissioner.

108

Attached is submitted for your information/signature/approval

I have discussed a flight

and agree

7/5/5/21

✓

CA Section

Letter signed & returned for dispatch. CC & EC
copies have been withdrawn

✓ kept for dispatch. 6/11
J. Kelly

- 4 -

TO : Executive Commissioner.

- 1 With reference to the Prime Minister's letter at Folio 6A, on the subject of an Act of Clemency in the case of sentences imposed by Allied Military Govt Courts, two methods of giving effect to the Prime Minister's proposal have been under consideration by the Civil Affairs Section as follows:-
 - a) That no general act of clemency should be granted but that all cases should be reviewed and sentences adjusted to make them correspond to those which the Italian Courts might have given under Italian law.
A review would take a considerable time. The act of clemency would, in this case, take the form of an announcement at some future date, say two or three months hence, giving details of the particular sentences which were to be reduced.
 - b) A general act of clemency under which certain remissions of sentence in accordance with an agreed scale would be granted in all cases.
- 2 In connection with this matter it is important to bear the following in mind:-
 - a) In certain categories of cases the punishment imposed was such as to act as a deterrent.
 - b) All Court sentences are not subject to the normal prison rules for certain remissions for good-conduct in prison.
 - c) In all AMG cases prison authorities hold only particulars of the sentence imposed and not of the offence committed. It would not be possible, therefore, in any general act of clemency to exclude any particular type of offence since this would entail a review of cases and the general act of clemency would lose its speed and simplicity.
- 3 It is recommended that an act of clemency should be granted. An outline of a general act of clemency has now been agreed with the Chief Legal Adviser and is set out and explained at Folio 9A.
If it is desired to study the various arguments concerning this matter, they are at Folios 4A and 4B (CLA's original proposal) and at Minute 3 (views of Civil Affairs Section)
- 4 If the proposal given at Folio 9A is agreed to by the Chief Commissioner, it is suggested that the following action be taken:
 - a) A letter should be sent to the Prime Minister stating that this Commission agrees in principle to an act of clemency but that no announcement can be made until the directions of the Supreme Allied Commander in this matter are received.
 - b) That details of the proposed act of clemency should be submitted to the SAC's directions.
If the SAC agrees, it is considered that an announcement as to the general lines of the act of clemency should be made by the Allied authorities. If it is decided that this announcement be made at the same time as the handing over

- as a deterrent.
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 - b) That details of the proposed act of clemency should be submitted *to AFHQ* for the SAC's directions.
If the SAC agrees, it is considered that an announcement as to the general lines of the act of clemency should be made by the Allied authorities. If it is desired that this announcement be made at the same time as the handing over of the Northern Regions, the matter may be one of urgency.
The act of clemency would then be implemented through an Italian Government decree.
 - 5 It should be noted that it is suggested that the act of clemency should not apply to AMG territory which, when the Northern Regions are handed over, would include VENEZIA GIULIA, UDINE, possibly BOLZANO, the Islands of PANTELLERIA and LAMPEDUSA. A later act of clemency on the handing back of these territories could be made to bring sentences in these territories into line.

6. If the Lufwaffe are approved a letter for signature by C.C. is enclosed. On return of file a letter will be drafted to M. CARL, Brig.

CA Section
1 Nov 45

To AFHQ
To President of Council

6000/11

- 3 -

VP

- 1 This matter seems to have left the proper channels. The question as to whether or not there should be a general act of clemency by the Allies to mark the return of practically the whole of Italy to Italian administration is one of policy and not of law.
- 2 Folio 3A should not have been addressed to the Legal Sc but to CA Sec. Similarly folios 4A and 5A should have been addressed by Legal Sc to this Sec. It is proposed, therefore, to treat 4A as if it was addressed to this Sec.
- 3 The recommendations at 4A are not concurred with.
 - a) One factor in determining a term of imprisonment was that the sentence should be an effective deterrent. The reason for this additional severity has now ceased. The increase in sentences has served its purpose and, so far as the Allies are concerned, there remains very little virtue and no benefit in persons continuing to serve their increased sentences.
 - b) Secondly, there is no doubt that an act of clemency would be a political gesture welcome to the Italians. It would also be evidence to the world of the reasonable and humanitarian attitude of the Allies.
 - c) It would relieve the overcrowding of the prisons which is extremely bad.
- 4 It is not agreed that the division of offences in Para 4 is the best for deciding whether or not an act of clemency should be granted. It is considered that two factors may properly be taken into consideration:
 - a) whether any and what addition has been made to the sentence as a deterrent and
 - b) the quality of the act; that is to say, whether it was deliberately done as an act hostile to the Allies or whether it was innocent of that intent.
- 5 Two examples are given of these criteria affecting the suggested division:
 - a) Para 4 a of folio 4A includes wire cutting but does not differentiate as to whether the act was one by which an ignorant peasant collected useful material or whether it was a hostile act deliberately planned and intended to disrupt communications at a critical moment;
 - b) Para 4b includes robbery etc; there is little doubt that hearing deterrent sentences were frequently given in cases of wrongful possession into which Italians (possibly not unwillingly) had been led by Allied personnel.
- 6 With regard to the argument in para 5 of 4A.
 - a) The fact that an act is the first of its kind is, if it is a reasonable and proper act, no argument against doing it.
 - b) There is no analogy with Germany, Austria or Japan. Italy was a co-belligerent and co-operator and fought beside the Allies, both by regular troops and, in the north particularly, by partisans. Any step taken here, for action taken with regard to Austria,

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- c) There should, of course, be no doubt as to the source of the act of clemency but if, as it should, it extends to persons sentenced by Italian courts for offences against the Allies, it will be necessary for the Italian Government to take the effective executive steps so far as persons sentenced by these courts are concerned.
- 7 If an act of clemency is to be an effective and welcome political gesture, it must be easily understood and co-incide in time with the events it is to mark. It is quite inappropriate to inform the Italian Government that a board is being set up to review cases to determine what acts of clemency should be granted. Not only will the whole value of the political gesture be lost but it will not be marked by any outstanding act for its political value will be wittered away in months of unnecessary work. The work of a review Court is of no benefit to the Allies and, so far as AC is concerned, it is a waste of man-power. It would lead to delay and disappointment.

Further, the announcement of such a board would be followed by a flood of applications and petitions for clemency causing a large increase of work.

8 An act of clemency by which is meant that one does not have to give a reason for every detail Does not have to be reasonable. It is sufficient that it is the wish of the grantor. It is, of course, desirable that it should not be exercised unreasonably.

9 The following is suggested as to the form which an act of clemency might take:

That all sentences by A-C Courts will be reduced as follows:

Life sentences will be reduced to 20 years;

All other sentences will be reduced to one half;

All persons who have served more than one half their sentences will be immediately released.

The Allies approve of the Italian Government taking such action as may be necessary similarly to reduce the sentences of persons sentenced before Italian courts for offences against the Allies.

10 If it is desired, it would be possible to extend a complete pardon to such relatively innocent offences as being out after curfew, and to exclude those guilty of acts intentionally hostile to Allied security; but to do so would impair the simplicity of the scheme, cause a lot of work and investigation, with consequent delay and disappointment. As has been said, an act of clemency has no need to be reasonable.

11 If, on the whole, sentences as between respective persons are fair, as between themselves and according to their respective offences, they will remain fair inter se if they are all reduced by the same proportion. The Allies are not concerned if, thereby, a man who has committed an offence against the Allies has his sentence reduced and another who has committed a comparable offence, but not against the Allies, does not. The pardon is purely an expression of Allied good will. Other offences are totally irrelevant.

12 It is not suggested that the terms in the above example are the most desirable. That is a matter for consideration; if the Legal Sec can supply statistics as to sentences, it will be possible to determine, according to the proportion of prisoners it is desired to release, by what proportion sentences should be reduced. The most convenient form of statistical table for this purpose would be a table (of the League Sports type) with the length of sentence along the top, the principal types of crime on the left-hand side, and the number of cases under the appropriate length of sentence.

13 It will also have to be decided whether the general clemency will apply in territory such as Udine which is not returned and whether it will apply in Venezia Giulia. It is recommended that it should apply in all territory under AIG.

10/11/45

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10 If it is desired, it would be possible to extend a complete pardon to such relatively innocent offences as being out after curfew, and to exclude those guilty of acts intentionally hostile to Allied security: but to do so would impair the simplicity of the scheme, cause a lot of work and investigation, with consequent delay and disappointment. As has been said, an act of clemency has no need to be reasonable.

11 If, on the whole, sentences as between respective persons are fair, as between themselves and according to their respective offences, they will remain fair inter se if they are all reduced by the same proportion. The Allies are not concerned if, thereby, a man who has committed an offence against the Allies has his sentence reduced and another who has committed a comparable offence, but not against the Allies, does not. The pardon is purely an expression of Allied good will. Other offences are totally irrelevant.

12 It is not suggested that the terms in the above example are the most desirable. That is a matter for consideration; if the Legal Sec can supply statistics as to sentences, it will be possible to determine, according to the proportion of prisoners it is desired to release, by what proportion sentences should be reduced. The most convenient form of statistical table for this purpose would be a table (of the League Sports type) with the length of sentence along the top, the principal types of crime on the left-hand side, and the number of cases under the appropriate length of sentence.

13 It will also have to be decided whether the general clemency will apply in territory such as Udine which is not returned and whether it will apply in Venezia Giulia. It is recommended that it should apply in all territory under AEG.

Approved

S.H. WHITE Lt Col,
CSO CA Section

25 Oct 45

VP. Since the above was written 7A and 8A have been reviewed. 7A is persons of interest. It is a request for clemency to the Disposition of Prisoners Committee. 8A is a suggestion from Public Safety that the clemency may reduce the prison sentences.

Approved

CA S
20011800
X 608.

3

4079/1



31 January 1947

SUBJECT : R-Day Plan re Amnesty and Disposition of
AMG Cases in Venezia Giulia

TO : Allied Force Headquarters
Attention: G-5 Section

1. In view of the imminence of the signing of the Treaty of Peace with Italy, and the consequences attendant thereon, it is considered advisable that a definite plan be evolved at this time regarding implementation of the Italian Amnesty Decree, and final disposition of cases of prisoners serving Allied Military Government Court sentences in Venezia Giulia. In this connection it is believed that the procedure outlined in the following may be best suited to the accomplishment of desired results, and its adoption therefore is recommended.

2. As the first step to be taken under this plan, it is proposed that prompt final review be made of all outstanding sentences imposed by Allied Military Government Courts in Venezia Giulia, those of two years and less to be conducted in Venezia Giulia, the greater ones to be handled by the Legal Division of Allied Commission. Cases in the latter category now number twenty two. This procedure is considered necessary to accomplish just modification of the many long-term deterrent sentences of our courts in this area, by the time our administrative obligations there shall have ended. In any event, amnesty would not be extended to include Allied Military Government cases, and decisions reached as a result of such joint review would not be announced until a given date, just prior to termination of Allied Military Government administration.

3. The next consideration would be preparation of a General Order of Venezia Giulia giving full force and effect to the provisions of the Italian Amnesty Decree in that area. For reasons of policy, the Italian Amnesty Decree has not been implemented in Venezia Giulia (see letter AC/4079/1/L, dated 19 July 1946; also letter, G-5 934.43, dated July 1946). This, of course, should be done, in all justice, to allow qualified prisoners there the same privileges and immunities enjoyed by persons of the same standing throughout other parts of Italy.

4. Decision then would be made regarding a date certain, immediately before R-Day, for simultaneous promulgation of the General Order giving effect to the Italian Amnesty Decree and announcement of decisions on review of Allied Military Government cases, referred to in paragraphs 2 and 3 above,

Page 2.

at which time all of our obligations in these connections thus would be definitely closed out.

5. In contemplation of this plan attention is invited to the fact that under International Law powers now vested in the Military Governor in this behalf come to a natural end with the advent of Peace.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

copies to:

AC/4005/L

AC/4193/L

163

CMM/SC

7160
4079 ✓

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
~~EXCERPTS~~

VENEZIA GIULIA

LEGAL DIVISION

Legal
4962

Reference No.: VG/AMG/LD/99/146

Subject : Amnesty. 14 January 1947

To : ALLIED COMMISSION

Supplemental memo for notes
given Col. Carnes yesterday herewith
attached.

For the Senior Civil Affairs Officer:



CHARLES M. MUNNECKE

Lt. Colonel

Chief Legal Officer

Incl.

102

CME/SC

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS
~~XXXXXXXXXX~~

VENEZIA GIULIA

LEGAL DIVISION

Reference No.: VG/AMG/LD/ 99/146
Subject : Amnesty. 14 January 1947
To : ALLIED COMMISSION

Supplemental memo for notes
given Col. Carnes yesterday herewith
attached.

For the Senior Civil Affairs Officer:



CHARLES M. MUNNECKE
Lt. Colonel
Chief Legal Officer

Incl.

101

3PM

72A

LEGAL DIVISION

14 January 1947

Supplemental to Memo dated 13 January 1947
Subject : Amnesty.

R.D. 5 October 1920, No. 1416 and
R.D. 13 March 1921, No. 214, provided by Italian
decree for Amnesty for offenses for which sentence
was imposed by Austria.

Apparently, the Government turning over
(Austria) did not act on the matter, but left it
to the new Government.

As to whether this Amnesty included
political offenses, is not determined by me as yet -
further *inquiry* will be made by me.

Charles M. Monroche
CHARLES M. MONROCHE
Lt. Colonel 160
Chief Legal Officer

✓
copy to Allied Comm.

71A

Memorandum to Col. Weber:

In compliance with your orders, Col. Carnes had a conference with Col. Bowman and Lt.Col. Munnecke in Trieste on 12 January 1947, to find out the views of Col. Bowman with reference to amnesty and a review of AMG cases prior to the withdrawal of AMG from Venezia Giulia. This conference resulted in the following conclusions by Col. Bowman:

1. That all A.M.G. cases should be re-reviewed prior to Feb. 10, 1947.

(a) Cases where any defendant in the case has been sentenced in excess of 2 years will be reviewed as to all defendants convicted, by Allied Commission. (Col. Carnes had informed Col. Bowman that one of the purposes of his visit was to collect cases referred to in (a) with a view of reviewing them in case this was ordered by AFHQ.)

(b) All other cases to be re-reviewed by A.M.G.-V.C. Headquarters.

159

2. Decisions on review should be announced at a time about one week before A.M.G. turns over.

3. No amnesty for A.M.G. cases - all will be individually considered.

4. Col. Bowman was of the opinion that amnesty should be divided into two groups:

(a) As to political offenses - convictions by Special Court of Assize - It is his opinion that amnesty should not be granted by A.M.G. because:

1. Trials in Special Court of Assize are still in progress.

X

- 2 -

2. Defascism is still a very live and controverted subject and it is not considered advisable for A.M.G. to grant leniency in these cases.

3. As to whether grace is to be granted, it should be left to decision by a legislative act of the people concerned, (i.e. a decree by a legislative body in which U.G. is represented).

(b) As to other offenses included in the Italian Decree of Amnesty, he would prefer to leave the matter to the new governments concerned. However, if after a survey of the number of persons involved and an application of its provisions, it is determined that a comparatively small number of persons will be actually released from prison, he has no objections to implementing the decree.

5. Col. Carnes explained to Col. Bowman that he had been directed to get his views on amnesty for Col. Weber prior to submission by Allied Commission of a recommendation to AFHQ on the subject.

138
James J. Carnes,
Col., Inf.

70A

AC/4070/1/L

13 January 1947

My dear Monsignor Carroll:

Your letter N. 159971/SA of 26 December 1946 has been received.

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

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

With all good wishes,

Sincerely,

[Signature]

ELIERY W. STONE
Rear Admiral, USNR
Chief Commissioner

157

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

407911 ✓

HEADQUARTERS ALLIED COMMISSION
Office of the Chief Commissioner
APO ~~9634~~ 794

69A

MEMORANDUM:

TO : Legal Sub Commission

For preparation of a reply for the signature of the
Chief Commissioner.


EDWARD T. S. SULLIVAN,
Major, Air Corps,
CSO to CC.

0900
7 Jan 47

3 136

Sir, letter referred to is
at folio 59A. M. S. [unclear]



Vatican City, December 26, 1946

N. 138971/SA

Dear Admiral Stone,

The Secretariat of State of His Holiness, having received a further inquiry from His Excellency Bishop Santin of Trieste on the subject of a possible amnesty for those imprisoned in the Venezia Giulia area, and referring to its letter of 18 September 1946 and your kind response of 8 October (AC/4079/1/L), would take the liberty to address you once more on this subject.

Bishop Santin states that the political offenses with which these men have been charged were committed when Trieste was under the same regime as the rest of Italy, and that many of them are on the same level or even less serious than the offenses for which amnesty has been granted in the rest of Italy.

The Bishop's letter, dated 4 December 1946, earnestly petitions for the extension of the amnesty to the unfortunate persons enduring an already prolonged internment so that they might return to their homes for the Christmas season.

The Secretariat of State would be grateful for a benevolent consideration of this petition on the part

Admiral Ellery Stone
Chief Commissioner
Allied Commission
Via Veneto

Rome

of the Allied Military Authorities in the Venezia
Giulia area.

With sentiments of cordial regard and esteem,
I am

Sincerely yours,

Walter S. Carroll.

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

MINUTE 54

6PA

Ex. Comm.

Draft of LA. Any comments please?

(Sgd) M. CARR, Brig.
V.P. C.A. S.

15/7/46

P.S. I am not sure we want to mention Brig. Drew who was really only an observer.

MC

MINUTE 55

CA Section

Letter signed and returned for dispatch. Copies have been withdrawn for CC and EC files.

18/7

J.G.

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannaford.

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannaford's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders.

The total number of cases affected, as stated in our letter

19

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannafoord.

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannafoord's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders.

The total number of cases affected, as stated in our letter to AFHQ, is small and estimated to number about 12.

Col. Weber is still in Florence and doubtless you will wish to discuss this matter with him on his return.

(Sgd) M. Carr, Brigadier
M. CARR,
Brigadier
A/Executive Commissioner

4 Oct 1946.

MINUTE 57

CA Sec.

Ltr signed and returned for dispatch. Copy for CC files has been withdrawn.

6/10

L.J.G.

MINUTE 51

TO : Executive Commissioner
VP CA Section

The Amnesty decree just issued by the Italian Government was the subject of a conference with Brig. DRUM, Cols. Bowman and Robertson and Lt. Col. Hannaford.

It was agreed, until further instructions were received from AFHQ not to publish a general order embodying the provisions of the decree for political as well as practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

(Sgd) C. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

11 July 1946

MINUTE 52

153

VP CA S

We should, I think, follow up our Amnesty letter
We should, I think, follow up our Amnesty letter

in Trieste and the consequences of a political liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

11 July 1946

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

153

MINUTE 52

VP CA S

We should, I think, follow up our Amnesty letter to AFHQ with a recommendation about WG as recorded above. Would you submit for C.C.?

12/7

ML

MINUTE 53

VP CA

Draft submitted as requested by E.C.

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Legal S/C
15 June 46

Ref: AC/4079/1/L

19 July 1946

SUBJECT: Implementation of Amnesty Decree
in VENEZIA GIULIA.TO : ALLIED FORCE HEADQUARTERS,
Attention: G-5 Section.

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

1. The question of extending all or part of the amnesty decree to VENEZIA GIULIA was discussed in Trieste at a meeting at which Colonels Bowman and Robertsor, AMG 13 Corps, and Lt. Col. Mansford of this HQ were present.
2. It was agreed, for political as well as practical reasons, not to publish a General Order embodying the provisions of the decree pending instructions from your HQ.
3. The Special Court of Assizes is still operating in TRIESTE and the consequence of a political amnesty liberating Fascists a few months after their sentences have been pronounced by Courts created by AMG might be prejudicial to the whole jurisdiction thus established.
4. On the other hand, there remains the injustice of a functionary appointed by the Republican Fascist Government remaining in prison just because he was unfortunate enough to be assigned to a locality now in disputed territory.
5. The former Minister of Justice, Palmiro Togliatti, in an interview with Lt. Col. Mansford expressed the opinion that it would be premature to implement in VENEZIA GIULIA the amnesty decree under some form or other. Togliatti pointed out that the political conditions which justified the promulgation of anti-Fascist legislation, now partly rescinded by the amnesty, had subsided in Italy but still obtained in VENEZIA GIULIA. The implementation, he thought, would at present do more harm than could be justified by the desire to redress a small number of individual cases of injustice.
6. I am of opinion that the amnesty decree of 22 June 1946 should not for the time being take effect in VENEZIA GIULIA.
7. Will you please say if you concur.

152

(Sgd) ELLERY W. STONE
Rear Admiral, USNR
Chief CommissionerCopy to: Chief Commissioner
Exec. Commissioner
Polad (A)
Polad (3)
AMG 13 Corps.

C O P Y

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5 : 934.43

July 1946.

SUBJECT : Implementation of Amnesty Decree
in VENEZIA GIULIA.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference your 4079/1/L of 19 July 46.

It is agreed that the amnesty decree should
not be promulgated in VENEZIA GIULIA.

BY COMMAND OF LIEUTENANT GENERAL MORGAN :

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

Copy to : US POLAD
Br POLAD



VS/MC/A/1346

16 January 1947

Subject: Amnesty and Review of Cases.

To : Assistant Chief of Staff, G-8
Allied Force Headquarters.

1. Enclosed is a memorandum by the Chief Legal Officer of this Headquarters purporting to embrace the conversation, and decisions arrived at, at a short conference between Colonel Barnes of the Review Board, Legal Division, Allied Commission and the Senior Civil Affairs Officer and Chief Legal Officer, this Headquarters on 13 January.

2. The memorandum reflects what occurred as I remember it except as follows:

A. "(2) Decisions on review will be announced at one time about one week before A.M.I. turns over."

I am opposed to blanket action of any kind either in the extension of amnesty or the announcement of decisions on review. I feel that each case should be handled on its own merits and, while as a matter of internal policy and administration we may put on a special drive before we turn over, no public attention should be directed to that fact. We may lose some credit but on the whole I think that the advantages of this procedure will outweigh the disadvantages.

B. "(4) b) As to other offenses included in the Italian Decree of Amnesty, we should prefer to leave the matter to the new governments concerned. However, if after a survey of the number of persons involved and an application of its provisions, it is determined that a comparatively small number of persons will be actually released from prison, we have no objections to implementing the decree."

The Italian amnesty decree would not of course in any event be "implemented". However, for reasons analogous to those above discussed, I should prefer that there be no amnesty decree but that clemency be extended in individual cases which might or might not closely approximate the effect of the Italian decree. Action should, in any event, be individual and unaccompanied by publicity. I think that the total number of persons involved will be small enough so that there should be no trouble about this.

ref
ALFRED C. BOWMAN
Colonel, J.A.G.D.
SENIOR CIVIL AFFAIRS OFFICER

Incls:

Memo dtd 13 Jan 47
by Chief Legal Officer, AMO/VO

copies to:

Chief Legal Officer, AMO/VO

Allied Commission, Rome, Attn: Col Carnes

LEGAL SUB - COMMISSION	
CJO - CLA	
~~BOB~~ Review Board	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	23 JAN 1947

149

A.M.C.

Pursuant to conference with Col. Cairnes and Col. Rowan to-day with reference to amnesty and review of A.M.C. cases the following comments are made:

(1) A.M.C. cases will be re-reviewed prior to February 10, 1947.

a) Cases where any defendant in the case has been sentenced in excess of 2 years will be reviewed as to all defendants convicted, by Allied Commission.

b) All other cases will be reviewed by this Headquarters.

(2) Decisions on review will be announced at one time about one week before A.M.C. turns over.

(3) No amnesty for A.M.C. cases - all will be individually considered.

(4) Amnesty is divided into 2 Groups -

a) As to political offenses - convictions by Special Court of Assize - It is our opinion that amnesty should not be granted by A.M.C. because:

1) Trials in Special Court of Assize are still in progress.

2) Defascism is still a very live and controversial subject and it is not considered advisable for A.M.C. to grant leniency in these cases.

3) As to whether grace is to be granted, it should be left to decision by a legislative act of the people concerned, (i.e. a decree by a legislative body in which V.C. is represented).

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b) As to other offenses included in the Italian Decree of Amnesty, we should prefer to leave the matter to the new governments concerned. However, if after a survey of the number of persons involved and an application of its provisions, it is determined that a comparatively small number of persons will be actually released from prison, we have no objections to implementing the decree.

c) In any event, the matter is of such importance that we should prefer instructions from A.F.H.Q. before issuing any order on amnesty.

Trieste, 13 January 1947

/s/ Charles E. Munroe
/t/ CHARLES E. MUNROE
LT. COLONEL, INFANTRY
CHIEF LEGAL OFFICER

Copy to SCAC

C O P Y

4079/1

52P

File 664

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.43 P

24 January 1947

SUBJECT: Amnesty and Review of Cases.

TO : SCAG
Venezia Giulia

Reference your VG/AMG/4/1345 of 18 January 1947.

1. The views expressed in your above-mentioned letter are substantially agreed. The object of review is to see that the case was legally conducted; that the evidence justified conviction and the sentence was reasonable and uniform with others for similar offenses.

2. The Review Board is not concerned with amnesty nor has it any powers to reduce sentences as a matter of policy so that convicts may be released on the cessation of Allied Military Government.

3. Pardon is the prerogative of the Supreme Allied Commander and the policy concerns not only Venezia Giulia but the remainder of Italy also. There will therefore be no question of amnesty or any general reduction of sentences (even if considered individually) without the approval of this Headquarters.

BY COMMAND OF GENERAL MORGAN:

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

147

Copy to: ALCCM. ✓

LEGAL SUB - COMMISSION	
CJD - CLA	
OCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	27 JAN 1947

4079/1
✓
3455
1059
Lynch
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.43P

13 November 1946

SUBJECT: Clemency.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference your letter AC/4079/1/L of 8 July.

1. The Supreme Allied Commander has noted with interest the Crime statistics with your letter AC/4079/1/L of the 30 September and notes that the Minister of Justice expresses the view that the revision of sentences by the Allies which is now nearing completion has had practically the same effect as of the Amnesty decree had been extended to all those convicted for offences against the Allies.

2. No further action on the Prime Ministers letter (73387/50077. 4.2.4.2.) of the 24th June would appear necessary. Will you please, therefore, inform the Prime Minister that the Supreme Allied Commander, although not prepared to extend the Amnesty Decree to persons convicted by AMG Courts, has caused the sentences of such persons to be reviewed, thereby achieving the same result.

3. With regard to the removal of civil disabilities resulting from conviction to which you refer in para 3 of your letter AC/4079/1/L of the 30 September, you may inform the Minister of Justice that the Supreme Allied Commander has no objection, if the Italian Government consider such a course desirable, to persons sentenced for offenses against the Allies being relieved, after their release from prison, from any civil or other disabilities which would otherwise attach to them as a result of their conviction.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

LEGAL SUB-COMMISSION

ADJ. GEN.

ADM.

CHIEF COUNSEL

LEGAL SECTION

NOV 15 1946

146

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

4079/1
T-R-A-N-S-L-A-T-I-O-N

64A

Ministry of Pardon and Justice
General Department of Penal Affairs
Office No.

Rome,

To : The First Presidents of the
Courts of Appeal,
Procuratori Generali, Courts
of Appeal,
Presidents of Sections, Courts
of Appeal,
Avvocati Generali, Sections,
Courts of Appeal

and for information

To : The Allied Commission,
Liaison Officer with the Allied
Commission.

SUBJECT : Sentences passed by the Allied Military Authorities
against Italian citizens.

Your attention is drawn to the provisions under Art. 2
of R.D.L. No. 31 of 11 February 1944 establishing that judgments
passed by Allied Military Courts have the same effects as if they
were passed by Italian Tribunals.

The above purports that, as soon as the Italian
Authorities are advised, the judgments passed shall have full
effects particularly in regard to the enforcement of the penalties
imposed as well as for the penal index cards to be prepared by
the Central Penal Recording Office.

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It should be borne in mind, however, that as far as
the provisions under the aforesaid article are concerned, the
effects of the judgments passed by the Allied Military Courts
may be modified or annulled by the Allied Commission or upon consent
of the Allied Commission.

In consequence thereof the effects of the judgments revoked shall cease and the effects of the sentences modified shall be limited in accordance with the new sentence as modified.

Data relating to the revocation shall be listed on the penal index cards as well as upon the penal certificates when issued.

In case the penalty has been modified, the last decision taken by the Allied Commission shall be considered as definitive.

The above remarks are very important inasmuch as the Allied Commission, in view of the fact that the Italian amnesty decrees do not apply to offenses committed to the detriment of the Allied Forces, reconsiders the cases periodically, and usually grants a reduction of penalty.

Will you please draw the attention of the appropriate offices under your administration in regard to the above mentioned instructions and in particularly the ones entrusted with the task of enforcing the sentences as well as the local Penal Recording Offices.

Please give assurances.

(Signed)

THE MINISTER

144

MEMO TO THE CHIEF COMMISSIONER:

1. As requested, I have prepared for your approval a reply to the letter of the Vatican, which is enclosed in this file.
2. Oddly enough, this letter came to me as I was preparing a memorandum to you on the matter of policy to be pursued in Venezia Giulia not only with reference to the Italian Amnesty but on Allied Military Government sentences as well.
3. As you know, we have re-examined and adjusted Allied Military Government sentences imposed by us in Italy except those imposed in Venezia Giulia. Being a going concern, it would be unwise to relax the deterrent effect which our sentences carry in the current administration of this area.
4. On the other hand, on R Day, not only will Venezia Giulia Military Government end but the power on our part further to review the cases likewise will end. It behooves us, therefore, to be prepared to act in this behalf before R Day.
5. Anticipating this need, I have dispatched Colonel Carnes to Trieste to canvass the situation with Colonel Rowman and his legal officers. The power to deal with sentences less than two years is vested in Venezia Giulia. The power to deal with sentences over two years is vested in the Allied Commission. Colonel Carnes is bringing back to Rome the records of the sentences of more than two years. These number about twenty.
6. My present idea is as follows: Simultaneously, and in unison, Venezia Giulia will review the two year and less sentences, and I will review the more than two year sentences. No modification will be announced in any sentence, however, prior to a given date.
7. On a given day, - immediately before R Day, - by General Order Venezia Giulia can implement the Italian Amnesty decree. Simultaneously with the issuance of the General Order, an announcement can be made of the decisions determined upon

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it would be unwise to relax the deterrent effect of sentences carry in the current administration of this area.

4. On the other hand, on R Day, not only will Venezia Giulia Military Government end but the power on our part further to review the cases likewise will end. It behooves us, therefore, to be prepared to act in this behalf before R Day.

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6. My present idea is as follows: Simultaneously, and in unison, Venezia Giulia will review the two year and less sentences, and I will review the more than two year sentences. No modification will be announced in any sentence, however, prior to a given date.

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7. On a given day, - immediately before R Day, - by General Order Venezia Giulia can implement the Italian Amnesty decree. Simultaneous with the issuance of the General Order, an announcement can be made of the decisions determined upon in the review of the Allied Military Government cases. Thus in one announcement, we can tidy up Venezia Giulia to the same extent and in the same manner as we have done elsewhere in Italy.

8. The above is a solution and not necessarily the solution.

9. I am setting out in Page A the data as reflected in our files with regard to the Italian Amnesty decree. I am of the opinion that this decree should be implemented before the curtain is rung down in Venezia Giulia, postponing the issuance of the order, however, until such time as the end of AMG admin-

istration is certain. I am also of the opinion that many of our AMG deterrent sentences should be modified ere we cease our functions. There can be no doubt that they are on the rugged side.

10. In theory at least, as a commissioned officer, I am supposed to use my imagination and talents in meeting the unprecedented problems with which the Legal Division is confronted in the liquidation of the administration of occupational law in Italy. In the instant case I have sought to anticipate a solution of this problem. Since writing this report initially, the letter of A. P. Hqtrs., G-5, dated 6 January 1947, has been received. It calls for the initiation of ruthless tearing down of activities. An exception is made in work that is essential. As opinions may differ on what is essential, I content myself with calling this situation to your attention. I find it embarrassing to make a recommendation that we proceed with the review of these cases, as I want no suspicion that we are seeking to perpetuate ourselves as seemingly is being done by other branches.

11. In the case of the Legal Division, one point must not be overlooked. Unlike other branches, the activities of the Legal Division are controlled by law. Under International Law, with the coming of Peace, our powers under occupational law come to their natural end. By delegation from the Military Governor, we administer Occupational Law. Any needful exercise of such powers must be done ere the powers lapse on R Day. Even if the Military Governor ordered the continuation thereof after R Day, the order would fail for want of power. It follows, therefore, that whatever action is to be taken hereon, if any, must be taken before R Day out of necessity of law.

142

JOHN K. WHELAN
Colonel, Infantry
Chief Legal Advisor

An exception is made in work that is essential. I content myself with calling this differ on what is essential. I find it embarrassing to make a situation to your attention. I find the review of these cases, as recommendation that we proceed with the review of these cases, as I want no suspicion that we are seeking to perpetuate ourselves as seemingly is being done by other Branches.

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142

JOHN E. WEIER
Colonel, Infantry
Chief Legal Advisor

Ref: AC/4079/1/L19 July 1946SUBJECT: Implementation of Amnesty Decree
in VENEZIA GIULIA.TO : ALLIED FORCE HEADQUARTERS,
Attention: G-5 Section.

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

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

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

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

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

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

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

7. Will you please say if you concur.

(Sgd) ELLERY W. STONE **141**
Rear Admiral, USNR
Chief Commissioner

Copy to: Chief Commissioner
Exec. Commissioner
Polad (A)
Polad (9)
AMG 13 Corps.

MINUTE 51

TO : Executive Commissioner
VP CA Section

The amnesty decree just issued by the Italian Government was the subject of a conference with Brig. DRW, Cols. Bowman and Robertson and Lt.Col. Hannaford.

It was agreed, until further instructions were received from AFHQ not to publish a general order embodying the provisions of the decree for political as well as practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

11 July 1946

(Sgd) C. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

MINUTE 52

VP CA S

Call attention to Amnesty letter

practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

11 July 1946

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

140

MINUTE 52

VP CA S

We should, I think, follow up our Amnesty letter to AFHQ with a recommendation about VG as recorded above. Would you submit for C.C.?

12/7

ML

MINUTE 53

VP CA

Draft submitted as requested by F.C.

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Legal S/C
15 June 46

MINUTE 54

Ex. Comm.

Draft of LA. Any comments please?

(Sgd) M. CARR, Brig.
V.P. C.A. S.

15/7/46

P.S. I am not sure we want to mention Brig. Drew who
was really only an observer.

MC

MINUTE 55

CA Section

Letter signed and returned for dispatch. Copies
have been withdrawn for CC and EC files.

19/7

J.G.

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannaford, 139

His view is that as special courts of assize are still function-
ing in Venezia Giulia the political implication of releasing Fascist politic-
al offenders sentenced by a court, created by order of AMG, after a few
months detention would have a serious effect.Hannaford's original view was that the amnesty if applied at all
should apply only to criminal and not to political offenders.

The total number of cases effected, as stated in our letter to

Letter signed and returned for dispatch. Copies have been withdrawn for CC and EC files.

19/7

J.G.

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannaford. 139

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannaford's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders.

The total number of cases affected, as stated in our letter to AFHQ, is small and estimated to number about 12.

Col. Weber is still in Florence and doubtless you will wish to discuss this matter with him on his return.

(Sgd) M. Carr, Brigadier
M. CARR,
Brigadier
A/Executive Commissioner

4 Oct 1946.

MINUTE 57

CA Sec.

Ltr signed and returned for dispatch. Copy for CC files has been withdrawn.

8/10

L.J.G.

407911

CONFIDENTIAL

345

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

ALL/SHW/CGH

G-5: 934.43R

12 November 1946

SUBJECT: Clemency (Amnesty to Fascist Offenders)

TO : Venezia Giulia
Allied Military Government.

Reference this Headquarters letter G-5: 934.43R of 6 August
and your letter VG/AMG/LB/99/3227 of 19 October 1946.

The views expressed in your letter as to the undesirability
of an act of clemency in Venezia Giulia in favour of fascists is
accepted. No further action will be taken as regard the petition.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

/s/ A. L. HANFLEN
/t/ A. L. HANFLEN
Colonel, GSC,
Assistant Chief of Staff, G-5.

Copy to:
Allied Commission. ✓



LEGAL SU

CJO-CLA

DCLO

CHIEF COUNSEL

ITALIAN SECTION

Recd

NOV 15 1946

138

CONFIDENTIAL

TRANSLATION

The Keeper of seals
Minister of Pardon and Justice

AC/4585/5

Rome, 16 September 1946

Dear Col. SEHR,

The present position of persons sentenced by Allied military courts is almost the same as that of persons found guilty by Italian courts, as has always been the constant desire of the Italian Government for obviously reasons of uniformity and justice.

This situation has been reached by overcoming notable difficulties because, as you are aware, it has never been possible to apply a provision of amnesty.

In the first place I must say that great merit in securing the above result is due to the Legal Sub-Commission, upon whose collaboration this Ministry has been always able to fully rely, and especially to your personal understanding of our problems and needs.

I am following with keen interest your judicial activity and greatly appreciate the sense of equity that you have constantly shown.

And largely, to your numerous revisions of Allied cases frequently resulting in a notable reduction of sentences, a situation has been reached very similar to that of persons found guilty by Italian courts who enjoyed the amnesty of 5th April 1944, and the recent one.

Further according to recent agreements proposed by you, the possibility of applying by means of a Ministerial Decree Conditional Liberty to those particularly deserving of it, allows us to declare that as far as the prison situation is concerned, a work of social pacification and real justice has been achieved.

However, in order to continue our work in this direction, I think it will be ~~83~~ fortunate to examine together a system that may

61A

37

- 2 -

mitigate also the legal disabilities of those sentences viz. the mention of the sentence in the criminal record (Penal Procedure Code Art. 608 No. 6), the accessory penalties (Penal Code Art. 23 - 38), security measures (Penal Code 199 - 240).

In this way we can arrive at a situation analogous to that reached by Italian Government by granting amnesty which, with regard to crimes already tried, has brought about a full rehabilitation of the convicted persons.

This end, especially desirable as regards the partisans who have committed crimes solely for political reasons, could be achieved by means of a provision issuing either from the Allied Commission or the Italian Government.

In any event, if you agree to this necessity, we shall try to find a plan the more suitable to the matter.

I beg you to let me know your view on this problem

Cordially Yours

(SBB)

Fausto GULLO.



136

4079/1/L

LEG. SUB-COMMISSION

Chief Counsel

CJO

Ballon 934.43P

CL RK5

SUBJECT : Clemency

TO : Chief Commissioner
Allied Commission
APO 794

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

601A

1 October 1946

Please refer to your AC/4079/1/L of 18 September and this Headquarters letter G-5: 934.43P of 23 August 1946; when may the requested figures be expected please.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. Hamblen

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

AC/4079/1/L

1st IND.

HQ. ALLIED COMMISSION, LEGAL SUB-COMMISSION, APO 794, 5 OCT 46

TO : ALLIED FORCE HEADQUARTERS, G-5 Section APO 512, U.S. Army.

Statistics requested were forwarded by this office on 30 September 1946.

For the Chief Commissioner :



L. J. GILBRIDE,
Major, ICD,
Chief Counsel.

59 A

AC/4079/1/L

8 October 1946

My dear Monsignor Montini:

57A

I am writing to acknowledge receipt of your letter N. 138971/SA of 18 September 1946.

An initial decision was taken by the Supreme Allied Commander in July last that the amnesty decree should not, for the time being, take effect in Venezia Giulia. I am, however, having further consideration given to this matter and will write you again.

With all good wishes,

Sincerely,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

134

His Excellency Monsignor G. B. Montini
Secretariat of State of His Holiness
Vatican City

HEADQUARTERS ALLIED COMMISSION

APO 394

Office of the Executive Commissioner

58A

2 October 1946.Chief Legal Adviser.

45A
570

Reference the attached. Will you please put on relevant file and draft a courteous reply for Chief Commissioner to send to Secretary of State of the Vatican.

Will you also let me know on the file what was the final decision regarding application of the amnesty in Venezia Giulia.

Chief Commissioner is of the opinion that we should forward a copy of the attached to AFHQ but no action should be taken until the matter has been discussed.



M. CARR,
Brigadier,
A/Executive Commissioner.

133

MC/KR.



N. 130971/EA

Dal Vaticano, 11 September 18, 1946

Dear Admiral Stone,

The Secretary of State of His Holiness has been advised by Bishop Santin of Trieste that the Italian Government amnesty is not being extending to those tried and imprisoned in the Trieste area for the same offenses for which in the other areas of Italy liberation from imprisonment has already been granted.

His Excellency indicates that much suffering has been and continues to be caused by the discrimination applied in the limitation of the amnesty areas.

In view of the circumstances, the Secretary of State of His Holiness is transmitting the request of Bishop Santin that, if possible, the amnesty be extended to the above mentioned area.

With kind personal regards,

132

Sincerely yours,

J.B. Montini

Admiral Ellery Stone
Chief Commissioner
Allied Commission
Via Veneto

Rome

1609
 FTB

NUMBERS OF PRISONERS UNDER SENTENCES OF

AND COURTS

SENTENCES GREATER THAN ONE YEAR

56A

<u>OFFENSES</u>	<u>YEARS OF TERMINATION</u>					<u>Life</u>	<u>Totals</u>
	<u>1946</u>	<u>1947</u>	<u>1948- 1949</u>	<u>1950- 1955</u>	<u>1956- 1975</u>		
Allied Property - Theft, possession and Conspiracy	78	134	60	31	1	0	313
Arms - Possession, Non- Declaration and Conspiracy	25	59	23	24	0	0	131
Counterfeit Money - Making and Possession	4	18	25	11	11	0	69
Armed Robbery	5	0	13	14	2	0	34
Assault of Allied Personnel	4	4	5	7	4	0	24
Murder and Homicide	1	0	6	5	11	10	33
Bribery and Conspiracy	0	4	3	1	0	0	18
Spies, Espionage and Sabotage	0	1	1	8	23	11	44
Other Offenses - Acts Prejudicial to Good Order, Demonstrations, Petition Laws, etc.	20	22	4	5	0	0	51
<u>TOTALS</u>	<u>197</u>	<u>242</u>	<u>249</u>	<u>106</u>	<u>52</u>	<u>21</u>	<u>707</u>

SENTENCES LESS THAN ONE YEAR

Allied Property - Theft, possession and Conspiracy	21	21
Arms - Possession, Non-	8	8

Summary of Allied Personnel										
Murder and Homicide	4	4	5	7	4	0	24			
Bribery and Conspiracy	1	0	6	5	11	10	33			
Spies, Espionage and Sabotage	0	4	3	1	0	0	18			
Other Offences - Acts Prejudicial to Good Order, Demonstrations, Nation Laws, etc.	0	1	1	8	23	11	44			
TOTALS	20	22	4	5	0	0	120			31
	117	242	149	106	52	21	707			

Summary of Allied Personnel

Allyed Property - Theft, Possession and Conspiracy	21						21			
Arms - Possession, Non-Declaration and Conspiracy	8						8			
Bribery and Conspiracy	1						1			
Other Offences - Acts Prejudicial to Good Order, Demonstrations, Nation Laws etc.	3						3			
TOTALS	33						33			

GRAND TOTALS	170	242	149	106	52	21	740			
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728

FILE

HEADQUARTERS ALLIED COMMISSION
APO 704
LOCAL SUB-COMMISSION

55A

AG/6074/2/1.

1307ms.
30 September 1946.

SUBJECT : Clemency.

TO : Assistant Chief of Staff,
G-5, AFHQ.

54A

1. Reference is made to letter G-5 : 974.43K dated 23 August 1946, subject as above.

2. As requested there is forwarded herewith a tabulation covering persons at this time remaining under AMG sentences, showing sentences of one year or less separately from sentences of over one year. As will be observed all of these cases fall within the first classification mentioned of offenses which might endanger Allied security or operations. Sentences in the other class of cases, for crimes no longer of moment such as curfew offenses, have expired. This table does not include five out of an original number of 153 cases of persons in confinement under AMG sentences whose names could not be reconciled with those appearing in our records, owing to various causes such as given wrong names or, in the case of women, the use of family rather than marriage names. It is expected that eventually these remaining five cases will be fully accounted for. For any use which may be made of this record it should be borne in mind that all of the persons included therein do not now remain in jail. Operation of Conditional Liberty, of course, is causing the liberation of a number of them by the Italian Government upon expiration of half of the sentence being served.

3. There is also enclosed for such action, if any, as may be deemed appropriate, letter received from the Minister of Pardon and Justice, with translation, regarding mitigation of legal disabilities attendant upon sentences of AMG Courts. Inasmuch as legal disabilities deriving from such sentences are established by Italian law the opinion is held that no action concerning them should be taken by Allied authorities, but that in case the Italian Government is willing to decree cancellation of such disabilities no objection should be interposed. In reading this letter it now becomes clear that the remedy suggested by the Italian Government for these cases is in the nature of forgiveness of the civil consequences of offenses committed

- 2 -

which, under our law, is accomplished only by pardon.

For the Chief Commissioner:

Incl.

G.O. HANCOCK.
Lt. Colonel,
Deputy Chief Legal Advisor.

128

LEGRL

882

FILE

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.43P

23 August 46

SUBJECT: Clemency.

TO : Chief Commissioner,
Allied Commission,
APO 794.

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

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

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

BY COMMAND OF LIEUTENANT GENERAL LEE: :

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

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
AUG 26 1946	

Copy sent to EC for EC

MC

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

53A

MF/rm.

23 September 1946.

AC/4079/1/L.

My dear Minister,

Upon my return I found your letter of the 16 September 1946 and I hasten to reply.

Let me first thank you for your kind words regarding the activity of this Sub-Commission which I have the honour to direct.

The feelings you have expressed towards myself are a pledge of a more intimate collaboration between us in the future.

I am glad that my endeavours in the judicial field have been appreciated by you but, as regards the particular suggestion contained in your letter, I am sorry to be unable to give you an immediate reply because I am still waiting for instructions from higher Authorities.

Upon their reply I shall at once communicate with you.

I take the opportunity of expressing you my best wishes.

Yours sincerely

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

1-6

On. Fausto GULLO
Ministro Guardasigilli
Sua Sede

FILE

MEMO TO THE CHIEF COMMISSIONER :

1. Letter from A.F. Headquarters, "Flag A" is for your information.
2. A copy of a letter from the Minister of Justice referred to in paragraph 1 of "Flag A" is set out in "Flag B".

COMMENTARY :

3. The powers authorized in paragraph 3 of "Flag A" to be exercised by the Italian Government make the third major step in our program of adjusting the stern administration of occupational law to the level of normal judicial standards. The three major steps successively taken are :

- a) Review of cases.
- b) Grant of power to Italian Government to grant Conditional Liberty in AMG cases.
- c) Removal of Italian civil disabilities resulting from AMG convictions.

4. Now that (c) supra, has been authorized, as suggested by the Minister of Grace and Justice in his letter to me (Flag B) it is in order that the Minister and I agree on a system for the promulgation of the powers granted in paragraph 3 of Flag A.

5. Before approaching the Minister on this matter, because of the great importance which the Italian Government will undoubtedly attach to this third concession, it has occurred to me that for reasons of policy the announcement might be formally made by you, as Chief Commissioner, or by you and the Prime Minister jointly. As we have put multiplied thousands in jail for offences against Proclamation Law, the announcement will be far reaching.

- b) Grant of power to Italian Government to grant Conditional Liberty in ASD cases.
- c) Removal of Italian civil disabilities resulting from AMG convictions.

4. Now that (c) supra, has been authorized, as suggested by the Minister of Grace and Justice in his letter to me (Flag B) it is in order that the Minister and I agree on a system for the promulgation of the powers granted in paragraph 3 of Flag A.

5. Before approaching the Minister on this matter, because of the great importance which the Italian Government will undoubtedly attach to this third concession, it has occurred to me that for reasons of policy the announcement might be formally made by you as Chief Commissioner, or by you and the Prime Minister jointly. As we have put multiplied thousands in jail for offences against Proclamation Law, the announcement will be far reaching.

6. Candidly, I do not know if it would be wise or otherwise for you to make such announcement. You know the answer to that question better than I. The point I here make is, should you desire to make a formal announcement, in working out the system with the Minister of Grace and Justice, I would want it understood that no publicity was to be given our discussions until you had acted thereon.

7. What are your wishes?

8. Two further steps remain in our program. One is now underway: we are checking the status of every person in Italian jails held under any color of Allied authority. I hope to be able to say to the Italian

Government that any person not undergoing lawful sentence of an Allied Court, or any person not held for security reasons, who are being detained, cannot be held in prison under color of Allied authority.

9. The last major premise are those cases of long term sentences for espionage and sabotage convictions. You will recall that at your special instance, I brought this matter to the attention of G-5. As you know, I got nowhere fast. I say now as I said then, this issue should be met with the same courage we have met the three major premises above set out.

10. Personally, I am gratified with the approval in Flag A which the Military Governor has given the review program. That the Italian Government has likewise been impressed with our program is evidenced by the statement contained in Flag B. There can be no doubt that the step now authorized in paragraph 1 of Flag A is a solid step in the right direction.

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

TRANSLATION

Rome, 15 Sept 46.

The keeper of the Seals.
Minister of Grace and Justice

AG/4589/5/L.

Dear Col. Weber,

The present position of persons sentenced by Allied Military Courts is almost the same as that of persons found guilty by Italian Courts, as has always been the constant desire of the Italian Government for obviously reasons of uniformity and justice.

This situation has been reached by overcoming notable difficulties because, as you are aware, it has never been possible to apply a provision of amnesty.

In the first place I must say that great merit in securing the above result is due to the Legal Sub-Commission, upon whose collaboration this Ministry has been always able to fully rely, and especially to your personal understanding of our problems and needs.

I am following with keen interest your judicial activity and greatly appreciate the sense of equity that you have constantly shown.

Due largely to your numerous revisions of Allied cases frequently resulting in a notable reduction of sentences, a situation has been reached very similar to that of persons found guilty by Italian Courts who enjoyed the amnesty of 5th April 1944 and the recent one.

Further, according to recent agreements proposed by you, the possibility of applying by means of a Ministerial Decree Conditional Liberty to those particularly deserving it; allows me to declare that as far as the prison situation is concerned, a work of social pacification and real justice has been achieved. 123

However, in order to continue our work in this direction, I think it will be opportune to examine together a system that may mitigate also the legal disabilities of those sentences viz. the mention of the sentence in the criminal record (Penal Procedure Code Art. 608 No. 6), the accessory penalties (Penal Code Art. 28-38), security measures (Penal Code 199-240).

In this way we can arrive at a situation analogous to that reached by Italian Government by granting amnesty which, with regard to crimes already tried, has brought about a full rehabilitation of the convicted persons.

This end, especially desirable as regards the partisans who have committed crimes solely for political reasons, would be achieved by means of a provision issuing either from the Allied Commission or the Italian Government.

In any event, if you agree to this necessity, we shall try to find a plan the more suitable to the matter.

I beg you to let me know your view on this problem.

Cordially yours

(sgd) Fausto Gullo.

IL GUARDASIGILLI
MINISTRO DI GRAZIA E GIUSTIZIA

Roma, 16 settembre 1946

UC/4589/5

Pregiatissimo Col. Weber,

La situazione in cui vengono attualmente a trovarsi i condannati dalle Corti Militari Alleate si è grandemente ravvicinata a quella di coloro che sono stati giudicati dai Tribunali Italiani, come è stato sempre costante desiderio del Governo Italiano per evidenti ragioni di uniformità e di giustizia.

A tale situazione si è avvicinati vincendo notevoli difficoltà in quanto, come Lei ben sa, non è stato mai possibile per costoro applicare un provvedimento di amnistia.

È detto dirLe, innanzi tutto, che grande merito di quanto sopra spetta alla Sottocommissione Legale, sulla cui collaborazione questo Ministero ha potuto sempre fare ampio affidamento e, in particolare, sulla Sua personale comprensione dei nostri problemi e delle nostre necessità.

Io sto seguendo, con vivo interesse, la Sua attività giudiziaria ed ho potuto, attraverso questa, apprezzare in sommo grado il senso di equità da Lei costantemente dimostrato.

Particolarmente attraverso le Sue numerose revisioni dei processi alleati, che spesso hanno condotto a una notevole mitigazione della pena, si è raggiunta una situazione abbastanza simile a quella dei condannati dai Tribunali Italiani, che hanno potuto usufruire sia dell'amnistia del 5 Aprile 1944, sia della recente amnistia.

Inoltre, con la possibilità di applicare con Decreto Ministeriale la liberazione condizionale, secondo i recenti accordi da Lei promossi, a coloro che particolarmente se ne rendono meritevoli, si può affermare che, per quanto riguarda gli effetti detentivi di queste condanne, si è compiuta opera di pacificazione sociale e di vera giustizia.

Tuttavia per proseguire su questa via ritengo opportuno proporre di esaminare, di comune accordo, un sistema che mitighi anche le conseguenze giuridiche e cioè la menzione delle condanne nel certificato penale (C.P.P. art. 608 n.6), le pene accessorie (C.P. artt. 28-38), le misure amministrative di sicurezza (C.P. Artt. 199..240) di queste condanne penali in modo da raggiungere una situazione analoga a quelle che il Governo Italiano ha ottenuto con l'amnistia, che, per quanto

riguarda i reati già giudicati, ha portato a un'ampia riabilitazione dei condannati.

I mezzi per raggiungere questa giusta finalità, particolarmente sentita per quanto riguarda i partigiani, che hanno commesso dei reati per fini soltanto politici, formalmente potrebbe concretarsi in un provvedimento della Commissione Alleata o del Governo Italiano.

Comunque, qualora Lei sia d'accordo su questa esigenza, si cercherà di trovare insieme il sistema più idoneo in proposito.

La prego vivamente di volermi far conoscere il Suo pensiero su questo problema e gradisca i miei saluti più cordiali.

(sgd) Fausto Gullo

Colonnello W E B E R

Capo della Sottocommissione Legale

R O M A

A true copy

L. J. Gilbride

L. J. GILBRIDE,
Major, 1GD

120

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

FILE

FILE

57A

LJS/ns

18 September 1946

AC/4079/1/L

SUBJECT : Clemency.

TO : Assistant Chief of Staff
G-5, AFHQ.

1. Reference your G-5 : 934.43 P dated
13 September, subject as above.

2. Tabulation as requested is in process
of preparation and will be forwarded within a few days'
time.

For the Chief Commissioner :

FILE

JONAS E. WEBER,
Colonel, Infantry,
Chief Legal Adv 149

1

FILE

4079/1

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

1506

Legal

LB

50A

13 September 1946

G-5: 934.43P

SUBJECT: Clemency.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference your AC/4079/1/2 of 8 Jul.

It is hoped that you will be in a position to forward
at an early date the statistics requested by this Headquarters
letter G-5: 934.43P of 23 Aug.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

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

LEGAL COUNSEL	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
LEGAL SECTION	
MEMBERS REVIEW BOARD	
16 Sept 46	

FILE

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FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

49A

JKW/rm.

12 September 1946.

AC/4079/1/L.

SUBJECT : Amnesty.

TO : Provincial Commissioner, UDINE, Province.
(Attn. SLO Maj. GILSHENAN)1. See your letter of 6 September 1946, No. SLO/HQ
AC/SEPT/1.

2. The matter of amnesty is being dealt with at the highest level of the Allies. It must be borne in mind that Japan, Germany and Austria are similarly situated. No forecast is made as to when the decision will be announced, and what such decision will be. Nor is it desired that any expression be made by lower levels during such consideration. Please accept our assurance that the Allied Commission has not been indifferent to such matter.

By command of Rear Admiral STONE :

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

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
UDINE PROVINCE

6 September 1946.

SUBJECT: Amnesty

TO : Chief Legal Advisor
Legal Sub-Commission
HQ AC ROME.

REF. : SIC/HQ AC/SEPT/1

Is it possible to accelerate a decision on the question of amnesty in respect of individuals sentenced by AEG Courts. The delay in announcing a decision causes much inconvenience and is the subject of much adverse comment in the Province.

By order of the Provincial Commissioner.

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
CLERK SECTION	
MEMBERS REVIEW BOARD	
SEP 10 1946	

C. I. P. [Signature]
Senior Legal Officer.

116

4079/1/2

17A

3. August 1946

W/350.05

My dear Mr. Prime Minister:

With reference to your 73361/50877.h.2.h.2 of 24th June.

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

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

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

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

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

Yours very truly,

115

M. S. LUSH

BRUCE A. STONE
Asst. Atty. Gen., USMC
Chief Commissioner

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

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

785016

ALLIED FORCE HEADQUARTERS
G-5 Section
AFC 512

WILLIS TOWERS WATSON

C=O: 99.45

July 1946.

SUBJECT: Implementation of Amnesty Decree
in VENEZIA OTULIA.

TO : Chief Commissioner,
Allied Commission,
APO 784.

45A

Reference your 4979~~8~~/L of 19 July 46.

It is agreed that the amnesty decree should not be promulgated in VENEZIA GIULIA.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

Handwritten signature

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

Copy to: US POLAD
Br POLAD

114

JUL 29 1946

HEADQUARTERS ALLIED COMMISSION

Office of the Chief Commissioner

A P O 794

Ref: AC/4079/1/L.19 July 1946.SUBJECT: Implementation of Amnesty Decree
in VENEZIA GIULIA.TO : ALLIED FORCE HEADQUARTERS.
Attention: G-5 Section.

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

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

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

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

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

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

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

7. Will you please say if you concur.

(Sgd) ELLERY W. STONE 113
Rear Admiral, USNR
Chief Commissioner

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

FILE

HEADQUARTERS ALLIED COMMISSION
ABC 794

43A

AC/409a/1/L

8 July 1946

SUBJECT : Italian Amnesty.

TO : AFHQ (G-5 Section).

1. My advisors and I have given full consideration to the Italian Government's Presidential Decree No. 4 of the 26th June 1946 which grants a wide measure of amnesty and pardon for common, political and military offences and of which a version in English is enclosed. I have also received from the Prime Minister a letter dated 24th June 1946 on this subject, a copy of which is enclosed.

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

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

4. The only other article of the decree which calls for comment is Article 13 which deals with offences committed to the detriment of the Allied Forces.

the Prime Minister a letter dated 25th June 1946 on this subject, a copy of which is enclosed.

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

3. Attention is drawn to the interpretation of Article 3 of the decree. Read together with the explanatory notes which accompanied the decree, as submitted to the Council of Ministers, this Article excludes from any benefits under the decree those persons who, possessed of high functions of a civil, political or military nature, committed certain specified offences. It means, moreover, that they ^{para 2} concerned need not necessarily be of high rank, but that the provisions can be applied to a subordinate officer who held an appointment normally granted to an officer of high rank.

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

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

- 2 -

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

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

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

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

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

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

by the Review Board to reduce sentences of clemency. In this connection reference is made to your Headquarters letter G-5:O14.5 of 28th February 1946 and in particular to paragraph 4 of that letter.

Your Headquarters has never agreed to amnesty being applied to offences triable in A.M.G. or Italian Courts affecting Allied Interests or personnel but by letter G-5:O14.5 of 30th April 1946 has agreed to the Italian Government applying 'provisional liberty' to the cases specified in para 5 of this letter.

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

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

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

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

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

- 3 -

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

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

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

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

1st Eberly W. Stone

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

110

subject of Italian citizens mentioned
who are mentioned in the Prime Minister's letter paragraphs
4, 5 and 6.

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

19/ Henry W. Stone

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

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Distribution

Copy to C.C.
E.C.

AC/4079/7/L

MEASURES TO DEPEND PROVIDING FOR SECURITY
AND PAROLE DATED 22 JUNE 1946 -

42A

Mr. President,

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

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

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

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

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

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

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

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

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

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

Article 1, of the amnesty covers all the offences -- therefore also military as well as political ones, which are punished by detention only or by detention and fine, or by superior to five years imprisonment. For the granting of such benefit art. 32 of the Penal Code applies.

In regard to political offences, the decree makes a distinction between those which were committed in certain parts of the State after the beginning of the new Administration or in territory which remained under the administration of the legitimate Italian Government from the 1st September 1943, as well as for those which were committed before this time limit.

In the first case the amnesty, excepting the cases under Article 4, is complete, and also includes criminal acts committed by certain elements or groups which belonged to the civilian separatist movement, or which attempted to reconstitute the fascist movement. Acts committed in violation of penal laws after the liberation of the national territory committed by the partisans are also included in these provisions. 108
crime under art. 575 of the Penal Code falls under the amnesty if it were committed in the conditions established by R.D. 17-XI-1945 No. 719, and before 31-III-1945. In the second case, which covers crimes under Articles 3 and 5 of R.D. 27-IV-1944 No. 19, and Art. 1 of R.D. 22-V-1945 No. 144, and the crimes connected with them by virtue of art. 45, No. 2 of the Penal Code, the persons who were entrusted with duties of high responsibility and those who committed or were associated with murder, massacre, robbery and other crimes committed with the purpose of obtaining a personal profit are excluded from the amnesty. In this way, the amnesty is applied in favour of those persons who were not entrusted with high functions, or have not committed criminal acts of great importance while in cases of great responsibility and cases of criminal acts the full severity of law is applied.

The judge may request that necessary investigations be made in cases where the application of articles 1 and 3 is not clearly established.

(3)

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

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

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

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

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

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

As far as political crimes are concerned, the clemency provides for a commutation in the most severe sentences and a liberal application of pardon in the other cases. It has been decided that the death penalty be commuted to that of imprisonment for life in all cases in which the exceptions established under Art. 5 of the amnesty decree are not applicable and that all sentences imposing an imprisonment for life be commuted to a term of 30 years. Other sentences of imprisonment are reduced as established under Art. 9 (c). The pecuniary penalties are totally remitted. The policy in regard to the objective exclusion from the benefit which is always more favourable to political prisoners is also different. Finally, in so far as the most severe sentences for which a commutation of penalty has been granted are concerned, the provisions under Art. 12 relating to the revocation of the benefit are not applicable. These apply only in the case of pardon.

107

(4)

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

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

As far as the effective date of the decree is concerned, it has been established to deviate from the provisions contained in the Code.

It has been fixed that the benefits are applicable to offences committed up to 18 June 1946 with the particular exceptions set out in the present decree.

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

411A

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

The President of the Council of Ministers by virtue of the
powers of temporary Chief of State vested upon according to Art. 2,
I part of the D.L.L. of 16 March 1946 No. 96;

Having seen the Art. 8 of the Statute;

Having heard the Council of Ministers;

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

ARTICLE

Art. 1

Amnesty for crimes

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

Art. 2

Amnesty for political crimes committed after the liberation

105

Amnesty is granted for political crimes which are punishable
with a prison term, even superior to that indicated in art. 1 above,
provided they have been committed in any part of the national territory
after the beginning of civil administration as well as for all
political crimes committed after the 8th Sept. 1943 in the part of the

Art. 1

Amnesty for crimes

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

Art. 2

105

Amnesty for political crimes committed after the liberation

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

Art. 3

Amnesty for other political crimes

An amnesty is granted for the crimes provided for by Art. 3 and 5 of the D.L.L. 27 July 1944 No. 150 and by Art. 1 of the D.L.L. 22 L.R. 1745 No. 142 as well as for crimes provided by the provisions of Art. 45 N. 2 of the R.D. Procedure Code, except in case they have been committed by persons or high civil political or military functions, or in the case where massacre, savage tortures, murder, pillage have been committed or in the case they have been committed for purposes of profit.

- 2 -

Art. 4

Exclusion from amnesty

The amnesty ^{granted} in the articles above does not apply to:

1. The crimes under Art. 575 Penal Code, except in case it has been committed before the 31 July 1945 in the conditions provided for by Art. 1, first para of the D.L.L. 17 Nov. 1945 No. 719;
2. The crimes provided for in the D.L.L. 12 October 1944 No. 323 repressing the prostitution and the crimes provided for by Art. 531 and following of the chapter II, Part. IX, Book II of the Penal Code;
3. The crimes under arts. 318, 319, 321, 422 and 564 of the Penal Code;
4. The crimes provided for by chapter IV, Part. I, Book II of Penal Code;
5. The military crimes under Art. 15 below.

Art. 5

Political nature of thecrimes

In case a sentence has been passed and on the basis of such sentence or from the acts of procedure it cannot be ascertained if the crime is of a political nature or not, the judge who has jurisdiction to declare the amnesty shall order necessary investigations to take place.

The same investigations shall be ordered by the Supreme Court of Cassation if an appeal to the same is pending.

Art. 5

Political nature of the
crimes

In case a sentence has been passed and on the basis of such sentence or from the acts of procedure it cannot be ascertained if the crime is of a political nature or not, the judge who has jurisdiction to declare the amnesty shall order necessary investigations to take place.

The same investigations shall be ordered by the Supreme Court of Cassation if an appeal to the same is pending.

Art. 6

Request of trial by the accused

The amnesty does not apply if the accused, before the issuing of the sentence which sets out that the crime is extinguished because of the amnesty, states that he does not want to take advantage of its benefit.

Art. 7

Reckoning of retaliation

For the purpose of applying the amnesty, establishing the penalty

- 3 -

imposed and for any other purpose established by law the rules set down in Art. 22 of the Code of Penal Procedure shall apply.

Art. 8

Pardon for common offences

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

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

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

Art. 9

Pardon and commutation of penalty for political offences.

104

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

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

same offence, a pardon granted after D.L.L. No. 679 of 5 October 1945 came into operation, the limits for the fine under para 1 above are doubled.

Art. 9

Pardon and commutation of penalty for political offences. 104

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

- (a) The penalty of death is commuted to one of life imprisonment, save for the exception provided for an amnesty granted under Art. 3.
- (b) The penalty of life imprisonment is commuted to one of 30 years imprisonment.
- (c) All other sentences of imprisonment over five years shall be reduced by one third but in any case such reduction shall not be less than five years; all other sentences of imprisonment not over five years are fully pardoned.
- (d) All fines are fully remitted.

Art. 10

Exclusion for from pardon

Pardon shall not apply:

- 4 -

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

2. For offences indicated in Art. 4.

3. For offences under Arts. 314, 317, 453, 575, 628, 629 and 630 of the Penal Code, save if committed for political reasons.

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

Art. 11

Consideration of previous penal Records.

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

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

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

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

In applying the benefits to cases of political offences

by the following provisions.

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

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

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

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

Art. 12

Revocation of pardon

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

- 5 -

Art. 13

Offences committed to the detriment
of the Allied Forces

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

Art. 14

Financial offences.

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

Art. 15

Military offences.

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

In cases where such decree provides that the benefit shall be granted subject to a fulfillment of an obligation, such obligation shall be carried out within 30 days after the present decree of 103 into force. Such time limit shall start from the first day the interested person, in case he is abroad, reaches Italy. In applying articles 1 and 2 of the above mentioned D.L. the increase of penalty provided by Art. 47 of the Military Penal Code of War shall not be taken into consideration.

Art. 16

Art. 15

Military offences.

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In cases where such decree provides that the benefit shall be granted subject to fulfillment of an obligation, such obligation shall be carried out within 30 days after the present decree shall be carried out. Such time limit shall start from the first day the interested person, in case he is abroad, reaches Italy. In applying articles 1 and 2 of the above mentioned D.L. the increase of penalty provided by Art. 47 of the Military Penal Code of 1946 shall not be taken into consideration.

Art. 16

Date of operation.

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

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

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

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

Dated, 22 June 1946.

DE GEMINTI

Teclintti - Pomita - Brosio -
 - De Courten - Cevelotto -
 - Gullo

Seen, the Keeper of the Seals:
Togliatti.

40A

Ref. SD/550.05

4 July 1946

SUBJECT : Italian subjects in Allied Internment Camps.

TO : AFHQ (G-5 Section)

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

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

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

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

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

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

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

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

101

Copy to : Office of the Executive Commissioner
Public Safety S/C.
File AC/4079/I/1

TRANSLATION

The President of the Council of Ministers.
73387/50077.4.2.4.2.

Rome, 24 June 1946

My dear Admiral,

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

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

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

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

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

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

Believe me, my dear Admiral,

Respectfully yours,

/s/ De GASPERI

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission - Rome.

TRANSLATION

Leg. 2/10
File 14079/1/LJ.H.
2/7

CA Sec

39A

THE PRESIDENT OF THE COUNCIL OF MINISTERS

73587/50077.1.2.4.2.

Rome, 24 June 1946.

My dear Admiral,

As you already know, in occasion of the advent of the Republic and with a view to a fruitful internal pacification, the Government has made a large provision of amnesty and pardon for the crimes committed up to 15 June 1946.

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

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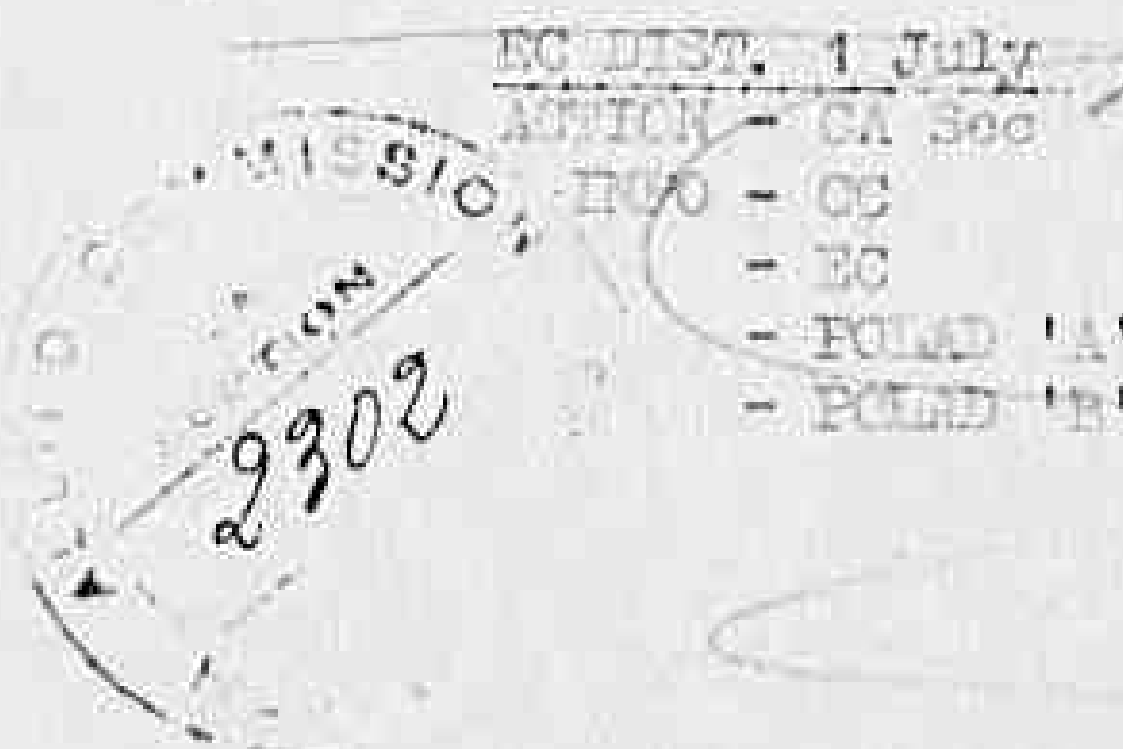
Besides, I shall be grateful if you will kindly let me know the number of interned citizens at the disposal of Allied Authorities, as the Italian Administration does not possess precise data in this regard.

99

Believe me, my dear Admiral,

Respectfully yours
/s/ DE GASPERI

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission
Rome.



73387/50077.A.2.4.2.



*Il Presidente
del Consiglio dei Ministri*

Roma, 24 giugno 1946

Mio caro Ammiraglio,

come Le è già noto, il Governo in occasione dell'avven-
to della Repubblica ed ai fini di una feconda pacificazione in-
terna, ha disposto un vasto provvedimento di amnistia e di condo-
no per i reati commessi a tutto il 18 giugno 1946.

Sono state, inoltre, condonate le sanzioni previste
dall'art. 3 del D.L.L. 26 aprile 1945, n. 149, a carico di colo-
ro che abbiano esplicato attività fascista. E' stato, altresì,
dato incarico al Ministro per l'Interno di disporre la libera-
zione delle persone assegnate al confino di polizia, in appli-
cazione delle leggi di pubblica sicurezza.

Mi pregio trasmetterLe il testo dei relativi provvedi-
menti, affinché Ella possa conoscerne i precisi termini.

Dal provvedimento di amnistia e di condono sono espres-
samente escluse le persone condannate dai Tribunali militari Al-
leati, in favore delle quali il Governo italiano non aveva il
potere di disporre. Restano, del pari, esclusi da ogni benefi-
cio coloro che si trovano tuttora internati nei campi di con-
centramento amministrati dalle Autorità Alleate o comunque a di-
sposizione di queste.

All'Ammiraglio Ellery W. STONE
Commissario Capo
della Commissione Alleata = ROMA =



In relazione alle stesse finalità che hanno ispirato i suddetti provvedimenti da parte del Governo italiano, sono indotto a richiamare la Sua attenzione sulla dolorosa disparità di situazione che nasce dalle suaccennate esclusioni, af finchè Ella voglia valutare, nel suo profondo senso di equità, la possibilità che un analogo atto di clemenza venga disposto da parte dell'Autorità Alleate.

Le sarò, inoltre, grato se vorrà farmi conoscere il numero dei cittadini internati a disposizione delle Autorità Alleate, essendo l'Amministrazione italiana priva di esatti dati al riguardo.

Voglia accogliere, mio caro Ammiraglio, l'espressione della mia viva considerazione.

Fe

Leggiani

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

The President of the Council of Ministers by virtue of the powers of temporary Chief of State vested upon him according to art. 2, IV para of the D.L.L. 16 March 1946 No. 98;

Having seen the Art. 8 of the Statute;

Having heard the Council of Ministers;

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

Decrees:

Art. 1

Amnesty for crimes.

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

Art. 2

Amnesty for political crimes committed
after the liberation.

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

Art. 3

Amnesty for other political crimes.

An amnesty is granted for the crimes provided for by art. 5 and 5 of the D.L.L. 27 July 1944 No. 159 and by art. 1 of the D.L.L. 22 April 1945 (1) No. 142

as well as for crimes under art. 45 No. 2 of the Penal Procedure Code except in case they have been committed by persons of high civil political or military rank, or in the case when massacre, savage tortures, murder, pillage have been committed or in the case they have been committed for purpose of profit.

Art. 4

Exclusion from amnesty.

The amnesty granted in the articles above does not apply to:

1. The crime under art. 575 Penal Code, except in case it has been committed before the 31 July 1945 in the conditions provided for by art. 1, first para of the D.L.L. 17 Nov. 1945 No. 719;
- 2., The crimes provided for in the D.L.L. 12 October 1944 No. 323 repressing the prostitution and the crimes provided for by art. 531 and following of the chapter II, Part. IX, Book II of the Penal Code;
3. The crimes under art. 318, 319, 321, 422 and 364 of the Penal Code;
4. The crimes provided for by chapter IV, Part I, Book II of Penal Code;
5. The military crimes under art. 15 below.

Art. 5

Political nature of the crimes.

96

In case a sentence has been passed and on the basis of such sentence or from the acts of procedure it cannot be ascertained if the crime is of a political nature or not, the judge who has jurisdiction to declare the amnesty shall order necessary investigations to take place.

The same investigations shall be ordered by the Supreme Court of Cassation in case of appeal.

Art. 6

Request of trial by the accused.

The amnesty does not apply if the accused, who before the issuing of the sentence which sets out that the crime is extinguished because of the amnesty, states that he does not want to take advantage of its benefit.

Art. 7

Reckoning of penalties.

For the purpose of applying the amnesty, establishing the penalty imposed and for any other purpose established by law the rules set down in art. 32 of the Code of Penal Procedure shall apply.

Art. 8

Pardon of common offences.

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

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

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

Art. 9

Pardon and commutation of penalty for political offences.

Excluding

95

Irrespective of the cases in which an amnesty is granted under Art. 1, 2 and 3, for political offences and other similar crimes under Art. 45 (n.2) of the Code of Penal Procedure, the following rules shall apply:

- a) The penalty of death is commuted to one of life imprisonment, save for the exceptions provided for an amnesty granted under art. 3.
- b) The penalty of life imprisonment is commuted to one of 30 years imprisonment.
- c) All other sentences of imprisonment over five years shall be reduced by one third but in any case such reduction shall not be less than five years; all other sentences of imprisonment not over five years are fully pardoned.
- d) All fines are fully remitted.

Art. 10

Exclusion from Pardon.

Pardon shall not apply:

1. In favour of those persons who at the date upon which this decree shall come into force, are in hiding, save that they surrender themselves for imprisonment within four months from such date. This provision is not applicable in cases where the penalty or the remaining penalty are fully pardoned or in cases where penalty of death is commuted for life imprisonment by virtue of art. 9.
2. For offences indicated in art. 4.
3. For offences under arts. 314, 317, 453, 575, 628, 629, and 630 of the Penal Code, save if committed for political reasons.
4. For offences under art. 1 and 2 of D.L.L. No. 234 of 10 May 1945 relating to penal provisions of an extraordinary nature.

Art. 11

Consideration of previous penal Record.

The previous penal records shall be taken into consideration in applying the benefits of the present decree in the limits established by the following provisions. 84

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

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

Sentences declared extinct by reason of previous amnesty; offences extinct at the date of the present decree for expiration of the time limits under art. 167 of the Penal Code establishing a suspension of conditional liberty; sentences providing a rehabilitation.

Art. 12

Revocation of Pardon.

Pardon shall be revoked in cases where the person to whom it was granted

is sentenced, to a term of penal servitude of not less than one year, for a unpremeditated crime committed within five years after the date of the present decree.

Art. 13

Offences committed to the detriment
of the Allied Forces.

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

or

Art. 14

Financial Offences.

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

Art. 15

Military Offences.

D.L. No. 132 of 29 March 1946 granting amnesty and pardon for military⁹³ offences is extended to offences herein contemplated provided they were committed up to 18 June 1946.

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

Art. 16

Date of operation,

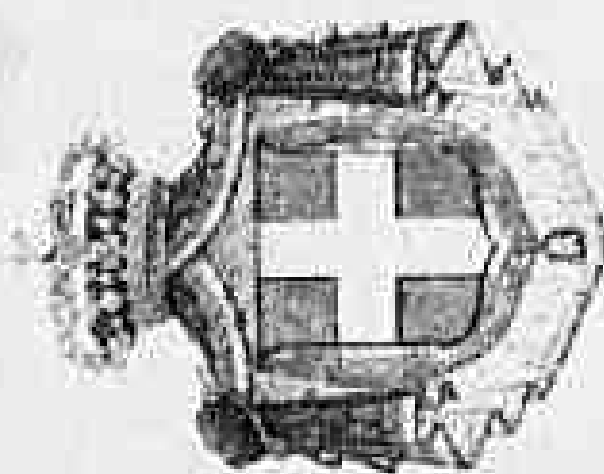
The present decree shall come into operation on the first day of its publication in the G.U. and has full force of law for offences committed up to the 18th June 1946 save for what has been differently provided for by the preceding

(6

articles. The present decree shall come into operation in the territory not yet restored to the Italian Administration upon restoration of the same or at a date established by order of the Allied Military Government etc. etc.

Rome 22 June 1946.

92



-1 LUG 1946

Il Presidente del Consiglio dei Ministri

In virtù dei poteri di Capo provvisorio dello Stato, conferitigli dall'art. 2, quarto comma, del decreto legislativo luogotenenziale 16 marzo 1946, n. 98;

Visto l'art. 4 del decreto-legge luogotenenziale 25 giugno 1944, n. 151;

Visto il decreto legislativo presidenziale 19 giugno 1946, n. 1;

Previe concerto con i Ministri per l'Interno, per la Grazia e la Giustizia, per il Tesoro, per la guerra, per la marina, e per l'Aeronautica;

Vista la deliberazione del Consiglio dei Ministri;

HA SANZIONATO E PROMULGA :

7 91

Art. 1

Con effetto dalla data di entrata in vigore del presente decreto sono condonate:

1.- Le sanzioni per infrastanti disciplinari commesse a tutto il giorno 18 giugno 1946 da dipendenti dalle amministrazioni dello Stato, compresi i militari e gli appartenenti ai corpi militarizzati, o dagli altri enti pubblici e dalle imprese concessionarie di pubblici servizi, quando le sanzioni stesse non comportino la risoluzione del rapporto d'impiego o di

Art. 1

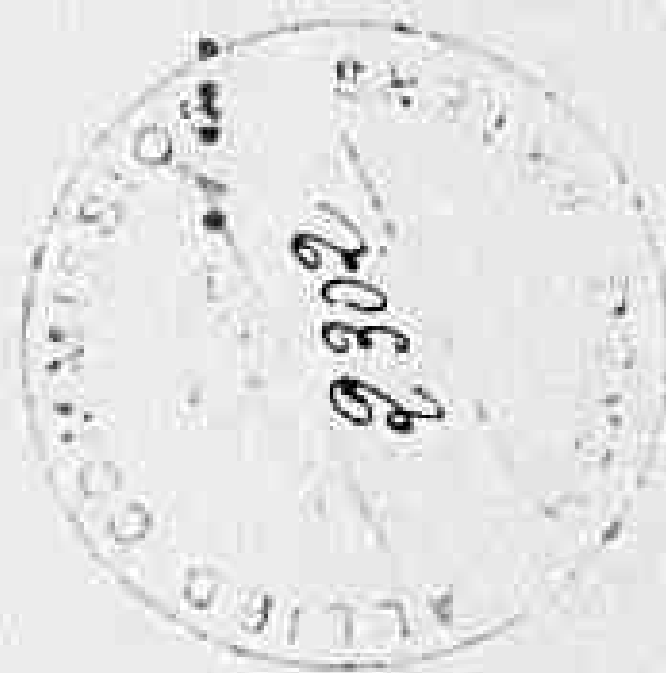
Con effetto dalla data di entrata in vigore del presente decreto sono conosciute:

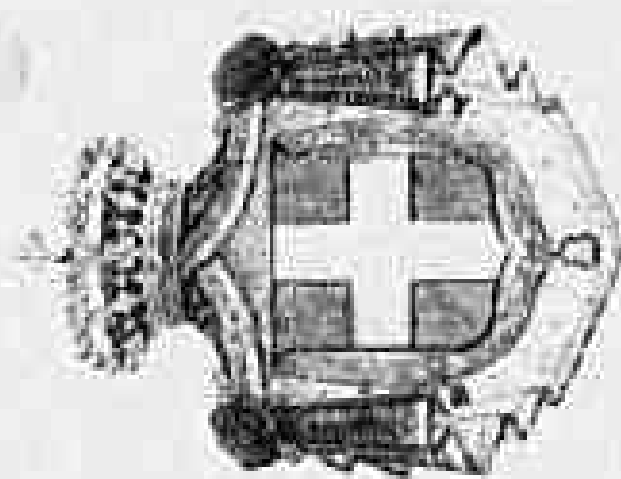
1.- le sanzioni per infrazioni disciplinari commesse a tutto il giorno 18 giugno 1946 da dipendenti delle amministrazioni dello Stato, compresi i militari e gli appartenenti ai corpi militarizzati, o degli altri enti pubblici e dalle imprese concessionarie di pubblici servizi, quando le sanzioni stesse non comportino la risoluzione del rapporto d'impiego o di lavoro;

2.- le sanzioni accessorie della perdita del diritto al trattamento di quiescenza, prevista dall'art. 22, comma secondo, del decreto legislativo luogotenenziale 27 luglio 1944, n. 159, e successive modificazioni;

3.- le sanzioni accessorie della riduzione del trattamento di quiescenza, connessa ai provvedimenti di cancellazione dei ruoli dei militari, disposti ai sensi dei decreti legislativi luogotenenziali 26 aprile 1945, n. 294, e 7 settembre 1945, n. 685;

4.- le sanzioni non superiori alla sospensione per infrazioni disciplinari commesse a tutto il giorno 18 giugno 1946 da esercenti pubbliche funzioni o un'attività professionale.





Il Presidente del Consiglio dei Ministri

Art. 2

E' dato incarico al Ministro dell'Interno di disporre la liberazione condizionale delle persone assegnate al confino di polizia in applicazione degli articoli 180 e seguenti del testo unico delle leggi di pubblica sicurezza, approvato con R. decreto 18 giugno 1931, n. 773, per fatti commessi a tutto il giorno 18 giugno 1946, nonchè la revoca delle ammonizioni inflitte per fatti commessi anteriormente a tale data.

Art. 3

Sono condonate le sanzioni previste dall'art. 3 del decreto legislativo luogotenenziale 26 aprile 1945, n. 149, per fatti commessi a tutto il giorno 18 giugno 1946.

Art. 4

Sono condonate le sanzioni previste dall'art. 1 del decreto legislativo luogotenenziale 10 marzo 1946, n. 74.

Art. 5

Con successivi provvedimenti, su proposta dei Ministri competenti, possono essere emanate norme complementari e di attuazione del presente decreto.

Sono condonate le sanzioni previste dall'art. 3 del decreto legislativo luogotenenziale 26 aprile 1945, n. 149, per fatti connessi a tutto il giorno 18 giugno 1946.

Art. 4

Sono condonate le sanzioni previste dall'art. 1 del decreto legislativo luogotenenziale 10 marzo 1946, n. 74.

Art. 5

Con successivi provvedimenti, su proposta dei Ministri competenti, possono essere emanate norme complementari e di attuazione del presente decreto.

Art. 6

Il presente decreto entra in vigore il giorno della sua pubblicazione.

Il presente decreto, munito del sigillo dello Stato, sarà inserito nella Raccolta ufficiale delle leggi e dei decreti della Repubblica Italiana. E' fatto obbligo, a chiunque spetti, di osservarlo e di farlo osservare come legge dello Stato.

Roma, addì

giugno 1946

P/ro DE GASPERI
C/ro ROSTA
" TOGLIATTI
" CORBINO
" BRUSCA
" DE CURTIS
" CEVOLOTO

PER COPIA CONFORME

EDIZIONE STRAORDINARIA

Conto corrente con la Posta

Anno 57° — Numero 137

GAZZETTA UFFICIALE

DELLA REPUBBLICA ITALIANA

PARTE PRIMA

ROMA - Domenica, 23 giugno 1946

SI PUBBLICA TUTTI I GIORNI
MENDE I FESTIVI

DIREZIONE E REDAZIONE PRESSO IL MINISTERO DI GRAZIA E GIUSTIZIA - UFFICIO PUBBLICAZIONE DELLE LEGGI — TELEF. 50-139 51-236 51-551
AMMINISTRAZIONE PRESSO LA LIBRERIA DELLO STATO - PIAZZA GIUSEPPE VERDI 10, ROMA - TELEF. 80-033 841-737 850-144

PREZZI E CONDIZIONI DI ABBONAMENTO

ALLA PARTE PRIMA E SUPPLEMENTI ORDINARI

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Trimestrale L. 500 - Un fascicolo L. 10

All'ESTERO: L. doppio dei prezzi per l'Italia.

AI «BOLLETTINO DELLE ESTRAZIONI»

In ITALIA: Abbonamento annuo L. 2.400 - Semestrale L. 1.500
Un fascicolo - Prezzi vari.

ALLA PARTE SECONDA

In ITALIA: Abbonamento annuo L. 800 - Semestrale L. 500
Trimestrale L. 300 - Un fascicolo L. 10

All'ESTERO: Il doppio dei prezzi per l'Italia.

Al «BOLLETTINO DELLE ESTRAZIONI» (sorteggio titoli, obbligazioni, cartelle)

All'ESTERO: Il doppio dei prezzi per l'Italia.

L'importo degli abbonamenti deve essere versato sul c/c postale n. 12640 intestato all'Istituto Folligrafico dello Stato
Libreria dello Stato - Roma.

Per gli annunci da inserire nella «Gazzetta Ufficiale», veggansi le norme riportate nella testata della parte seconda.

La «Gazzetta Ufficiale» e tutte le altre pubblicazioni ufficiali sono in vendita al pubblico presso i negozi della Libreria dello Stato in Roma, Via XX Settembre (palazzo del Ministero delle Finanze); Corso Umberto 234 (angolo Via Marco Minghetti 23-24); Via Firenze 37 (palazzo Ministero della Guerra); in Milano, Galleria Vittorio Emanuele 3; in Napoli, Via Chiaia 6; e presso le Librerie depositarie di Roma e di tutti i Capoluoghi di Provincia.

Le inserzioni nella Parte II della «Gazzetta Ufficiale» si ricevono in ROMA - presso la Libreria dello Stato (Ufficio Inserzioni) - Via XX Settembre - Palazzo del Ministero delle Finanze). La filiale della Libreria dello Stato in Milano, Galleria Vittorio Emanuele 3, è autorizzata ad accettare solamente gli avvisi consegnati a mano ed accompagnati dal relativo importo.

LEGGI E DECRETI

RELAZIONE e DECRETO PRESIDENZIALE 22 giugno 1946, n. 4.

Amnistia e indulto per reati comuni, politici e militari.

Relazione del Ministro Guardasigilli al Presidente del

Consiglio sul decreto Presidenziale 22 giugno 1946, n. 4, concedente amnistia e indulto per reati comuni, politici e militari.

Signor Presidente,

turno, lo collegare, e per accare un conforto sensibile a un numero ingente di loro familiari derelitti e angosciati.

Ci si è bene preoccupati, per i reati di diritto comune, di non eccessivamente ridondere la portata dell'atto di elezione, in vista del notevole aumento del numero dei reati comuni al quale si è assistito negli ultimi due anni, e specialmente in vista della frequenza di alcune figure di reato particolarmente gravi e repugnanti alla pubblica coscienza e moralità. La generale aspirazione a un salutare ritorno a normali condizioni di sicurezza delle persone e dei beni ha quindi dettato il limite dell'amnistia e del condono per i reati di diritto comune e le esclusioni cui sarà fatto cenno più avanti.

Per i reati politici ci si è trovati di fronte a un problema certo e talora contrastato, di cui si è dovuto tener conto nel determinare il contenuto e i limiti dell'atto di clemenza. Questa è profondamente sentita, da un lato, la necessità di un rapido avvenimento del Paese a condizioni di pace politica e sociale. La Repubblica, sorta dalla aspirazione al rinnovamento della nostra vita nazionale, non può non dare soddisfazione a questa necessità, presentandosi così con gli occhi suoi, come il regime della pubblicazione e ricezione di tutti i buoni statuti. Un atto di clemenza è per

In ITALIA: Abbonamento annuo L. 1.500 - Semestrale L. 750 - Un fascicolo L. 10
 All'ESTERO: Il doppio dei prezzi per l'Italia.
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 L'importo degli abbonamenti deve essere versato sul c/c postale n. 1/2640 intestato all'Istituto Poligrafico dello Stato
 Libreria dello Stato - Roma.

Per gli annunci da inserire nella «Gazzetta Ufficiale», veggansi le norme riportate nella testata della parte seconda.

La «Gazzetta Ufficiale» e tutte le altre pubblicazioni ufficiali sono in vendita al pubblico presso i negozi della Libreria dello Stato in Roma, Via XX Settembre (palazzo del Ministero delle Finanze); Corso Umberto 234 (angolo Via Marco Minghetti 23-24); Via Firenze 37 (palazzo Ministero della Guerra); in Milano, Galleria Vittorio Emanuele 3; in Napoli, Via Chiaia 5; e presso le Librerie depositarie di Roma e di tutti i Capoluoghi di Provincia.

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LEGGI E DECRETI

RELAZIONE e DECRETO PRESIDENZIALE 22 giugno 1946, n. 4.

Amnistia e indulto per reati comuni, politici e militari.

Relazione del Ministro Guardasigilli al Presidente del Consiglio sul decreto Presidenziale 22 giugno 1946, n. 4, concedente amnistia e indulto per reati comuni, politici e militari.

Signor Presidente,

La Repubblica celebra il suo avvento emanando tra i suoi primi atti un provvedimento generale di clemenza.

Non è necessario spendere parole per motivare questo atto per quanto riguarda i reati comuni. Rimanendo esso nella pratica costituzionale e politica italiana per le date scorse, corrente, soprintenti, né potrebbe immaginarsi data più esemplare di quella in cui, dopo che il popolo italiano, chiamato a esprimere la sua volontà circa la forma istituzionale dello Stato, ha scelto la forma repubblicana, questa scelta è stata riconosciuta e annunciata nelle forme previste dalla legge e si sono compiute le prime modificazioni costituzionali che da essa derivano.

Col passaggio dalla monarchia alla Repubblica si è aperto un periodo nuovo nella vita dello Stato italiano unitario, ed è giusto che in questo momento un atto di clemenza intervienga per alleviare le condizioni anche di coloro che avendo violato la legge potessero condurre un subitaneo o devono ess-

birne le conseguenze, e per arrecare un conforto sensibile a un numero ingente di loro familiari derelitti e angosciati.

Ci si è bene preoccupati, per i reati di diritto comune, di non eccessivamente ostendere la portata dell'atto di clemenza, in vista del notevole aumento del numero dei reati comuni al quale si è assistito negli ultimi due anni, e soprattutto in vista della frequenza di alcune figure di reato particolarmente gravi e repugnanti alla pubblica coscienza e moralità. La generale asperzione a un soggetto rifiorito a normali condizioni di sicurezza delle persone e dei beni, un qualche diritto al limite dell'amnistia e del condono per i reati di diritto comune e le esclusioni cui sarà fatto cenno più avanti.

Per i reati politici ci si è trovati di fronte a espressioni e talora contrastanti, di cui si è dovuto tener conto nel determinare il contenuto e i limiti dell'atto di clemenza. Questa è profondamente sentita, da un lato, la necessità di un rapido avvenimento del Paese a condizioni di pace politica e sociale. La Repubblica, sorta dalla aspirazione di rinnovamento della nostra vita nazionale, non può non dare soddisfazione a questa necessità, presentandosi così sin dai primi suoi passi come il regime della pacificazione e riconciliazione di tutti i buoni italiani. Un atto di clemenza è per essi, in pari tempo, atto di forza e di fiducia nei destini del Paese.

Non si può dimenticare, poi, che se negli anni passati è particolarmente nel loro periodo dell'invazione tedesca, molti sono stati i cittadini i quali hanno rinunciato ai doveri di fedeltà verso lo Stato e verso la Patria cui si son fatti ribelli ponendosi al servizio degli invasori, se molti sono stati i cittadini i quali hanno rinunciato ai doveri di solidarietà verso i loro connazionali, al rispetto dei diritti politici e civili e delle libertà democratiche, e persino alle più sacrate leggi della umanità, abbandonandosi ad atti abominevoli di persecuzione e di violenza, nelle circostanze in cui quegli atti sono avvenuti possono però ritrovarsi elementi che attenuano le responsabilità personali. Non si può quindi, per occhi davanti al fatto che nei primi anni del movimento e del regime fascista vi era nel Paese una generale tensione politica, e che in seguito, soppressa ogni libera voce di cri-

condannati, non essendo ammesso per i casi più gravi e balzando di tutti i contributi da persone rivestite di elevate funzioni di direzione civile o politica, o di comando militare. Se anche a questi casi si fosse estesa la elezione, grave sarebbe stato il contrasto con la coscienza popolare, e con i principi sacrali della equità. Vi è infatti una esigenza non solo giuridica e politica, ma morale, di giustizia, per cui coloro che hanno commesso delitti, la cui traccia è impronta dell'essere stata cancellata, contro il Paese tradito e portato alla rovina contro le libertà democratiche, contro i loro concittadini, o contro i più elementari doveri della umanità, devono essere puniti a essere puniti con tutto il rigore della legge. Un riconoscimento di questa esigenza, anziché contribuire alla pacificazione, contribuirebbe a rinfocolare odio e rancori, con conseguenze certamente per tutti incalcolabili.

Esposti in questo modo i principi informatori del decreto chiarezza ne appariranno le singole disposizioni enunciate.

Secondo il primo articolo, rientrano nell'ambito tutti i reati — e quindi anche quelli minori — e quelli d'ordine politico non specificati nelle norme seguenti — per i quali la legge commina una pena detentiva, sola o congiunta a pena pecuniaria, non superiore nel massimo a cinque anni, ovvero una pena pecuniaria. Agli effetti dell'applicazione del bene si fa riferimento all'art. 2) per il confronto delle pene e per ogni altra determinazione di legge, le pene dell'art. 2) del Codice penale. Si ha riguardo, pertanto, soltanto alle pene principali.

Riguardo ai delitti politici, il decreto fa distinzione fra quelli commessi nelle singole località e quelli commessi in tutto il territorio. Sino a oggi che ha avuto inizio in esse l'Amministrazione del Governo militare alleato, e per le località rimaste all'Amministrazione del Governo italiano (e cioè alcune zone dell'Italia meridionale e l'isola) a partire dall'8 settembre 1943, e quelli commessi prima di questo limite di tempo.

Nel primo caso, l'amnistia, salva le eccezioni di cui all'art. 4, è completa, e come tra l'altro l'amnistia definisce di determinati elementi o gruppi che si richiamano al movimento separatista siciliano e alla lotta di liberazione, nonché i tentativi, finora, finora, non riusciti, di riorganizzazione del movimento fascista. Rientrano nelle disposizioni di questo articolo anche gli atti commessi in violazione delle leggi penali, dopo la liberazione del territorio nazionale, da combattenti di quelle formazioni partigiane a cui va imputata la responsabilità del Paese per il contributo da esse dato a favore del fascismo. Anzi, mentre il delitto di cui all'art. 525 del Codice penale fa eccezione, in generale, alle disposizioni di questo articolo, in questo ultimo caso esso è pure ammissibile, purché commesso nelle condizioni previste dal D. L. L. 17 novembre 1945, n. 579, ed entro il 31 luglio 1946.

Si è partiti qui dalla considerazione che non sarebbe giusto perseguitare e punire atti — anche gravi — commessi per una epopea di forza d'incerta del movimento insurrezionale antifascista, anche dopo che i singoli territori erano passati all'Amministrazione alleata.

Nel secondo caso, che riguarda i delitti previsti dagli articoli 3 e 5 del D. L. L. 27 luglio 1945, n. 459, e dall'art. 1 del D. L. L. 22 aprile 1946, n. 142, e i reati ad essi connessi, ai sensi dell'art. 4) n. 2 del Codice penale, si fa luogo alla distinzione accennata sopra, nelle considerazioni generali sui principi ispiratori del decreto. L'articolo esclude dal beneficio coloro che per le funzioni di cui erano investiti hanno avuto una elevata responsabilità, come pure coloro che hanno nella esecuzione o in occasione dei delitti commessi o fatti, chiesto a commettere uccisioni, stragi, sequestrati, o sovlie per violentamente effettuate, oppure sono stati autori del delitto da

condannati, non essendo ammesso per i casi più gravi e balzando di tutti i contributi da persone rivestite di elevate funzioni di direzione civile o politica, o di comando militare. Se anche a questi casi si fosse estesa la elezione, grave sarebbe stato il contrasto con la coscienza popolare, e con i principi sacrali della equità. Vi è infatti una esigenza non solo giuridica e politica, ma morale, di giustizia, per cui coloro che hanno commesso delitti, la cui traccia è impronta dell'essere stata cancellata, contro il Paese tradito e portato alla rovina contro le libertà democratiche, contro i loro concittadini, o contro i più elementari doveri della umanità, devono essere puniti a essere puniti con tutto il rigore della legge. Un riconoscimento di questa esigenza, anziché contribuire alla pacificazione, contribuirebbe a rinfocolare odio e rancori, con conseguenze certamente per tutti incalcolabili.

Una norma nuova per un decreto di amnistia è contenuta nell'art. 6 che riconosce la facoltà di rinunciare al beneficio. Essa è stata introdotta per la prima volta, nel citato decreto 1945, n. 459, art. 142, conferendo amnistia per reati minori. Si è ritenuto opportuno inserirla anche nel presente decreto come una condizione per l'applicabilità del beneficio, a tutela del particolare interesse dell'ingiustizia che non voglia rinviare sotto la tacca di aver commesso il reato addebitati.

E' ovvio che una volta manifestata la volontà di rinunciare al beneficio questo non è più applicabile. Se nel giudizio sarà accertata la colpevolezza, il giudice pronuncerà soltanto, salva l'applicazione del condono.

La diversità di trattamento per reati comuni e politici adottata per l'amnistia è stata scelta anche nella concessione dell'indulto. Infatti per i reati comuni viene concesso soltanto il condono delle pene detentive non superiori a tre anni e delle pene pecuniarie non superiori a due tremila ed è stata disposta la riduzione nella stessa misura di quelle maggiori, oltre a da indultare. Per i reati politici, invece, l'indulto prevede una commutazione di mille delle pene più gravi a un luogo comune delle altre. Si è disposta infatti che la pena di morte sia commutata nell'ergastolo per tutti i casi in cui non ricorrano le eccezioni stabilite nell'art. 3 relativamente all'amnistia, e in commutazione, in ogni caso, dell'ergastolo nella reclusione per tre anni. Le altre pene detentive sono ridotte nella misura indicata dall'art. 9 lettera c). Le pene pecuniarie sono condonate interamente. Differenti è pure la disciplina delle esclusioni oggettive dal beneficio che è più favorevole sempre nel confronto dei condannati politici. Infine, relativamente alle condanne più gravi per le quali è stata concessa la commutazione della pena non si applica la disposizione dell'art. 12 concernente l'eventuale revoca del beneficio, in quale riguarda unicamente il condono.

Anche nel presente decreto si è ritenuto di derogare, per quanto riguarda la valutazione del pregresso, alle norme dettate dal Codice penale. Di essi non si terrà per nulla conto nei confronti degli imputati o condannati per reati politici, salvo che si tratti di delinquenti abituali, professi, ma non condannati negli altri casi se ne terrà conto soltanto nei limiti stabiliti nei comuni secondo l'art. 11 dell'articolo 11. Nell'art. 12 sono esclusi da tutti i benefici i colpevoli di reati in danno delle forze alleate o giudicati da tribunali alleati o in corso di giudizio presso tali tribunali.

Si è derogato pure alle norme del Codice per quanto riguarda la data di efficacia del decreto, poiché si è stabilito che i benefici sono applicabili ai reati commessi sino a tutto il 18 giugno 1945 salvo le eccezioni particolarmente contenute nel decreto stesso.

Tale è l'atto di clemenza che, approvato in un grave momento della nostra vita nazionale, certamente contribuirà a creare nel Paese quel nuovo clima di unità e di concordia che è il più favorevole alla ricostruzione politica e al commercio, e nel quale dovrà continuare, entro i limiti stabiliti, la necessaria opera di giustizia per il definitivo nostro risanamento politico e morale.

Il Ministro di grazia e giustizia
PALMIRO TOLLATI

IL PRESIDENTE DEL CONSIGLIO DEI MINISTRI

In virtù dei poteri di Capo provvisorio dello Stato, conferitigli dall'art. 2, quarto comma, del decreto legislativo luogotenenziale 16 marzo 1946, n. 98;

Visto l'art. 8 dello Statuto;

Sentito il Consiglio dei Ministri;

Sulla proposta del Ministro per la grazia e giustizia, di concerto con i Ministri per l'interno, per la guerra, per la marina, per l'aeronautica e per l'agricoltura;

Decreta:

Art. 1.

Amnistia per reati in genere

E' concessa amnistia per i reati per i quali la legge commina una pena detentiva, sola o congiunta a pena pecuniaria, non superiore nel massimo a cinque anni, oppure una pena pecuniaria.

Art. 2.

Amnistia per delitti politici commessi dopo la liberazione

E' concessa amnistia per i delitti politici puniti con pena anche superiore a quella indicata nell'art. 1, ove siano stati commessi nelle singole parti del territorio nazionale dopo l'inizio in esse dell'amministrazione del Governo militare alleato o, riguardo al territorio rimasto sotto l'amministrazione del Governo legittimo italiano, per i delitti suddetti commessi dopo l'8 settembre 1943.

Art. 3.

Amnistia per altri delitti politici

E' concessa amnistia per i delitti di cui agli articoli 3 e 5 del decreto legislativo luogotenenziale 27 luglio 1944, n. 159, ed all'art. 1 del decreto legislativo luogotenenziale 22 aprile 1945, n. 142, e per i reati ad essi commessi ai sensi dell'art. 45, n. 2, Codice procedura penale, salvo che siano stati compiuti da persone rivestite di elevate funzioni di direzione civile o politica o di comando militare, ovvero siano stati commessi fatti di strage, sevizie particolarmente efferate, omicidio o saccheggio, ovvero i delitti siano stati compiuti a scopo di lucro.

3° i reati di cui agli articoli 318, 319, 321, 422 e 564 del Codice penale;

4° i delitti previsti dal Capo IV, Titolo I, Libro II del Codice penale;

5° i reati militari per i quali provveda l'articolo 15.

Art. 5.

Accertamento dell'indole politica del delitto

Ove sia stata pronunciata condanna e dalla sentenza o dagli atti del procedimento non apparisca sufficiente mente stabilito se il delitto sia d'indole politica, il giudice competente ad emettere la declaratoria di amnistia dispone gli opportuni accertamenti.

Gli stessi accertamenti disporrà la Suprema Corte di Cassazione, ove pendano ricorso.

Art. 6.

Richiesta di giudizio da parte dell'imputato

L'amnistia non si applica qualora l'imputato, prima che sia pronunciata sentenza di non doversi procedere per estinzione del reato per l'amnistia, dichiarerà di non volerne usufruire.

Art. 7.

Computo delle pene

Agli effetti dell'applicazione dell'amnistia si seguono, per il computo delle pene e per ogni altra determinazione di legge, le regole dell'articolo 32 del Codice di procedura penale.

Art. 8.

Condono per reati comuni

Fuori dei casi di amnistia di cui all'articolo 1, sono condonate le pene detentive non superiori a tre anni e le pene pecuniarie non superiori a lire tremila, e di altrettanto sono ridotte quelle maggiori inflitte o da infliggere.

Il condono è ridotto ad un anno per le pene detentive ed a lire mille per quelle pecuniarie nei confronti di coloro che, per la medesima condanna, hanno usufruito o possono usufruire dell'indulto concesso col regio decreto 5 aprile 1944, n. 96.

Qualora il reato sia stato commesso dopo l'entrata in vigore del decreto legislativo luogotenenziale 5 ottobre 1945, n. 679, il limite della pena pecuniaria indicata nel comma primo è raddoppiato.

Art. 1.
Amnistia per reati in genere

E' concessa amnistia per i reati per i quali la legge commina una pena detentiva, sola o congiunta a pena pecuniaria, non superiore nel massimo a cinque anni, oppure una pena pecuniaria.

Art. 2.

Amnistia per delitti politici commessi dopo la liberazione

E' concessa amnistia per i delitti politici puniti con pena anche superiore a quella indicata nell'art. 1, ove siano stati commessi nelle singole parti del territorio nazionale dopo l'inizio in esse dell'amministrazione nazionale dopo l'armistizio, o, riguardo al territorio del Governo militare alleato o, riguardo al territorio rimasto sotto l'amministrazione del Governo legittimo italiano, per i delitti suddetti commessi dopo l'8 settembre 1943.

Art. 3.

Amnistia per altri delitti politici

E' concessa amnistia per i delitti di cui agli articoli 3 e 5 del decreto legislativo luogotenenziale 27 luglio 1944, n. 159, ed all'art. 1 del decreto legislativo luogotenenziale 22 aprile 1945, n. 142, e per i reati ad essi commessi a' sensi dell'art. 45, n. 2, Codice procedura penale, salvo che siano stati compiuti da persone rivestite di elevate funzioni di direzione civile o politica o di comando militare, ovvero siano stati commessi fatti di strage, sevizie particolarmente efferate, omicidio o saccheggio, ovvero i delitti siano stati compiuti a scopo di lucro.

Art. 4.

Esclusioni dall'amnistia

Sono esclusi dall'amnistia concessa coi precedenti articoli:

1° il delitto di cui all'art. 575 Codice penale, salvo che sia stato commesso entro il 31 luglio 1945 nelle condizioni previste dall'art. 1, comma primo, del decreto legislativo luogotenenziale 17 novembre 1945, n. 749;

2° i reati di cui al decreto legislativo luogotenenziale 12 ottobre 1944, n. 823, sulla repressione della prostituzione, e quelli di cui agli articoli 531 e seguenti del Capo II, Titolo IX, Libro II del Codice penale;

Art. 6.

Richiesta di giudizio da parte dell'imputato

L'amnistia non si applica qualora l'imputato, prima che sia pronunciata sentenza di non doversi procedere per estinzione del reato per l'amnistia, dichiarì di non volerne usufruire.

Art. 7.

Computo delle pene

Agli effetti dell'applicazione dell'amnistia si seguono, per il computo delle pene e per ogni altra determinazione di legge, le regole dell'articolo 32 del Codice di procedura penale.

Art. 8.

Condono per reati comuni

Fuori dei casi di amnistia di cui all'articolo 1, sono condonate le pene detentive non superiori a tre anni e le pene pecuniarie non superiori a lire tremila, e di altrettanto sono ridotte quelle maggiori inflitte o da infliggere.

Il condono è ridotto ad un anno per le pene detentive ed a lire mille per quelle pecuniarie nel confronto di coloro che, per la medesima condanna, hanno usufruito o possono usufruire dell'indulto concesso col regio decreto 5 aprile 1944, n. 96.

Qualora il reato sia stato commesso dopo l'entrata in vigore del decreto legislativo luogotenenziale 5 ottobre 1945, n. 679, il limite della pena pecuniaria indicato nel comma primo è raddoppiato.

Art. 9.

Condono e commutazione di pena per reati politici

Fuori dei casi di amnistia di cui agli articoli 1, 2 e 3, per i delitti politici e per i delitti ad essi connessi a' sensi dell'articolo 45, n. 2, del Codice di procedura penale, si applicano le norme seguenti:

a) la pena di morte è commutata in quella dell'ergastolo, salvo le eccezioni disposte per l'amnistia dall'articolo 3;

b) la pena dell'ergastolo è commutata in quella della reclusione per trenta anni.

c) le altre pene detentive, se superiori a cinque anni, sono ridotte di un terzo; ma in ogni caso la riduzione non può essere inferiore a cinque anni; le pene detentive non superiori a cinque anni sono interamente condonate;

d) le pene pecuniarie sono interamente condonate.

Art. 10.

Esclusioni dal condono

Il condono non si applica:

1° nei confronti di coloro che, alla data dell'entrata in vigore del presente decreto, si trovano in stato di latitanza, salvo che si costituiscano in carcere entro quattro mesi dalla data stessa; questa disposizione non si applica nel caso in cui la pena o la residua pena siano interamente condonate e nel caso di commutazione della pena di morte e dell'ergastolo di cui all'art. 9;

2° per i reati indicati nell'art. 4;

3° per i reati previsti nel Codice penale negli articoli 314, 317, 433, 575, 628, 629, 630; salvo che siano stati commessi per motivi politici;

4° per i reati contemplati negli articoli 1 e 2 del decreto legislativo luogotenenziale 10 maggio 1945, n. 231, contenente disposizioni penali di carattere straordinario.

Art. 11.

Valutazione dei precedenti penali

Ai fini dell'applicazione dei benefici concessi con il presente decreto si tiene conto dei precedenti penali solo nei casi e nei limiti stabiliti dalle disposizioni seguenti.

I benefici non si applicano a coloro che alla data del presente decreto hanno riportato una o più condanne per delitto non colposo a pena detentiva superiore nel complesso a tre anni.

Nell'esame dei precedenti penali non si tiene conto delle condanne dichiarate estinte per precedente amnistia, né dei reati estinti alla data del presente decreto per il decorso dei termini della sospensione condizionale della pena a norma dell'art. 167 Codice penale, né delle condanne per le quali sia intervenuta la riabilitazione.

Nella applicazione dei benefici ai reati politici non si tiene conto dei precedenti penali; ma i benefici stessi non si applicano ove si tratti di delinquente abituale, professionale o per tendenza.

Art. 13.

Reati commessi in danno delle Forze alleate

In ogni caso sono esclusi dall'amnistia e dall'indulto i reati commessi in danno delle Forze alleate o degli appartenenti a dette Forze, ovvero giuristi dai Tribunali alleati o in corso di giudizio presso tali Tribunali.

Art. 14.

Reati finanziari

Il presente decreto non concerne i reati finanziari e non ha effetto ai fini dell'applicazione delle leggi sulla avocazione dei proventi di regime.

Art. 15.

Reati militari

L'efficacia del decreto luogotenenziale 29 marzo 1946, n. 132, concedente amnistia e condono per i reati militari, è estesa ai delitti ivi contemplati che siano stati commessi a tutto il 18 giugno 1946.

Ove detto decreto subordini la concessione di un beneficio all'adempimento di un obbligo, questo deve essere adempiuto nel termine di 30 giorni dalla entrata in vigore del presente decreto. Questo termine decorre dal giorno del ritorno in Italia per chi, alla data di entrata in vigore del presente decreto, si trovi all'estero.

Ai fini dell'applicazione dell'amnistia di cui agli articoli 1 e 2 del decreto luogotenenziale suddetto, non si tiene conto dell'aumento della pena preveduto nell'art. 47 del Codice penale militare di guerra.

Art. 16.

Entrata in vigore del presente decreto

Il presente decreto entra in vigore il giorno della sua pubblicazione nella *Gazzetta Ufficiale* ed ha efficacia per i reati commessi a tutto il giorno 18 giugno 1946, salvo non sia diversamente disposto negli articoli precedenti.

Nei territori non ancora restituiti all'Amministrazione italiana il presente decreto entrerà in vigore dalla data di tale restituzione o da quella in cui esso divenga esecutivo con ordinanza del Governo Militare Alleato.

Ordiniamo che il presente decreto, munito del sigillo dello Stato, sia inserito nella Raccolta ufficiale delle leggi e dei decreti della Repubblica italiana. E' fatto obbligo a chiunque spetti di osservarlo e di farlo osservare.

Dato a Roma, addì 22 giugno 1946

Art. 12.

n. 132, concedente amnistia e condono per i reati militari, è estesa ai delitti ivi contemplati che siano stati commessi a tutto il 18 giugno 1916.

Ove detto decreto subordini la concessione di un beneficio all'adempimento di un obbligo, questo deve essere adempito nel termine di 30 giorni dalla entrata in vigore del presente decreto. Questo termine decorre dal giorno del ritorno in Italia per chi, alla data di entrata in vigore del presente decreto, si trovi all'estero.

Ai fini dell'applicazione dell'amnistia di cui agli articoli 1 e 2 del decreto luogotenenziale suindicato, non si tiene conto dell'aumento della pena preveduto nell'art. 47 del Codice penale militare di guerra.

Art. 16.

Entrata in vigore del presente decreto

Il presente decreto entra in vigore il giorno della sua pubblicazione nella *Gazzetta Ufficiale* ed ha efficacia per i reati commessi a tutto il giorno 18 giugno 1916, salvo non sia diversamente disposto negli articoli precedenti.

Nei territori non ancora restituiti all'Amministrazione Italiana il presente decreto entrerà in vigore dalla data di tale restituzione o da quella in cui esso divenga esecutivo con ordinanza del Governo Militare Alleato.

Ordiniamo che il presente decreto, munito del sigillo dello Stato, sia inserito nella Raccolta ufficiale delle leggi e dei decreti della Repubblica Italiana. E' fatto obbligo a chiunque spetti di osservarlo e di farlo osservare.

Dato a Roma, addì 22 giugno 1916

DE GASPERI

Togliatti — Romita — Brozio
— De Courten — Cevallos —
Gullo

Visto, il *Giornale Ufficiale* Togliatti

SANTI RAFFAELI, *gerente*

Art. 11.

Valutazione dei precedenti penali

Ai fini dell'applicazione dei benefici concessi con il presente decreto si tiene conto dei precedenti penali solo nei casi e nei limiti stabiliti dalle disposizioni seguenti.

I benefici non si applicano a coloro che alla data del presente decreto hanno riportato una o più condanne per delitto non colposo a pena detentiva superiore nel complesso a tre anni.

Nell'esame dei precedenti penali non si tiene conto delle condanne dichiarate estinte per precedente amnistia, né dei reati estinti alla data del presente decreto per il decorso dei termini della sospensione condizionale della pena a norma dell'art. 167 Codice penale, né delle condanne per le quali sia intervenuta la riabilitazione.

Nella applicazione dei benefici ai reati politici non si tiene conto dei precedenti penali; ma i benefici stessi non si applicano ove si tratti di delinquente abituale, professionale o per tendenza.

Art. 12.

Revoca del condono

Il condono è revocato di diritto qualora chi ne ha usufruito riporti altra condanna per delitto non colposo punibile con pena detentiva superiore nel massimo ad un anno, commessa entro cinque anni dalla data del presente decreto.

GIUSEPPE GIUSEPPE, *direttore*

Roma - Istituto Poligrafico dello Stato - G. G.

COPY

COPY

HEADQUARTERS
ROME AREA ALLIED COMMAND

SUBJECT: Amnesty

DC/26
25 June 1946.TO : Headquarters Allied Commission
(Attn: Executive Commissioner)

28 GIU. 1946

In reference to this morning's conversation Brigadier
LUSI - Brigadier L.G.

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

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

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

/s/ A LOW
Brigadier
Commanding
Rome Area Allied Command

88

EC DIST - 27/2

ACTION - CA SEC (2)

INFO: POLAD A

: POLAD P



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



RESTRICTED AND CONFIDENTIAL
AIO YA.

34A

July 1946

SUBJECT: Italian Amnesty.

TO: AMH C-5 Section.

1. I and my advisors have given full consideration to the Italian Government's Presidential Decree No. 4 of the 22nd June 1946 which grants a wide measure of amnesty and pardon for common, political and military offenses and of which a version in English is enclosed. I have also received from the Prime Minister a letter dated 24th June 1946 on this subject, a copy of which is enclosed.
2. I am of opinion that there is nothing in the above mentioned Decree which transgresses the long standing terms of the Moscow Declaration. This view is shared by my political advisors and Deputy Chief Legal Officer.
3. Attention is drawn to the interpretation of Article 3 of the Decree. Read together with the explanatory notes which accompany the Decree, this Article excludes from any benefits under the Decree those persons who possessed of high functions of a civil, political or military nature **57** committed certain specified offences. It means, however, that the persons concerned need not necessarily be of high rank, but that the provisions can be applied to a subordinate officer who held an appointment normally granted to an officer of high rank.

on this subject, a copy of which is enclosed.

2. I am of opinion that there is nothing in the above mentioned decree which transgresses the law of nations or the laws of humanity. This view is shared by my political advisers and Deputy Chief Legal Officer.

3. Attention is drawn to the interpretation of Article 5 of the decree. Read together with the explanatory notes which accompany the decree, this Article excludes from any benefits under the decree those persons who possessed of high functions of a civil, political or military nature **57** committed certain specified offences. It seems, however, that the persons concerned need not necessarily be of high rank, but that also provisions can be applied to a subordinate officer who held an appointment usually granted to an officer of high rank.

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

- 2 -

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

(a) Those convicted by A.N.G. Courts.

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

6. As regards persons convicted by A.N.G. Courts sentences imposed are at present being reviewed at this Headquarters and in many instances reductions of sentences have been ordered. The review is carried out with a view to determining that the sentence is sufficient to warrant the conviction and that the sentence is fair, reasonable and uniform. No action is taken by the Review Board to reduce sentences on grounds of clemency or amnesty. In this connection reference is made to your Headquarters letter G-5: (11.4.5) of 28th February 1945 and in particular to paragraph 4 of that letter.

Your Headquarters has never agreed to clemency or amnesty being applied to A.N.G. cases and I strongly recommend that clemency or amnesty be applied now and that urgent reconsideration should be given to this matter. Amnesty or clemency could be effected by one of three methods.

(c) Agreement of the Italian Government might be obtained to the issue of a

Agreement of 22nd June 1946.

are at present being reviewed. The review is carried out with a view to determining that the sentence is sufficient to warrant the conviction and that the sentence is fair, reasonable and uniform. No action is taken by the Review Board to reduce sentences on grounds of clemency or amnesty. In this connection reference is made to your Headquarters letter G-3: OLA.5 of 28th February 1945 and in particular to paragraph 4 of that letter.

Your Headquarters has never agreed to clemency or amnesty being applied to A.S.C. cases and I strongly recommend that clemency or amnesty be applied now and that urgent reconsideration should be given to this matter. Amnesty or clemency could be effected by one of three methods. Agreement of the Italian Government might be obtained to the issue of a further decree bringing A.S.C. cases under the new Decree of 22nd June 1946. I do not recommend this course.

The second method would be to adopt a clemency scheme such as that outlined in this Headquarters letter AC/479/1/L of 6th November.

The third method would be by the issue of directions to the Review Board that amnesty or clemency should be applied to all A.S.C. cases on lines similar to those set out in the Italian Amnesty Decree of 22nd June 1946 under reference.

- 3 -

7. Should your Headquarters agree to amnesty or clemency being applied to all A.M.G. convictions, then persons convicted by Italian Courts who are at the disposal of the Allied authorities would be the only category for whom ^{no} clemency is provided.

This category can be divided under two heads:-

- (a) Those convicted of common crimes e.g. theft, pillage, illegal possession of arms etc.,
- (b) Those who were considered a menace to Allied Security and who were handed over to the Italian Courts and convicted of political crimes such as collaboration with the enemy.

I strongly recommend that subject to the action proposed above regarding A.M.G. amnesty, those under (a) should benefit from the provisions of the Italian decree without qualification and that those under (b) should benefit only with the approval of the Allied Authorities to each individual case. An amendment to the Italian decree would be necessary to put this into effect.

8. With regard to Article 16 of the decree will automatically come into operation with the A.M.G. territory of Udine, and it is not proposed to take any action to prevent this. 53

It will not have effect in Venezia Giulia, but it may be possible to consider how far a modified application should be made in Zone "A".

By D.O.L.A. is visiting Venezia Giulia this week and will discuss this

1 strongly recommend that subject to the action proposed above regarding A.M.G. amnesty, those under (a) should benefit from the provisions of the Italian decree without qualification and that those under (b) should benefit only with the approval of the Allied Authorities to each individual case. An amendment to the Italian decree would be necessary to put this into effect.

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It will not have effect in Venezia Giulia, but it may be possible to consider how far a modified application should be made in some "A".
Mr D.C.L.A. is visiting Venezia Giulia this week and will discuss this question with the authorities on the spot.

9. In order to make clear the Allied policy to date, I recommend an early publication of a statement explaining the action being taken by the Allies as regards the review of cases tried by A.M.G. Courts. If approval is given to apply amnesty or clemency to A.M.G. cases, this statement could also explain the proposal which I should make to the Prime Minister for the issue of an amendment to Article 13 regarding cases tried by Italian Courts as recommended in para 7.

- 4 -

10. A separate communication is being addressed to you on the subject of Italian citizens interned in concentration camps who are mentioned in the Prime Minister's letter paragraphs 4, 5, and 6.

11. I should be grateful for an early and sympathetic consideration of the recommendations made in paragraphs 6, 7 and 9 above.

MILTON W. STUBBS.
Rear Admiral, USNR.
Chief Commissioner.

*Copy to 6C
ref 4075/4*

84

(36A)

Acts

Crimes Committed to the detriment
of the Allied Forces

In any case there are excluded
from the amnesty and pardon crimes
committed to the detriment of the Allied
Forces or of the members of the said
Forces or else tried by Allied
Courts or to be tried by such Courts.

HEADQUARTERS ALLIED COMMISSION
APO 394
Public Health Sub-Commission

AG/3072/50/PH

14 March 1946

15 MAR 1946

MEMORANDUM

TO : - VP, CA Section, HQ, ALCOM.

1. Reference is made to the letter of 2 March 1946 by the Executive Commissioner, regarding ENDIEA and medical supplies.
2. A letter was sent by this office to U.N.R.R.A. on 6 March 1946 asking for a joint discussion on the matter. A reply was received from the Public Health Section, U.N.R.R.A., that such a letter had been sent to the Allied Commission.
3. No such letter has been received by this office. Repeated inquiries, including a personal visit, have not produced the letter, although at one time it was said to have been drafted and that a Col. Ekserdjian was to call on your office to discuss it.
4. The visit to-day produced no trace of the letter at all, and the persons concerned were either out of town or in staff meetings. These people seem to have a penchant for meetings and long distance telephone conversations, and so cannot speak to a caller.

FOR THE DIRECTOR :

W. W. Sampson
WILLIAM W. SAMPSON
Captain Sn.C.
Executive Officer
Public Health Sub-Commission

Copy to : Executive Commissioner, HQ, ALCOM



30A

8 June 1946.

Dear Mr. Taylor:

This is in reply to your letter of May 16th which enclosed a copy of Vatican Note No. 127212/SA concerning Lieutenant Franco Baralli and Corporal Michalon Gastone.

The question of clemency for prisoners sentenced in Allied courts is a subject of correspondence currently being exchanged between the British and United States Governments, occasioned by proposals submitted by the Italian Ministry. It may be assumed that merited consideration is being given to the subject. Current instructions preclude us from granting clemency in cases where the accused have been convicted of espionage or sabotage, presumably because of the correspondence now passing between the Governments. In anticipation of an announcement of policy thereon, espionage and sabotage cases have been segregated by the Chief Judicial Officer of the Allied Commission.

As soon as any decision is reached which would enable clemency to be considered, I should be glad at that time to give the fullest consideration to Monsignor Montini's letter.

Sincerely,

/s/ Ellery W. Stone

ELLEERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Hon. Myron C. Taylor,
Personal Representative of the President
of the United States to His Holiness
the Pope,
2 Via Boncompagni,
Rome.

82

THE PERSONAL REPRESENTATIVE OF THE
PRESIDENT OF THE UNITED STATES OF AMERICA
TO HIS HOLINESS THE POPE
2, via Boncompagni, Rome.

May 16, 1946.

Dear Admiral Stone:

For such consideration and action as you may deem appropriate, I enclose a copy of Vatican Note No. 127212/SA of May 18, 1946 which I have received from the Secretariat of State of the Holy See, concerning the petition of Mrs. Angela Barelli on behalf of her son, Lieutenant Franco Barelli, and his companion, Corporal Michelon Castone.

It will be appreciated if you will kindly indicate the nature of the reply which may be made to the Holy See in this matter.

Sincerely yours,



Myron C. Taylor

Enclosures:

- Copy of Vatican Note No. 127212/SA.
- Copy of Pro Memoria dated May 14, 1946.
- Copy of Petition dated May 14, 1946 from Mrs. Angela Barelli.

Rear Admiral Ellery Wheeler Stone,
Chief Commissioner,
Headquarters Allied Commission,
Rome.

SEGRETERIA DI STATO
DI SUA SANTITÀ

No. 127212/SA

Dal Vaticano, May 18th, 1946

C O P Y

Your Excellency:

May I take the liberty to recommend to your kindly interest the enclosed petition addressed to Admiral Ellery Stone, Chief Commissioner of the Allied Commission, by Signora Angela Barelli on behalf of her son, Lieutenant Franco Barelli, and his companion, Corporal Michelon Gastone.

The petition of Signora Barelli, which outlines the case in question, is an appeal for clemency and condonation which she would desire to have presented directly to the Chief Commissioner of the Allied Commission.

I can assure Your Excellency that Signora Barelli is a Christian Mother of outstanding merit and esteem and that her cause is worthy of sympathetic attention.

Indeed, His Holiness Pope Pius XIIth, Who has known the Barelli family for a long period, is deeply interested in the case of Franco Barelli and his companion, and any measure of clemency which might be accorded these young men would elicit the gracious appreciation

on behalf of her son, Lieutenant
Corporal Michelon Castone.

The petition of Signora Barelli, which outlines the case in question, is an appeal for clemency and condonation which she would desire to have presented directly to the Chief Commissioner of the Allied Commission.

I can assure Your Excellency that Signora Barelli is a Christian Mother of outstanding merit and esteem and that her cause is worthy of sympathetic attention.

Indeed, His Holiness Pope Pius XIIth, Who has known the Barelli family for a long period, is deeply interested in the case of Franco Barelli and his companion, and any measure of clemency which might be accorded these young men would elicit the gracious appreciation of the Holy Father.

Gladly availing myself of this occasion to renew to Your Excellency the expression of my sentiments of highest consideration and of kindest regard, I remain

Very sincerely yours,

(SGD.) J. B. MONTINI

His Excellency
Myron C. Taylor
Personal Representative of the
President of the United States
to His Holiness

Enclosures 2

C O P YPRO MEMORIA

per il Dott. Franco Barelli condannato in data 8 settembre 1944 a venti anni di carcere per spionaggio ed attualmente detenuto a Perugia.

Il sottotenente Franco Barelli, laureato all'Università del S. Cuore di Milano e ben conosciuto dal Rettore Magnifico di quella Università P. Agostino Gemelli, il quale può rendere testimonianza della sua retta condotta morale, fu catturato nel settembre 1944 e sotto l'accusa di spionaggio condannato a venti anni di carcere.

Tale accusa è stata sempre ed è nel modo più assoluto negata dal Barelli il quale per non cadere prigioniero tentò ogni mezzo per raggiungere le proprie linee.

Egli, essendo uomo d'onore, non può asserire cosa contraria al vero.

Nel processo è chiaramente emerso che il Barelli non arrecò danno a nessun alleato nè commise atti di sabotaggio: tanto è ciò vero che i soldati suoi dipendenti, i quali insieme con lui furono presi prigionieri, dopo essere stati con lui detenuti nello stesso carcere, furono inviati come prigionieri di guerra in un campo di concentramento.

9

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Non sembra inutile far presente infine che il Barelli nei due anni già trascorsi in prigionia ha sempre tenuto una condotta esemplarmente corretta.

In questi giorni si sta procedendo nell'Ufficio Legale degli Alleati, di cui è capo il Colonnello Campbell (Via Veneto-ex Ministero Corporazioni) alla revisione di tutti i processi.

14 maggio 1946

C O P Y

To Admiral Ellery Stone
Chief of the Allied Commission
Corporation Building
ROME

Perugia, 14th May, 1946

Sir,

I undersigned Angela Barelli take the liberty of addressing you this petition to the purpose of having my son Franco Barelli's position newly examined.

He is held in the State Prison at Perugia where is serving the condemnation to 20 years prison to which he was sentenced by the Allied General Military Court on the 8th. September 1944 as responsible of violation to Proclamation n.1, 2nd part, art.4, sect.1.

The said my son was an officer in the Italian Army before September 1943, and after he continued serving as lieutenant in the Italian Republican Army.

He was captured by Allied Forces on 27th. June 1944 together his soldier, corporal Michelon Gastone, and successively prosecuted at Perugia and sentenced as guilty of having served the enemy as a spy.

Nevertheless the sentence, though extremely severe, stated that the two defendants "were not sent (by the enemy) with the charge of executing espionage and that really they had not executed espionage". Moreover the sentence stated they had not done any damage neither to persons nor to materials of Allied Forces.

As a matter of fact the trial proved that defendants were but soldiers who, cut off from their lines during a disturbing action by the swift and deep german retreat, tempted to reach their unit with a view to prevent their capture; and to this purpose they changed their military cloths with civilian ones. They had no other aim.

During the trial it appeared very clear, however, that the other men of the same patrol, who were captured in military equipment in the same days and who were held with my son in the Prison of Chieti, were soon after sent to a Prisoners Camp.

It is also to add that the Officer appointed to prosecute, Capt. E. N. Blacklock, requested by the Court if he had any proposal to do regarding the punishment the Court had to inflict, he quoted he was favorable to send the defendants to a confinement Camp, as it was done hitherto with other men of

corporal Michelon Gastone, and one sentenced as guilty of having served the enemy as a spy.

Nevertheless the sentence, though extremely severe, stated that the two defendants "were not sent (by the enemy) with the charge of executing espionage and that really they had not executed espionage". Moreover the sentence stated they had not done any damage neither to persons nor to materials of Allied Forces.

As a matter of fact the trial proved that defendants were but soldiers who, cut off from their lines during a disturbing action by the swift and deep german retreat, tempted to reach their unit with a view to prevent their capture; and to this purpose they changed their military cloths with civilian ones. They had no other aim.

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It is also to add that the Officer appointed to prosecute, Capt. E. N. Blacklock, requested by the Court if he had any proposal to do regarding the punishment the Court had to inflict, he quoted he was favorable to send the defendants to a confinement Camp, as it was done hitherto with other men of the same patrol.

The above running circumstances demonstrate that the guilt was not absolute and serious.

All this is clearly said in the documents pertaining to trial, and particularly in the sentence which I could not obtain in spite of all my efforts, and which I would be glad to annexe herewith.

Since the trial day two years are now elapsed, and war is finished with all its hard necessities.

Allied

-2-

Allied Authorities in last months have revisioned the positions of a great number of young men whose cases are quite similar to my son's.

These reasons decide me to address you the present petition and to implore in behalf of my son pardon and forgiveness on the unexpired term of the above mentioned sentence.

Sir, my son is a soldier who had no other fault but having believed serving his Country to the last, and only as a soldier. His condemnation and imprisonment were a necessary security measure during the war, but now that war is finished with the Allied Victory those necessities are over. I am therefore sure to meet your comprehension.

Sir, a mother supplicates your help; be generous and help her.

Hopefully

(Sgd.)

ANGELA BARELLI
Perugia, Logge di S. Lorenzo 12
presso Can.co Ettore Minestrini

NOTE:

Trial against Barelli Franco and Michelon Castone
held at Perugia on the 6-7-8th Sept. 1944.
before General Military Court of. A.M.G., with:
president : William F. Waugh, Major, JAGD.
members : Andrew Way , Major
: Louis L. Cox , Captain
officer appointed to prosecute:
E.N.Blacklock , Captain

The two defendants were arrested on the 27th.
June 1944.

Now they are held:

- Barelli Franco in State Prison at Perugia
- Michelon Castone in State Prison at Spoleto.

B

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.41.

22 May 1946

SUBJECT: Clemency - Espionage and Sabotage.

TO : Headquarters, Allied Commission,
APO 794.

Reference is made to your letter above subject file AC/
4079/1/L, dated 25 May 1946.
10

It is manifest from a survey of actions taking place throughout the world that no firm allied policy has yet been established in connection with the treatment of spies and saboteurs. In Italy there is no intention of granting clemency to this class of persons so long as Allied Forces remain therein, including the disputed area of Venezia Giulia. It is presumed that all cases of conviction have been reviewed for legal sufficiency of proof of guilt, if not, such review should be undertaken and the results reported with recommendations.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. H.

A. L. HAMBLIN
Brigadier General, GSC
Assistant Chief of Staff, G-5.

(A)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSIONCOPY.
++++

AC/4079/1/L

/ns
10 May 1946

SUBJECT : Clemency - Espionage and Sabotage.

TO : A.F.H.Q. (G-5 Section).

1. There are a number of cases, total is believed to be less than forty, wherein the accused are presently serving out long terms of imprisonment for proved espionage or sabotage, actual or attempted. In some cases the accused were sentenced to death but the penalty was commuted: others were sentenced by the Court to punishment less than death.

2. While the Laws of War recognise death as the penalty for espionage or sabotage and do not, with the possible exception of the French interpretation, envisage any lesser punishment, these cases were all tried under Proclamation Law under which on conviction the accused is "liable to punishment by death or by imprisonment or fine or both as the Court may determine". The effect of the proclamations is to make espionage and sabotage a domestic penal offence whereas under the Laws of War it is a recognised activity of belligerents involving no offence against international Law and the punishment of spies is inflicted on them, "not as violators of the Laws of War but to render that method of obtaining information as dangerous, difficult and ineffective as possible to the enemy."

75

3. In the cases referred to most of the accused were young people owing allegiance to the de facto or de jure governments which were opposed to the Allies. In some of the cases the motive was certainly high patriotism, in some there was a measure of pressure through domestic or economic conditions, in some gain may have been a substantial motive.

- 2 -

4. There are many considerations arising from these cases: there is the argument that the penalty is death and that short of being prepared to pronounce that sentence the Court should not convict but should order internment to cover security measures. That argument, as has been indicated, does not arise through the charges being brought under the Proclamation, but the true nature of the action is not altered by the fact. Again there is the question of how far remission of long term sentences so soon after the end of the War may influence espionage activities in any future war.

5. Whatever view is taken it is clearly impracticable to apply the standards of national domestic crime. It is suggested that these cases can be reviewed only in the light of Allied policy and it is requested that a statement of that policy be given so that cases may be reviewed by the Legal Sub Commission in conformity with it.

For the Chief Commissioner :

N. CARR,
Brigadier,
VP CA Sec.

57/ /46

The Chief Commissioner
Allied Commission.

Office of British
Political Adviser

3-17
4.011.1310

Subject: Clemency for Prisoners / 10A.

Your letter No. AC/14079/1/L of 6th November 1945
to Allied Force Headquarters, G-5 Section.

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

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

31.v.46

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

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



EC DIST. 3 final
ACTION: GA Sec (13)(2)
INFO: CC
EC

COPY

No. 192

Ref: 1333/2/46

MEMORANDUM



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

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

3. The obvious occasion for such an act would be the conclusion of the Peace Treaty, provided always that this were not unduly delayed. It is, on the whole, a matter of no great concern to His Majesty's Government whether sentences imposed by Allied Military Government courts continue to be enforced after the conclusion of the Peace Treaty, and His Majesty's Government do not intend for their part to propose that any provision to limit Italian sovereignty in this respect should be inserted in the Peace Treaty. For 2.

/deterrent

- 2 -

deterrent to protect what were at the time important Allied Military interests and when the Peace Treaty is concluded, this factor ceases to be operative. On these circumstances it would seem superfluous at this stage to take any special measures, apart from the normal work of reviewing performed by the Allied Commission, to reduce sentences which are still outstanding.

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

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

28th March 1946.

BRITISH EMBASSY,
WASHINGTON, D.C.

copyMEMORANDUM

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

Department of State,
WASHINGTON, May 1, 1946.

740.00119 CONTROL (Italy) /3-2846



COPIOffice of British
Political Advisor

57/46

The Chief Commissioner
Allied CommissionSubject: Clemency for Prisoners.

Your letter No. AC/4079/1/1 of 6th November 1945 to Allied Force Headquarters, G-5 Section.

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

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

31.v.46

(336) A. G. Halford
Br. Political Advisor

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

69
EC DIST - 3 JuneACTION - CASE (Legal) (2)
INFO - CC
- EC

SECRET

No. 192

Ref: 1333/2/1/6

MEMORANDUM

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

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

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

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

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

68

28th March, 1946

BRITISH EMBASSY
WASHINGTON, D.C.

COPYMEMORANDUM

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

Department of State
Washington, May 1, 1946.

740.00119 Control (Italy) 5-2346

67



HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

33A

AC/4079/I/L

JKW/ns
7 June 1946.

SUBJECT : Amnesty

TO : Headquarters , AMG, Udine Province
(Attn: Senior Legal Officer)

1. See your letter SLO/HQ AC/MAY/15
of 29 May 1946.

2. For your private information only,
the matter about which you inquire is being examined
by higher authority. Any attempt at forecasting the
action, if any, which will be taken would be highly
hazardous. Presumably all concerned will be notified
if and when decision is made.

By command of Rear Admiral STONE:

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

4083/25 *4079/1*

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
UDINE PROVINCE
Tel. Udine 1516
Ext. 16

32A

29 May 1946.

TO : Chief Legal Adviser,
Legal Sub-Commission HQ, AC,
R O M E.

SUBJECT : Amnesty.

FILE N° : SLO/HQ AC/MAY/15.

1. There is a fairly general impression in this Province that the return to government by freely elected representatives of the people will be marked by an Amnesty to persons now serving terms of imprisonment imposed by Ordinary Italian Courts. Should such an Amnesty be granted the position of persons serving sentences imposed by AMG Courts will be the subject of much enquiry.

I should be glad to know therefore if any analogous step in respect of those persons is under consideration by Allied Commission and if a directive may be expected in due course.

By order of the Provincial Commissioner:

C.L.P. Gilshenan
C.L.P. GILSHENAN Major,
Senior Legal Officer,
Udine Province.

SUB-COMMISSION

→
Italian Section
CL RKS

3 Jun 46

for reply see 05
4079/1 L of
7 June 46

31 (a)

57/ 146

Office of British
Political AdviserThe Chief Commissioner
Allied Commission.

- 361370

Subject: Clemency for Prisoners

Your letter No. AC/4079/1/L of 6th November 1945
to Allied Force Headquarters, G-5 Section.

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

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

31.v.46

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

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

*These Peace Treaty is probably delayed
there due to the fact that the action
called for by the US or the UK. It is
up to the US to make a proposal for the
Peace Treaty. These should be sent to the
Review Board. mC 26/4*



copy

31(6)

No. 192

Ref: 1333/2/46

MEMORANDUM

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

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

3. The obvious occasion for such an act would be the conclusion of the Peace Treaty, provided always that this were not unduly delayed. It is, on the whole, a matter of no great concern to His Majesty's Government whether sentences imposed by Allied Military Government courts continue to be enforced after the conclusion of the Peace Treaty, and His Majesty's Government do not intend for their part to propose that any provision to limit Italian sovereignty in this respect should be inserted in the Peace Treaty. For the most part severe sentences were passed as a
/deterrent

6/3

- 2 -

31 (A)

deterrent to protect what were at the time important Allied Military interests and when the Peace Treaty is concluded, this factor ceases to be operative. In these circumstances it would seem superfluous at this stage to take any special measures, apart from the normal work of reviewing performed by the Allied Commission, to reduce sentences which are still outstanding.

4. On the other hand, His Majesty's Government would see no objection to agreeing to any proposal from the Italian Government that sentences of Allied Military Government courts which are still outstanding at the time of the conclusion of the Peace Treaty should be remitted or reduced by the Italian Government at their discretion.
5. His Majesty's Government would be grateful for the views of the United States Government on this question, and would be glad to know whether they agree to the procedure suggested in the foregoing paragraph.

28th March 1946.

BRITISH EMBASSY,
WASHINGTON, D.C.

31(c)

copyMEMORANDUM

WRONG

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

Department of State,
WASHINGTON, May 1, 1946.

740.00119 CONTROL (Italy) /3-2846

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Luf 1st 90A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.41.

22 May 1946

me

SUBJECT: Clemency - Espionage and Sabotage.

TO : Headquarters, Allied Commission,
APO 794.

Reference is made to your letter above subject file AC/
4079/1/L, dated 15 May 1946.

It is manifest from a survey of actions taking place throughout the world that no firm allied policy has yet been established in connection with the treatment of spies and saboteurs. In Italy there is no intention of granting clemency to this class of persons so long as Allied Forces remain therein, including the disputed area of Venezia Giulia. It is presumed that all cases of conviction have been reviewed for legal sufficiency of proof of guilt, if not, such review should be undertaken and the results reported with recommendations.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. HAMBLIN
Brigadier General, GSC
Assistant Chief of Staff, G-5.

LEGAL SUB-COMMITTEE

CLO

SLO

Chief Counsel

CJO

Italian Section

CL RKS

24 May 46

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TRANSLATION

SUBJECT : Conditional Liberty in cases of sentences issued by Allied Military Tribunals.

With reference to your letter 4079/1/E dated 18 inst,

please be advised that this Ministry agrees with your proposals granting directly by a Ministerial Decree Conditional liberty to prisoners sentenced by Allied Xx Courts and following the same principles as for those sentenced by Italian Courts.

In order to apply said principles it is necessary that the following information be furnished to this Ministry :-

- a) a list of prisoners to whom Conditional liberty is granted ;
- b) date of initial¹ of detention and date of expiration;
- c) original sentence; any reduction obtained and place where the prisoner is detained;
- d) for each man it must be specified if he is a habitual offender and if he has been tried as such by Allied Courts.
- e) it is to be specified, further the offence committed and in brief how the offence was committed.

The latter news is required in case the prisoner really deserves ~~xxxxxxx~~ the benefit.

In every case the observations of your S/C will ^{be} ~~xxxx~~ appreciated/ 59

An early reply is awaited.

(sgd) Bonelli

29A

28A 446

- b) date of initial of detention and
- c) original sentence; any reduction obtained and place where the prisoner is detained;
- d) for each man it must be specified if he is a habitual offender and if he has been tried as such by Allied Courts.
- e) it is to be specified, further the offence committed and in brief how the offence was committed.

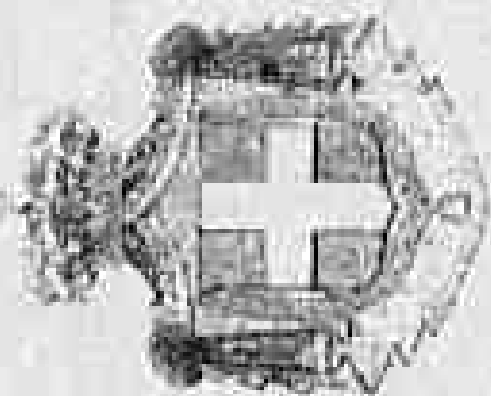
The latter news is required in case the prisoner really deserves ~~xxxxxxx~~ the benefit.

In every case the observations of your S/C will 59
be ~~xxxx~~ appreciated/

An early reply is awaited.

(sgd) Bonelli

Mod. 2



4079/1
 Ministero di Grazia e Giustizia

Subinella di M. il. Ministro

UFFICIO COLLEGAMENTO con l'A.C.

Subinella di M. il. Ministro

Roma, 21 maggio 1946 19

OGGETTO Liberazione condizionale nei casi di condanne inflitte
 dai tribunali militari alleati.

ALLA COMMISSIONE ALLEATA
 Sottocommissione Legale

ROMA

Con riferimento alla lettera A.C./4079/1/L del 18 corrente, si comunica che questo Ministero aderisce pienamente alla Vostra proposta di concedere direttamente con Decreto Ministeriale la liberazione condizionale per i condannati dalle Corti Militari Alleate, in base agli stessi principi seguiti per coloro che furono condannati da Tribunali italiani.

Pertanto a' lo scopo di potere applicare i principi anzidetti è necessario ottenere le seguenti notizie che potranno essere inviate da codesta Sottocommissione unitamente ad un elenco dei condannati per i quali la Vostra revisione è già stata effettuata.

Per ogni condannato, cioè, sarà necessario conoscere l'inizio della detenzione e la data della cessazione della pena, specificando sia la condanna originaria, sia l'ultima riduzione ottenuta, nonché il luogo della detenzione stessa.

Inoltre per ciascuno dovrà essere menzionato se si trat-

Sottocommissione Legale

Con riferimento alla lettera A.C./4079/1/L del 18 corrente, si comunica che questo Ministero aderisce pienamente alla Vostra proposta di concedere direttamente con Decreto Ministeriale la liberazione condizionale per i condannati dalle Corti Militari Alleate, in base agli stessi principi seguiti per coloro che furono condannati da Tribunali italiani.

Pertanto a'lo scopo di potere applicare i principi anzidetti per coloro che furono condannati da questa Commissione, detti è necessario ottenere le seguenti notizie che potranno essere inviate da codesta Sottocommissione unitamente ad un elenco dei condannati per i quali la Vostra revisione è già stata effettuata.

Per ogni condannato, cioè, sarà necessario conoscere l'inizio della detenzione e la data della cessazione della pena, specificando sia la condanna originaria, sia l'ultima riduzione ottenuta, nonché il luogo della detenzione stessa.

Inoltre per ciascuno dovrà essere menzionato se si tratta di persona che è stata condannata come recidiva dai Vostri Tribunali.

In fine occorre indicare il reato commesso esponendo anche succintamente come i fatti si svolsero. Questa ultima notizia potrà essere utile per valutare se il condannato merita in concreto il beneficio.

In ogni caso per ciascuno saranno apprezzate eventuali in concreto i benefici.

Si resta in attesa di un corno di riscontro.

L'UFFICIALE DI COLLEGAMENTO
(Dr. G. Bonelli).

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22 May 96

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/nda.

18 May 1946.

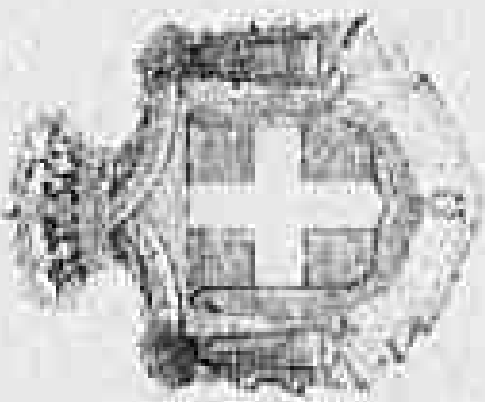
AC/4079/1/L.

SUBJECT : Conditional Liberty in cases of sentences imposed by Allied Military Courts.

TO : Ministry of Pardon and Justice.

1. See your letter OX/4238-1 of 16 May 1946.
2. It is desired that the ITALIAN GOVERNMENT exercise the powers of granting conditional liberty in the same manner, to the same degree and on the terms, to prisoners sentenced by AMG Courts as prisoners sentenced by Italian Courts for similar offenses, receive that privilege.
3. It is desired that this privilege be applied AT ONCE in suitable cases to prisoners who have already served a sufficient portion of their sentence to justify consideration for a grant of conditional liberty.
4. What, if anything, will be required of the Legal Sub-Commission by the Ministry of Grace and Justice, in order to carry out this function?

JOHN K. WEBER, 57
Colonel, Infantry,
Chief Legal Advisor.



Ministero di Giustizia

Subordinato di S. C. di Giustizia

Roma, 16. 5. 1946

Protocollo 1 cc/4238 - 1

OGGETTO Liberezioni condizionali di condanne da Corti alleste.

ALLA COMMISSIONE ALLIATA
Sottocommissione Legale

Roma

Con riferimento al foglio 10/1029/41 del 10 corrente questo Ministero ha esaminato il problema posto da codesta Sottocommissione e osserva in proposito quanto segue.

La liberazione condizionale è regolata dagli artt. 176, 177 del Codice Penale e può essere concessa ai condannati a pena detentiva che abbiano scontato metà della pena o almeno tre quarti se recidivi e abbiano dato prove costanti di buona condotta, purché il rimanente della pena non superi cinque anni. Circa il termine minimo di cinque anni della pena complessiva richiesto dall'art. 176 è da notare che il D.L. 27.8.45 n. 887 (articolo unico) non richiede tale requisito per tutto il periodo dello stato di guerra e di sei mesi dopo tale cessazione (da notare che la cessazione dello stato di guerra fu fissata al 15 aprile corr. anno).

Infine è da rilevare che la competenza a concedere la liberazione condizionale appartiene al Ministro della Giustizia che vi provvede con Decreto in seguito ad appositi istruttori (articolo 43 delle disposizioni di attuazione del Cod. di Proc. Penale).

Il decreto del Ministro è comunicato al giudice di sorveglianza presso il Tribunale del luogo ove il condannato sconta la pena, il quale, se ha ottenuto il beneficio è ib

25A
 Con riferimento al foglio 13/107927 del 10 corrente questo Ministero ha esaminato il problema posto da codesta Sottocommissione e riserva in proposito quanto segue.

La liberazione condizionale è regolata dagli artt. 176, 177 del Codice Penale e può essere concessa ai condannati a pene detentive che abbiano scontato metà della pena o almeno tre quarti se recidivi e abbiano dato prova costanti di buona condotta, purché il rimanente della pena non superi cinque anni.

Circa il termine minimo di cinque anni della pena complessiva richiesto dall'art. 176 è da notare che il D.L. 27.5.42 n. 527 (articolo unico) non non vieta tale requisito per tutto il periodo dello stato di guerra e di sei mesi dopo tale cessazione (da notare che la concessione dello stato di guerra in vigore al 15 aprile 1945).

Infine è da rilevare che la competenza a concedere la liberazione condizionale appartiene al Ministro della Giustizia che vi provvede con Decreto in seguito ad apposita istruzione (articolo 43 delle disposizioni di attuazione del Cod. di Proc. Penale).

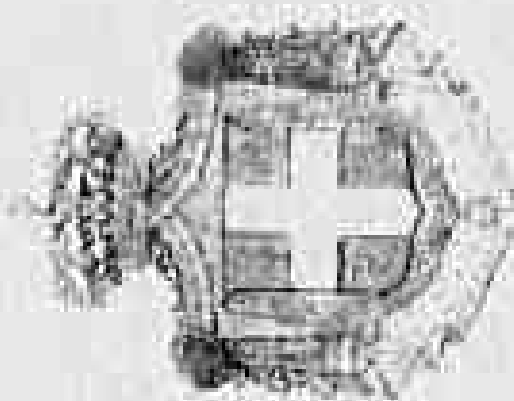
Il decreto del Ministro è comunicato al giudice di sorveglianza presso il Tribunale del luogo ove il condannato sconta la pena. Ciò in quanto colui che ha ottenuto il beneficio è iscritto di libertà vigilata e come tale deve ottemperare alla vigilanza.

Le eccezioni previste dal giudice di sorveglianza sono revocate se entro il termine dell'autorità di Pubblica Sicurezza.

La liberazione condizionale è colta che ha ottenuto il beneficio concesso un delitto o una contravvenzione della stessa indole o trasgressiva agli obblighi inerenti alla libertà vigilata.

...

Mod. 2



Ministero di Giustizia

Subv. di N. C. di Giustizia

Roma

19

Subv. di N. C.

OGGETTO

In tal caso il periodo trascorso in libertà vigilata non viene computato nella durata della pena che deve ancora essere scontata per la parte residua.

Pertanto qualora codesta Commissione voglia effettivamente porre in libertà condizionale coloro che sono stati condannati da Tribunali Alleati si ritiene che la decisione in proposito rientra nella Vostra competenza così come è stato fatto finora in materia di grazia.

La decisione Alleata potrebbe opportunamente uniformarsi ai principi della legislazione italiana sopra accennati, restando tuttavia inteso che non si tratta di provvedimento dell'Autorità Italiana in quanto non concesso con Decreto del Ministro della Giustizia.

Tale provvedimento una volta preso da codesta Sottocommissione dovrebbe essere comunicato al Ministero che provvederebbe alla sua esecuzione, tramite il giudice di sorveglianza, come per le normali liberazioni condizionali disposte con Decreto.

R.

TRANSLATION

16 May 1946.

SUBJECT : Conditional Liberty in cases of sentences imposed by Allied Military Courts.

TO : Allied Commission , Legal S/C, Rome.

With reference to your letter No.4073/1/L dated 10th May 1946, this Ministry has examined the question submitted by your Sub-Commission and the following observations are made :

Conditional Liberty is covered by Articles 176 and 177 of the Penal Code and can be granted to those prisoners who have already served half of the sentence imposed; in cases where the prisoners are habitual offenders it is granted after they have served at least 3/4 of the sentence and they must have good behaviour in prison, provided always that the remaining penalty does not exceed 5 years.

As far as the minimum term of 5 years ~~is~~ required by Art.176 is concerned, it is to be noted that DL No.827 of 27 June 1942 (sole article) no longer requires such requisite for all the time in which the Country is in state of war as well as six months after its cessation. (It is pointed out that the cessation of state of war has been fixed as of 15th April 1946, current year).

It is to be further noted that the only authority for the granting of conditional liberty is the Ministry of Justice which deals with such matters by issuing a decree after having made investigations (Art.43 of the current provisions of the Code of Penal Procedure). Such decree is transmitted to the supervisory judge at the Tribunale situated in the same town where the prisoner is serving the sentence. This because the man to whom conditional liberty is granted is subject to supervised liberty and as such he must comply with the instructions given to him by the said ~~xxx~~ judge and put into effect by Public Safety authority. i 54

Conditional liberty can be revoked if, during the period of supervised liberty, the accused commits a crime or an offence of the same type for which he was sentenced before, or if he violates the provisions inherent to the supervised liberty. In such case the period passed under supervised liberty is not included in the remaining penalty to be

no longer requires such requirements after its cessation is in state of war as well as six months after its cessation of state of war has been fixed (It is pointed out that the cessation of state of war has been fixed as of 15th April 1946, current year).

It is to be further noted that the only authority for the granting of conditional liberty is the Ministry of Justice which deals with such matters by issuing a decree after having made investigations (Art. 43 of the current provisions of the Code of Penal Procedure). Such decree is transmitted to the supervisory judge at the Tribunale situated in the same town where the prisoners is serving the sentence. This because the man to whom conditional liberty is granted is subject to supervised liberty and as such he must comply with the instructions to supervised liberty and as such he must comply with the instructions given to him by the said ~~xxx~~ judge and put into effect by Public ~~xxx~~ ; 54 Safety authority.

Conditional liberty can be revoked if, during the period of supervised liberty, the accused commits a crime or an offence of the same type for which he was sentenced before, or if he violates the provisions inherent to the supervised liberty. In such case the period passed under supervised liberty is not included in the remaining penalty to be served.

Therefore, if the Allied Commission is willing to grant conditional liberty to prisoners sentenced by Allied Courts, such decisions are ~~within~~ within your province in accordance with the usual procedure adopted up to now in cases of pardon "Grazia".

~~Within~~ ²⁰⁰⁵ conformed to the above mentioned principles of the Italian legislation nevertheless it is understood that ~~xxx~~ it is not a matter within the jurisdiction of the Italian authorities as it is not granted by a decree of the Ministry of Justice.

Such provisions once ~~xx~~ issued by your Sub-Commission should be communicated to this Ministry which takes care of carrying them out through the supervisory judge in the same way as if they were granted by Italian decree.

Translation made by Mrs. Pisapia Anna.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

96A

AC/4079/1/L

/ns
10 May 1946

SUBJECT : Clemency - Espionage and Sabotage.

TO : A.F.H.Q. (G-5 Section).

1. There are a number of cases, total is believed to be less than forty, wherein the accused are presently serving out long terms of imprisonment for proved espionage or sabotage, actual or attempted. In some cases the accused were sentenced to death but the penalty was commuted; others were sentenced by the Court to punishment less than death.

2. While the Laws of War recognise death as the penalty for espionage or sabotage and do not, with the possible exception of the French interpretation, envisage any lesser punishment, these cases were all tried under Proclamation Law under which on conviction the accused is "liable to punishment by death or by imprisonment or fine or both as the Court may determine". The effect of the Proclamations is to make espionage and sabotage a domestic penal offence whereas under the Laws of War it is a recognised activity of belligerents involving no offence against international law and the punishment of spies is inflicted on them, "not as violators of the laws of war but to render that method of obtaining information as dangerous, difficult and ineffective as possible to the enemy."

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3. In the cases referred to most of the accused were young people owing allegiance to the de facto or de jure governments which were opposed to the Allies. In some of the cases the motive was certainly high patriotism, in some there was a measure of pressure through domestic or economic conditions, in some gain may have been a substantial motive.

- 2 -

4. There are many considerations arising from these cases: there is the argument that the penalty is death and that short of being prepared to pronounce that sentence the Court should not convict but should order internment to cover security measures. That argument, as has been indicated, does not arise through the charges being brought under the Proclamation, but the true nature of the action is not altered by the fact. Again there is the question of how far remission of long term sentences so soon after the end of the War may influence espionage activities in any future war.

5. Whatever view is taken it is clearly impracticable to apply the standards of national domestic crime. It is suggested that these cases can be reviewed only in the light of Allied policy and it is requested that a statement of that policy be given so that cases may be reviewed by the Legal Sub Commission in conformity with it.

For the Chief Commissioner :

M. Carr Brigadier

M. CARR,
Brigadier,
VP CA Sec.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

25A

AC/4079/1/L

JKW/ns
10 May 1946.

SUBJECT : Clemency.

TO : The Minister of Grace and Justice.

1. It is desired that arrangements be made whereby 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.

2. To the end that this arrangement may be applied in suitable cases to prisoners who have already served a sufficient portion of their sentence to justify consideration for a grant of conditional liberty, it is suggested that a plan be devised, and discussion had, so that the same may be placed in operation. May we be notified?

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

4079/100
6625-
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

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24A

G-5: 014.5

30 April 1946

SUBJECT: Clemency.

TO : Headquarters, Allied Commission,
APO 394.

Reference your AC/4079/1/L 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:

A. L. Hamblen 50
A. L. HAMBLEN
Brigadier General, G.S.C.
Assistant Chief of Staff, G-5

LEO-1 SUB-COM 1000

CLO

DCLO

Chief Counsel

CJO

Italian

C. S.

Recd 2 May 46

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mda.

NG/4072/1/L.

15 April 1946.

SUBJECT : Clemency.

TO : AFHQ - G-5.

I. Discussion.

1. The Proclamations issued from time to time by SAC declared certain acts to be offences and prescribed punishments therefor.

2. In most countries, in addition to the laws defining offences and their punishments, the penal code normally specifies the characteristics of the various types of punishment and provides for remission of a part of the sentence for good conduct.

3. AMG has made no such provision but has passed convicts to the Italian Government for custody which deals with them in accordance with its normal practices, (that is according to Italian law), with the exception that it has not considered itself at liberty to reduce the effective term of sentence of an AMG court by remitting part thereof for good conduct.

4. It has consistently been the practice of AMG to re-activate Italian Courts behind the advancing line as early as possible and to save manpower by passing to such courts as many as possible of the offences triable under Italian law. Prior to the re-activation of such courts AMG Courts tried exactly the same type of case and under the same law. Frequently AMG Courts and Italian Courts might be sitting in the same areas and trying similar cases.

5. One person convicted by an Italian Court would therefore be entitled to a reduction of his term for good conduct while another who may have been convicted at the same time and place for a similar offence by an AMG Court obtains no remission.

6. This is inequitable and is a source of discontent between prisoners in the same prison, there is also no incentive to good behaviour.

7. The Italian Law as to remission for good conduct is that conditional liberty may be granted by the Inspector of Prisons on the application of the convict which may be made in the case of a first offender at any time after the expiration of half the sentence; if it is not a first offence, after three quarters of the sentence has been served. The Inspector takes into consideration the offence and the conduct of the prisoner and may allow conditional release subject to continued good conduct from such date as he considers appropriate.

There are two other measures in Italian Law which are not remission for good conduct by which sentences may be reduced:

- a. A convict is allowed to submit petitions for mercy in which case his offences, sentence and character is taken into account and the Ministry of Justice makes such orders as seems appropriate.
- b. To mark special events, the Sovereign grants an amnesty to prisoners, selected by the Ministry of Justice according to their offences and sentences.

II. Action Recommended.

May the Allied Commission be authorised to inform the Italian Government that their law as to remission of sentences for good conduct may be applied to persons sentenced by AMG courts and that the letter at TAB "A" be sent to Allied Commission accordingly.

However it may not be considered appropriate to authorize the Italian Government to exercise the powers of condono or amnesty so far as AMG convicts are concerned, before the Allied Commission reviewing board has completed the review of cases which it now has in hand. The work of the reviewing board should come to an end by August 1st or thereabout. Will you please let this HQ. know whether you agree with the suggested policy.

For the Chief Commissioner.

48

G.G. HAWTHORND,
Lt.Col.,
Deputy Chief Legal Advisor.

Copy to Executive Commissioner.
" " Public Safety.

22A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

JKW/ada.

4 April 1946.

16/4079/A/L.

SUBJECT : Clemency for Prisoners.

TO : Allied Force Headquarters,
G-5 Section, APO 512.

1. Reference your letter G-5: 014.5 of 28 February 1946.
2. As requested in paragraph three of your letter, as of 10 March, 1946, a chart has been prepared of the unexpired sentences in cases where the sentence originally imposed was for two years or less. This chart is attached and is marked "A". It is pointed out that this chart is based on Italian prison records furnished us. Case records in this category were reviewed in the Region of origin. The records of such cases are now being processed in Archives as Region records, and at the time of this check were not available for inspection.
3. From the beginning of occupation in Sicily, sentences originally imposed for a period longer than two years (including death) have been reviewed by the Chief Judicial Officer. An office record of such cases was kept by the Chief Judicial Officer. This record reveals that for the total period of occupation there were approximately 1165 such sentences.
4. Of such total, the office record reveals that as of 10 March 1946, in those cases where the sentence was not disturbed on review, there should remain approximately 1097 such cases. As requested in paragraph 6 of your letter, a chart of such offences has been prepared and is attached hereto and marked "B". Also included in such chart are unserved portions of such sentences.
5. As set out in our letter of 9 February 1946, on the basis of the Italian prison lists then furnished us, as of 1 February 1946 there were approximately 1345 persons in jail with sentences of two years

47

or less to serve. It is interesting to note that as shown by chart "A", 777 of these prisoners are serving out originally imposed sentences of less than two years. It is also interesting to note from chart "B" that in sentences originally imposed for more than two years, a total of 444 such sentences will expire in less than two years.

6. As reported in our letter of 9 February 1946, on the basis of Italian prison lists then furnished us, as of 1 February 1946, there were approximately 946 persons in jail with more than two years yet to serve on their originally imposed sentence. It is interesting to note that as shown by chart "B", according to our records there should be approximately 603 such prisoners. Since sending our letter of 9 February the Italian prison authority has furnished an additional list of long term prisoners. Thus as far as totals are concerned, the totals from our records of long term prisoners and those of the Italian prison authorities appear to be in a substantial accord.

7. It must be pointed out that chart "B" must be read as of 10 March 1946. Changes have already occurred therein by reason of revisions of sentence made in merited cases by way of re-examination. This is not so in the case of chart "A".

8. Approximately 260 cases have been reviewed, wherein sentences originally imposed were for a longer period than two years. It is our conclusion that all of such cases should be re-examined. Whether the remaining cases can be re-examined is dependent on the personnel available for the task and the time permitted for its completion. It is thought that two groups of two officers each, with the Chief Judicial Officer as ex-officio chairman of each group, - a total of five officers - should be able to conclude the task in June 1946. Two of such officers might well be non-legal.



M. CARR,
Brigadier,
VF CA Section 46

PORTION OF SENTENCE LEFT TO RUN (Computed as of 10 Mar 46)

Sentence	1 MO	2 MO	"	"	"	"	6 - 9 Mos	9 - 12 "	12 - 18 "	18 - 24 "
3 - 6 Mos	64	21	9	6	1	2				
6 - 9 "	20	18	13	7	3	6	22			
9 - 12 "	20	24	31	38	53	14	34	3		
12 - 18 "	9	13	16	10	12	6	30	52	4	
18 - 24 "	14	12	16	12	22	13	29	18	74	1

127 99 45 73 96

51

A

"A" Type of offence

"B" Unserved

	Arms	Assault	Ext. Poss. Prop	Theft	Robbery	Bribery	Counterfeiting	Passage & Seizure	Murder	Others		3 - 6 mos	6 - 9 mos	9 - 12 mos	12 - 18 mos	18 - 24 mos	2 - 4 yrs
2 - 4 yrs	100	13	178	76	11	19	25	5	4	69		49	31	84	127	86	81
4 - 7 yrs	65	10	87	64	10	22	29	2	5	48		14	12	6	2	16	148
7 - 10 yrs		5	23	27	11	5	5	5	2	16		5	4	1	2	2	10
10 - 15 yrs		5			9		7	4		6							2
15 - 20 yrs		6		1	3		7	26	2								
Over 20 yrs	1	1					1		7								
life								10	9								

60 47 91 131 104 14

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B

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91
131
104
14
21
23
27
27
29

879

p Unreserved portion of sentence of offence

Bribery	Counterfeiting	Espionage & Sabotage	Murder	Others		3 - 6 mos	6 - 9 mos	9 - 12 mos	12 - 18 mos	18 - 24 mos	2 - 4 yrs	4 - 7 yrs	7 - 10 yrs	10 - 15 yrs	15 - 20 yrs	20 & over	Life
19	25	5	4	69		49	31	84	127	86	81						
22	29	2	5	48		14	12	6	2	16	146	144					
5	5	5	2	16		5	4	1	2	2	10	50	25				
	7	4		6							2	4	1	24			
	7	26	2									13	2	3	27		
	1		7													10	
		10	9														19

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407991

4377 LEGAL
SIAALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 014.5

28 February 1946

SUBJECT: Clemency for Prisoners

TO : Headquarters, Allied Commission
APO 394

204

Reference your AC/4079/1/L of 9 February 1946.

1. It has been understood that the total of cases awaiting review was of the order of 10,000 or more but in view of the figures in your AC/4079/1/L of 9 February the task of reviewing the surprisingly low figure of some 500 cases does not seem beyond the reasonable capacity of ALCOM in the time remaining to it.
2. The proposal that persons sentenced by AMG Courts shall in future benefit by remission for good conduct in the same way and to the same extent as persons sentenced by Italian Courts, is receiving consideration.
3. The grant of this concession would have a considerable effect on the figures contained in para 3(a) of your letter. Can you estimate the number of persons who would be more or less immediately affected? A precise number is not required.
4. This Headquarters cannot accept your earlier proposal for a wholesale reduction of sentences based upon a uniform estimate of the deterrent element. It is understood however that the deterrent factor has not, in the view of your legal adviser, always been reasonably applied. If this is the fact this Headquarters agrees that an individual review of cases is desirable so that a reasonable and uniform scale of sentence may result.
5. The figures contained in para 3(b) of your letter would be somewhat reduced by remission for good conduct. Taking this into consideration your views are requested as to whether an individual review of the remaining cases is a physical possibility in the time which remains before ALCOM may be abolished. If possible an estimated date for the completion of such a review should be given.
6. In order to obtain a better understanding of the position it would be helpful if you could supply an approximate analysis of the

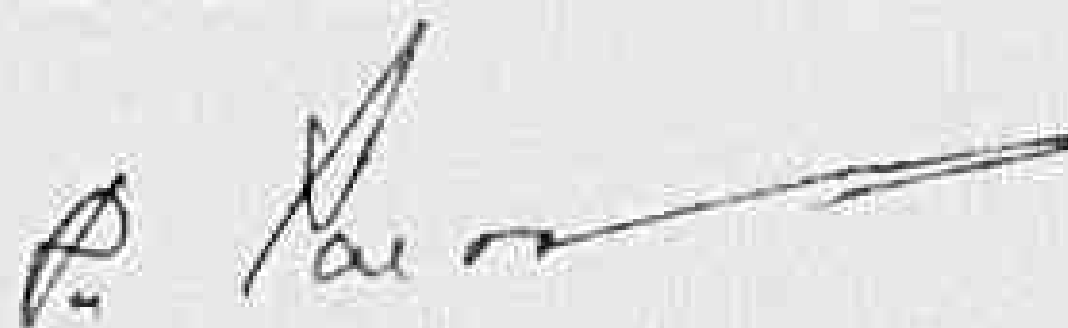
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43

number of sentences by groups of say, sentences up to 4, 7, 10, 15, 20, over 20 years and life, and also by the principal classes of offences. (It would be most helpful if these two could be combined in a cross table). It would also be of assistance if you could state the number of cases which experience has shown can be reviewed weekly on the average.

7. Your proposal that a conference should be held to discuss the subject will be considered in light of the information asked for above.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



F. G. A. PARSONS
Brigadier

Acting Assistant Chief of Staff, G-5

WFO	UNYON
CLO	
DCLO	
Chief Counsel	
CJO	
Italian	
CL RKS	
Hatch 46	

HEADQUARTERS ALLIED COMMISSION

Office of the Chief Commissioner

APO 394

Ref: AC/4079/1/L.

9 February 1946.

SUBJECT: Clemency for Prisoners.

TO: AFHQ, G-5 Section.

1 With reference to your G-5: 014.5 of 30 Dec 45 on the subject of clemency for prisoners I have the following comments and recommendations to make.

2 As regards Para 2 of your letter under reference and sentences for offences of a minor character, this type of sentence has by mere lapse of time been reduced to vanishing point. It is estimated that short term sentences from 30 to 120 days imprisonment have, generally speaking, been served.

In this connection it is pointed out that when release and redeployment caused a gradual and serious reduction in Legal Officers in AMG territory cases of the type described were transferred to Italian Courts. Only a very few cases of this nature have been tried since 1 Oct 45. The very few sentences which may remain will have expired before any act of clemency could be put into force.

It seems clear therefore, that no act of clemency is required in the case of sentences described in Para 2 of your letter under reference.

3 The sentences remaining unserved are those described in Para 3 of your letter, and fall into two categories:

(a) Those from six (6) months to two (2) years. According to Italian prison records, the persons in jail undergoing sentences from six (6) months to two (2) years number 1,345. These sentences are expiring daily. 41

(b) Those serving sentences for longer than two years.

These offences fall into two broad classifications:

In the first are those severe deterrent sentences given in the early days of the invasion, notably in Sicily and later in Naples for acts considered dangerous to our security and denounced by the proclamations, such as wire cutting, failure to declare enemy arms and Military equipment,

- 2 -

public demonstrations elevated by the circumstances to "riots" and "insurrections", and acts of sabotage for which the death penalty was not given.

In the second are those sentences for acts which violate the penal codes of Italy, and for that matter, of the United States and Great Britain, such as murder, forgery, robbery with fire arms, counterfeiting, perjury and swindling, etc.

According to Italian prison records, all persons in jail undergoing sentences for more than two (2) years number 546. These sentences are not expiring rapidly.

All records of trial of Allied cases are held by the Allied Commission, and I consider that it would be contrary to accepted policy and most undesirable to pass these records to the Italian authorities with the view to their reviewing Allied cases. These records are in English, and were prepared under rules unfamiliar to Italians; nor should these records be made available to become possible sources of claims against the Allies upon the conclusion of the peace, for alleged wrongful acts against the person or property of the accused. Further, any clemency action should emanate completely from the authority responsible for the trial, that is, the Allied authorities and not Italian authorities.

Under ample existing authority, a review of outstanding sentences is underway by the Legal Sub-Commission. Cases under category 3 (b) above are being examined by one lay and two judicial officers who make recommendations to the Chief Judicial officer. Long term sentences given as a deterrent for anticipated conditions which failed to materialize are being adjusted to actualities. Sentences for criminal law offenses are not being disturbed merely because imposed by an Allied Court. The Italians themselves are not eager to have such criminals released to the general public. It is proposed to make a similar review of unexpired sentences in category 3 (a) above.

As a part of the procedure the detention of every prisoner (other than those detained for security reasons) in Italian jails held under colour of Allied authority for penal offences is being questioned in conjunction with the appropriate Allied authorities. The necessity therefor is emphasized by the following examples:

In the VOLTERRA Penitentiary a man was found under detention from March 1945, for Allied (but NOT AME) proceedings which failed to materialize. He has been placed at the disposition of the Italian judiciary for another (more serious) offense. Seven prisoners from the Island of ELBA similarly detained were turned over to the Italian Special Court of Assize for trial. In another instance a German Prisoner of War had been detained in a small prison for several months.

- 3 -

- 7 There remains the question of any plan or scheme to be applied after the peace to unexpired long-term AMG sentences.

I refer to matters such as remission of sentence for good behaviour or the application to such sentences of any clemency act which might be decreed by the Italian Government after the peace.

Such matters pertain to treaty conventions and I presume that consideration will be given to them in the drafting of the Peace Treaty.

- 8 I suggest that if it is necessary to consider this whole matter in more detail, a conference of all concerned should be summoned.

/Sgt/ ELDER W. STONE,
Rear Admiral, USN,
Chief Commissioner.

CIVIL AFFAIRS SECTION.

Tel. Ext. 525.

22 Jan 46.

TO: Chief Legal Adviser.

- 1 While I feel that a conference may eventually be found to be advisable, I feel that we must at this stage give AFHQ our views on their letter of the 30 December 45.

It seems to me that the issue is quite clear cut - either there must be some over-all act of clemency, as we suggested previously, or sentences must be reviewed by your Sub-Commission and adjusted where necessary. If AFHQ remain opposed to a general act of clemency, review is the only solution.

I consider we should send a letter to AFHQ on the following lines:

SUBJECT: Clemency for Prisoners.

1. With reference to your G-5: 014.5 of 30 Dec 45 on the subject of clemency for prisoners, *comments and recommendations to make.* I have the following ~~comments~~.

2. As regards Para 2 of your letter under reference and sentences for offences of a minor character this type of sentence has by mere lapse of time been reduced to vanishing point. It is estimated that short term sentences from 30 to 120 days imprisonment have, generally speaking, been served.

In this connection it is pointed out that when ~~the~~ release and redeployment caused a gradual and serious reduction in Legal Officers

in AMG territory cases of the type described were transferred to

of the nature

Italian Courts. Only a very few cases have been tried since 1 Oct 45.

SUBJECT: Clemency for Prisoners.

1. With reference to your G-5: 0114.5 of 30 Dec 45 on the subject of clemency for prisoners, *comments and recommendations to make.* I have the following ~~points~~.

2. As regards Para 2 of your letter under reference and sentences for offences of a minor character this type of sentence has by mere lapse of time been reduced to vanishing point. It is estimated that short term sentences from 30 to 120 days imprisonment have, generally speaking, been served.

In this connection it is pointed out that when ~~the~~ release and redeployment caused a gradual and serious reduction in Legal Officers ³⁸

in AMG territory cases of the type described were transferred to Italian Courts. Only a very few cases ^{of the nature} have been tried since 1 Oct 45. ^{very} that few sentences may remain will have expired before any act of clemency could be put into force.

It seems clear therefore, that no clemency action is required in the case of sentences described in Para 4 of your letter under reference.

sketch 3. As regards sentences for major crimes referred to in Para 3 of your letter, these sentences fall into 2 categories:-

- (a) Those from 6 months to 2 years.
- (b) Those over 2 years.

All the trial records of these cases are held by the Allied Commission and ~~the Commission~~ ^{the Commission} that it would be contrary to accepted

- 2 -

policy and most undesirable to pass these records to the Italian

authorities with a view to their reviewing these cases.

At present, authorities in the North are to be asked that such records be passed to the Italian authorities for review. It is to be asked that such records be passed to the Italian authorities for review.

under category (a) above for 2 years and less have been reviewed

in the Regions where imposed and there is no record of ~~any~~ ^{them}

at this Headquarters though as a result of the hand-over of territory

in the North, all records of such cases should shortly be concentrated

at this Headquarters. In order to ~~deal with the absence of records~~ *clarify the position*

~~in these cases~~ the Italian Government has already been asked to

furnish this Headquarters with the names of all prisoners now in

confinement under ANG Sentences.

Recommended I ~~recommend~~ ^{so} that ~~if any~~ general act of clemency on the lines

suggested in this Headquarters letter AG/1079/1/L of 6 NOV 45 is

to be granted ~~the only way is for~~ a review ~~to~~ be carried out by

Legal Officers assigned to this Headquarters. A review of cases

where the sentence is longer than 2 years is already in hand.

It is estimated that the total of these cases will not exceed 300.

It was proposed that after the review of these longer sentences

has been completed to commence review of those imposed for 2 years

or less. *The number of these cases is estimated to be approximately 300 or less. The number of these cases is estimated to be approximately 300 or less.*

which is already being reviewed by the Italian authorities.

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Insert

*Majority any other
clemency given should
be given to the
authorities responsible
for trial, that is, the
allied authorities
and not from the
Italian authorities*

*Further point
is that all the
trial records
are in English.*

*Very good
point*

Reply

by all means
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to include the very
of the records
by E.9 to have
submitted from 18 a
commenced cases
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to have them who have
to have them who have
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*Logically, if
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confinement under AIG sentences.

recommended
I ~~believe~~ that is ^{the} general act of clemency on the times
suggested in this Headquarters Letter 20/10/99/1/L or 6 Nov 45 is
to be granted ~~the only way~~ is for a review ~~to~~ be carried out by
Legal Officers assigned to this Headquarters. A review of cases
where the sentence is longer than 2 years is already in hand.
It is estimated that the total of these cases will not exceed 700

It was proposed that after the review of these longer sentences
in cases like c/o/en from sentence becomes available
~~in as soon as~~
had been completed to commence review of those imposed for 2 years
or less. The number of these cases to be considered to be approx. 37.

or less. The number of these cases is relatively small, but it is hardly a negligible fraction of the total number of cases. There is one further point which affects this question and

~~It is suggested that consideration might be given to making the normal Italian rules for remission of sentence for good conduct not applicable to A.G. sentences as from a certain date. Such a provision might be included in any revised Aristotice Terms or in the Peace Treaty.~~

~~A decision on this matter should be taken at an early date and in the event of any remission for good conduct being applicable it~~

I might be advised
to include her the first
of the 1800's very
likely E. G. to have
Santitas down to a
man or lower and
in effective who lived
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with Santitas (and I
by 17 alone)

Logically it
might appear that
we should plant the
in the reservoir
water surface
Lentil

- 3 -

sentences carried out.

3. ~~4~~ In my opinion ~~the~~ ^{under no circumstances should} trial records ~~should~~ be passed to the Italian ^{Department} authorities for the purpose of their carrying out a review and that clemency action should take the form of a review of all appropriate cases by Allied legal officers, ~~where your Headquarters wishes to~~ give reconsideration to the question of the granting of a general act of clemency ~~on the lines contained in this Headquarters letter~~

AS/120741/1 of 6 Nov 45.

S.H. suggested that

not the entire Committee:

4. ~~1~~ ¹ - suggests that if it is necessary to consider the matter in more detail a conference of all concerned should be summoned.

H. CARR, Brig.
Lt Col Section

Chief Commissioner

22/1

AC

→

CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	

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4. ~~It~~ suggests that if it is necessary to
more detail a conference of all concerned
should be summoned.

W. JARR, JR.
IT-04-SECTION

Chief Commissioner

22/1

MC

CL	CL
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
Red 22 Jan 46.	

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31

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

10/1079/1/L.

SUBJECT: Clemency for prisoners.

TO : V.L. O.A. Section.

19 January 1946.

1/3a

Note, please, the letter dated 30 December, 1945, Allied Force Headquarters.

Clemency for prisoners undergoing confinement under sentences imposed by A.M.G. Courts has been under examination the past three months by the Legal Sub-Commission. As you know, the topic was made the subject of a communication from the Prime Minister of the Italian Government.

Schemes of clemency in some form, in operation under the domestic law of the United States, Britain and Italy, are bottomed on the premise that the record of trial upon which conviction was had is available for examination throughout the term imprisonment of the prisoner. It will be observed that the suggestions contained in the letter from Allied Force Headquarters are predicated on such assumption.

Records of trials by Allied Military Courts belong to, and in many instances already are a part of the archives of Allied Occupation. They have never been available for inspection of the Allied Forces generally, much less the Italian Government in particular. There are many reasons why these records should not be made available for inspection by the Italian Government. It follows, therefore, in dealing with clemency the scheme adopted must take into consideration this realistic obstacle.

The problem can be solved. Active steps in that direction are being taken. The conference is longer.

Clemency for prisoners undergoing confinement under the law imposed by A.V.G. Courts has been under examination the past three months by the Legal Sub-Commission. As you know, the topic was made the subject of a communication from the Prime Minister of the Italian Government.

Schemes of clemency in some form, in operation under the domestic law of the United States, Britain and Italy, are bottomed on the premise that the record of trial upon which conviction was based is available for examination throughout the term imprisonment of the prisoner. It will be observed that the suggestions contained in the letter from Allied Force Headquarters are predicated on such assumption.

Records of trials by Allied Military Courts belong to, and in many instances already are a part of the archives of Allied Forces. They have never been available for inspection of the Allied Forces generally, such as the Italian Government in particular. There are many reasons why these records should not be made available for inspection by the Italian Government. It follows, therefore, in dealing with clemency the scheme adopted must take into consideration this realistic obstacle.

The problem can be solved. Active steps in that direction are already in motion. A review of cases wherein the sentence is longer than two years is underway by three legal sub-commission officers. Many of these sentences given in the initial stages of the invasion were excessive in the light of subsequent experiences, and have served their drastic deterrent purpose. Allied military government should tidy its own judicial house and on its own motion this is being done. In the process, many such troublesome sentences will cease to be of any further concern under the head of clemency. On the other hand a large number of more than two years sentences will remain in those cases, for example, where the defendant prisoner is serving a term for murder. Sentences of this type should be dealt with on a prison administrative scheme, as for example, where the prisoner is given an earned credit on his sentence for good behavior and for services rendered in prison activities, and not as clemency proper. It is believed that the total of all sentences for more than two years imprisonment will not exceed eight hundred cases.

The type of sentences mentioned in paragraph 2 of the letter from Allied Force Commanders, in some cases of they have been referred to the visiting point. The short term sentences from 30 to 120 days imprisonment have been served. It must be remembered that when re-deployment began to British legal officials, cases of the type described were transferred to the Italian courts. Very very few such cases have been tried since 1 October 45. That for sentences remain will have expired before any plan of clemency could be invoked.

There are, however, an impressive number of unserved sentences that fall into the six-months to two years bracket. Here a difficulty with such sentences is encountered. Sentences imposed for two years and less were reviewed in the region where imposed. There is no record of such sentences in the legal Sub-division. It is to be regretted that as the system was being set up, this contingency was not guarded against. It was pointed out at the time, but, - well, - it was cast into the limbo as unimportant. The record of these cases now repose in the archives as unimportant. To cope with and overcome the problem now confronted, the Italian Government has been asked to furnish us with the names of all persons now in confinement under 1, 2, 3, sentences, and one of the things we hope to learn are the names of those whose sentences fall in these brackets. It

We have access to the Archives Records, and we know such names. It should be pointed out that from experience we know that the offenses which occasioned these sentences were theft and unlawful possession of Allied force property; unlawful possession of arms and ammunition; forgery of Allied documents, and bribery. There are of course, other offenses, but those described are in the overwhelming majority. Whether to deal with these cases on a basis of clemency proper, or clemency by way of prison administration, has yet to be decided. If I were to forecast, I would say that the cases should be reviewed for any re-adjustment of sentences, and thereafter, the prison administration method of earned time should be applied.

It is believed that at this time such good would insure from an amount - the - table - discussion between G-5, G-6, G-7, and the Chief Legal Advisor, G. It is now obvious that all concerned are working towards a common goal. It is not a situation whereby a solution can be found with mathematical precision. Every one-who's of lack of information as well as misinformation could be cleared away from the path of final decision, and the going made after simple.

The type of sentences mentioned in paragraph 2 of the letter from Allied Force Headquarters, by some logs of time have been reduced to the vanishing point. The short term sentences from 30 to 120 days imprisonment have been served. It must be remembered that when re-deployment began to disband legal officers, many of the type described were transferred to the Italian Courts. Very few such cases have been tried since 1 October 1945. What few sentences remain will have expired before any plan of clemency could be invoked.

There are, however, an impressive number of unserved sentences that fall into the six- or this to two year bracket. Here a difficulty with such sentence is encountered. Sentences imposed for two years and less were reviewed in the region where imposed. There is no record of such sentences in the Legal Sub-Division. It is to be regretted that as the system was being set up, this contingency was not guarded against. It was pointed out at the time, but, - well, - it was cast into the limbo an important. The record of these cases now resides in the archives in Naples. As soon with and overcome the problem now confronted, the Italian Government has been asked to furnish us with the names of all persons now in confinement under 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 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990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

to learn are the names of those whose sentences fall in these brackets. It should be pointed out that from experience we know that the offenses which occasioned these sentences were theft and unlawful possession of Allied Force property; unlawful possession of arms and ammunition; forgery of Allied documents, and bribery. There are of course, other offenses, but those described are in the overwhelming majority. Whether to deal with these cases on a basis of clemency proper, or clemency by way of prison administration, has yet to be decided. If I were to forecast, I would say that the cases should be reviewed for any re-adjustment of sentences, and thereafter, the prison administration method of earned time should be applied.

It is believed that at this time much good would inure from an around - the - table - discussion between S-5, S-6, S-7, S-8, and the Chief Legal Advisor, C. It is now obvious that all concerned are working towards a common goal. It is not a situation whereby a solution can be found with mathematical precision. Many sub-webs of fact of information as well as administration could be cleared away from the path of final decision, and the going made quite simple.

section. We hope with and overcome the prison
Government has been asked to furnish us with the names of all persons
now in confinement under 3.3.3. sentences, and one of the things we hope
to learn are the names of those whose sentences fall in these brackets. It
we have access to the Archives records, once we know such names. It
should be pointed out that from experience we know that the offenses which
occasioned these sentences were theft and unlawful possession of Allied
force property; unlawful possession of arms and ammunition; forgery of
Allied documents, and bribery. There are of course, other offenses, but
those described are in the overwhelming majority. Whether to deal with
these cases on a basis of clemency proper, or clemency by way of prison
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Chief Legal Advisor, G. It is now obvious that all concerned are working
towards a common goal. It is not a situation whereby a solution can be
found with neither tactical precision. Many sub-webs of lack of information
as well as misinformation could be cleared away from the path of final
decision, and the going made quite simple.

34

JOHN E. WINTER
Colonel, Infantry,
Chief Legal Advisor.

16A

Legal

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: OL4.5

30 December 1945

SUBJECT: Clemency for Prisoners

TO : Chief Commissioner,
Headquarters, Allied Commission,
A.P.O. 394

1. Reference is made to your letter above subject file AC/4079/1/L, dated 6 November 1945 and to the reply thereto, file G-5: OL4.5 dated 21 November 1945.

2. This Headquarters is desirous of instituting some method whereby the Italian Government may take clemency action on certain sentences without the necessity of separate individual action under the provisions of paragraph 4 of the turn-back proclamation. The offenses which might well be included under this authority would be those of minor character such as violations of curfew, traffic and movement regulations, simple theft not involving sabotage or personal injury. It is desired that you consider the feasibility of adopting some plan to place this idea in effect and submit your recommendations thereon.

3. It is further desired that you consider and give your recommendations on the desirability of authorizing the Italian Government to take independent action to pardon, remit, convert or otherwise reduce sentences imposed by AMG courts with certain exceptions such as the major felonies and major crimes against Allied persons or property. Each case to be considered by the Italian reviewing authorities on its merits. This action is quite separate and distinct from the proposal for handling minor offenses mentioned in paragraph 2 above. That proposal would serve as a trial effort to determine how the Italians handle the authority given them.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

33

CLO

DCLO

Chief (Court)

CJO

Italian

CL RK

3 JAN 1946


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

15A

INTER OFFICE MEMO

TO : ~~Polad (A)~~
~~Polad (B)~~

- 1 It is desired to hold a conference on the following matters:
- a) The policy as to an act of clemency - papers herewith.
 - b) Bolzano : the policy as to
 - i) nationality - papers herewith
 - ii) the appointment of a delegate - papers already circulated
 - iii) education - papers herewith
- 2 If you will be available at that time 1130 on Thursday 6 Dec is suggested as suitable. If that is not convenient, perhaps Polad (B) would be good enough to select a time suitable to himself and Polad (A) and phone CAS. The office of the A/VP is suggested as a suitable venue.

CA Section
 Ext 525

4 Dec 45

REC
CLO
DCLO
Chief
CJO
Relian
CL RAS
4 DEC 1945

S.H. WHITE Lt Col,
 A/VP CA Section

Copy to : Legal S/C
 Local Govt S/C

who will please attend discussion on items with which they are concerned. Item 1 will be taken first.

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Originator's Reference: C41083
 Date/Time of Origin: 26NOV1504

Message Centre No: G/4336
 Date Time Rec'd: 27NOV0830A
 Precedence: ROUTINE

FROM: AFHQ FROM G-5.
 TO : ALCOM ROME

UNCLASSIFIED.

Regarding reply to you AC/4079/1/L of
 6 November. (Reference your 8712).

Reply Thereto made 22 November 45 file G-5
 CL N 01 our point 5. Subject CLN Clemency for
 prisoners. Copy being sent today L

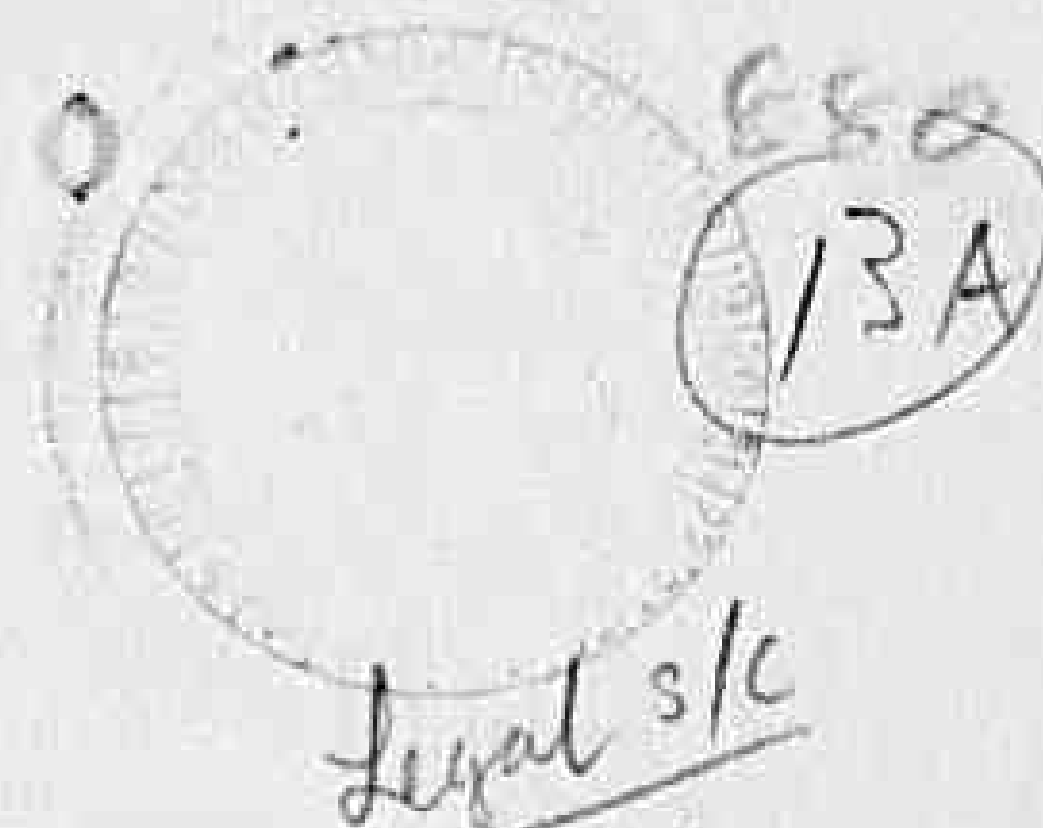
↑
 Cable referred
 to at Folio 13A

AC DIST.

ACT: LEGAL S/C
 INFO: C.COMMISSIONER
 FILE 2
 FLOAT

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
27 NOV 1945	

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512



26 November 1945

G-5: 014.5

SUBJECT: Clemency for Prisoners.

TO : Headquarters, Allied Commission, APO 394.

Pursuant our cable 41083, November 26, copy of letter of Chief of Staff, dated 21 November 1945, subject "Clemency for Prisoners", herewith attached.

BY COMMAND OF LIEUTENANT GENERAL MORTON:

Charles M. Morten
for

A. I. HANBLEN
Brigadier General, GSC
Assistant Chief of Staff, G-5

Incl:
as above.

LEGAL SUBCOMMITTEE	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Commission	
CL RKS	
27 NOV 1945	

See file with your attention

4079/1/L
13 DEC 1945

ACTION

CA Sec

Copy

ALLIED FORCE HEADQUARTERS
Office of the Chief of Staff

Copy

Legal

13 DEC 1945

G-5: 014.5

21 November 1945

SUBJECT: Clemency for Prisoners

MC 28/XII

TO : Chief Commissioner, Headquarters, Allied Commission, APO 394.

1. Reference is made to your letter above subject file AC/4079/1/L dated 6 November. The matter of clemency for prisoners has been given careful consideration. The Supreme Allied Commander however finds that he is unable to accept the line of argument put forward to substantiate the viewpoints set forth in your letter and therefore unable to agree the proposal.

2. Any General act of clemency based on sentences imposed by AMG Courts rather than based on the type of the offense and the conditions under which it was committed is considered an admission of quantitative error in the functioning of AMG courts and in the sentences imposed. If the good will of the Allies and their reasonable and humanitarian attitude have not and are not being demonstrated to the Italians in other matters of far greater import, then it is believed that the release of convicted offenders will be of little avail. The overcrowding of jails and the labour involved in consideration of individual offenses does not justify action which is otherwise undesirable. Nor is it considered that the turn back of certain territory in the North marks a milestone of allied activity in Italy which requires a revision of our legal administration.

3. It should be noted that the Italian Government is withing its authority to apply for the modification of sentences imposed by AMG courts in turned-back territory under the provisions of paragraph 4 of the Proclamation made by the President of the Council of Ministers when such territory is turned back to Italian jurisdiction. It is not expected however, that the Allied Commission will agree any blanket authority based solely on length of sentence imposed or on other than a consideration of the offense committed and the surrounding circumstances.

BY COMMAND OF THE SUPREME ALLIED COMMANDER:

29

ACTION

/s/ A. D. Ward
A. D. WARD
Major General
Chief of StaffCC Dist - 12 Dec
Action - CA Sec (2)
Info - EC

Original retained by CC

Chief Commissioner's comment: "E.C. Personal Abroad viewpoint!"



12A

2A

AMHQ G-5 SECTION

8712

24 NOVEMBER 1945

PRIORITY

UNCLASSIFIED ID

PARA ONE ID REFERENCE LETTER ABLE CHARLIE SLANT FOUR ZERO SEVEN NINE SLANT ONE
SLANT NINE OF SIX NOVEMBER AND SIGNAL EIGHT TWO NINE FIVE OF ONE THREE NOVEMBER ID
PARA TWO ID IF NOT POSSIBLE TO GIVE DECISION ON ACT CLEMENCY IMMEDIATELY IS MATTER

SUFFICIENTLY ADVANCED TO JUSTIFY DISCUSSION OF MACHINERY WITH MINISTRY OF JUSTICE
ONE IT WOULD NOT BE NECESSARY IN SUCH DISCUSSION TO MENTION ACTUAL DEGREE OR SCORE
OF PROPOSED REDUCTIONS OF SENTENCE.

INT. DISTR.

Chief Commissioner
Exec. Commissioner

28

CIVIL AFFAIRS SECTION

608

S.H. WHITE Lt Col.

J.J. LEONE
CWO, USA
Asst Adjutant

sum
654

11A

TO: AFIR G-5 SECTION

8295

13 Nov 45

PRIORITY

UNCLASSIFIED PD

PARA ONE PD TRUST IT WILL BE CONVENIENT TO GIVE EARLY DECISION ON
PROPOSED ACT CLEMENCY CMA ASLE CHARLIE SLANT FOUR ZERO SEVEN NINE SLANT
ONE SLANT LOVE ~~REEDUC XIX~~ OF SIX NOVEMBER FOUR FIVE REFERS PD
PAREN TO AFIR GEORGE FIVE SECTION FROM HQ ALCON CITE ACCAS PAREN
PARA TWO PD ARRANGEMENTS WITH MINISTRY OF JUSTICE WILL TAKE A FEW
DAYS

Internal Distribution: Chief Commissioner
Executive Commissioner.

Civil Affairs Section

608

G.J. LEONE,
CFO USA
Asst. Adjutant.

1 27

1945

REF: 135/4079/1/1

6 November 1945

Subject: Clemency for Prisoners

TO : AFHQ, G-5 Section

1. The Italian Government has asked this Commission to consider favorably the granting of a general act of clemency to mark the return of North Italy to Italian Administration and as a token of Allied appreciation and good will.
2. This Commission has very carefully considered the suggestion, which it had already independently had in mind, and recommends that the Supreme Allied Commander should as an act of grace grant an act of clemency among others for the following reasons:
 - a) That in most cases sentences carried a deterrent factor - that factor has served its usefulness, the serving of the deterrent portion of the sentence is of no benefit to the Allies and that it is not unnecessary to make sentences to what they might have expected to have been but for the no longer necessary deterrent factor.
 - b) That the Allies imposed various restrictions such as curfew, restrictions on movement and the like and that these and other offenses when there were extenuating circumstances and the sentence was light might receive rather more generous treatment.
 - c) That the act will be a mark of the Allies' good will and appreciation.
 - d) That the gesture would be one acceptable to the Italian people and to public opinion.
 - e) That it would demonstrate to the world the reasonable and humanitarian attitude of the Allies.
 - f) That the overcrowding of Italian prisons is extreme and that a substantial reduction in the lighter sentences will go some small way to ease the situation which is acute.
3. This Commission having considered alternative schemes recommends that the act of clemency in respect of sentences imposed by AMG Courts should take the following form:
 - a) That life sentences be reduced to 30 years.
 - b) That sentences in excess of 25 years be reduced to 15 years.
 - c) That sentences from 15 to 20 years be granted a reduction of 1/2.
 - d) That sentences of 10 years or under be granted a reduction of 1/3.
 - e) That all sentences be reduced to be entitled to the usual reduction for good conduct for the whole of their period.
 - f) That no reduction be granted in respect of fines or sentences in default of payment of fines.

It is also recommended that the Italian Government be informed that it

may make similar reductions in the case of prisoners sentenced before Italian Courts for offences against the Allies.

- 4 This scheme discriminates between cases of differing gravity, it provides an easily applicable formula, it will entail little work to carry out (which in view of the AG manpower position is an important factor) and is of immediate political value.
- 5 The proposed Act of Clemency should apply to Italian Government territory and to that shortly to be returned to the jurisdiction of the Italian Government. The deterrent effect of sentences is still required in territory which will remain under AG; similar acts of clemency can if desired be made concurrently with other restorations of territory.
- 6 It is desirable, if this recommendation is approved, that an announcement should be made simultaneously with the restoration of North Italy to Italian Administration. It is requested therefore that this matter may be treated as urgent and that the decision be communicated to this HQ as long before the handover date as possible to allow of the necessary arrangements being made with the Ministry of Justice.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

GA

Proposed Scheme for Clemency
and Notes thereon

Scheme

- 1 With reference to the discussion with the CIA yesterday, the following is recommended and has been agreed to by the CIA as the suggested act of Clemency.
 - a) Life sentences be commuted to 20 years.
 - b) Sentences in excess of 20 years be reduced to 15 years.
 - c) Sentences from 4 to 20 years be granted a remission of 1.
 - d) Sentences of 4 years or under be granted a remission of 1.
 - e) That all sentences as so reduced be entitled to the usual remission for good conduct for the whole of their period.
 - f) That the Italian Government be ~~entitled~~ to make similar reductions in the case of prisoners sentenced before Italian Courts for offences against the Allies.
- 2 This proposal has been agreed as a via media which discriminates between the various types of case; it is an easily applicable formula, it will (in view of our manpower position) entail least work and is of immediate political value.
- 3 The act of clemency shall apply only to prisoners held in restored territory and not in AMG territory, where the deterrent effect is still required; a similar act of clemency can later apply to other restorations.

Notes

- a-Sub-Para 1c above removes what may be regarded as the deterrent portion of the sentences.
- b-Sub-Para 1d is a more real act of clemency. It discriminates between the more and the less serious offences (the malum in se and the malum prohibita of the CIAs recommendation). It will also have some immediate effect and to that extent relieve the prison situation. In the absence of statistics one cannot be certain that the 4 year level is the best at which to draw the line but the reduction of sentences of over 4 years will contribute nothing to the amelioration of prison conditions.
- c-The sentences of early AMG cases which it is considered were unjust are a different problem. It is considered that they are more suitable for a review for the removal of our errors rather than a pardon.
- d-A general review of all cases would be a large commitment to undertake because a phase was out of balance. A review of the whole would delay and confuse the act of clemency whereas the recommended general act of clemency has an immediate political and benevolent effect and in no way prejudices a review of particular group of cases whether by area or prior to a certain stated date.

Notes

Notes

a - Sub-Para 1c above removes what may be regarded as the deterrent portion of the sentences. It discriminates between the more serious and the less serious offenses, and thus the value of the deterrent effect of the sentences.

a - Sub-Para 1c above removes what may be regarded as sentences. It discriminates between the more and the less serious offences (the malum in se and the malum prohibita) of the same class (recommendation). It will also have some immediate effect and to that extent relieve the prison situation. In the absence of statistics one cannot be certain that the 4 year level is the best at which to draw the line, but the reduction of sentences of over 4 years will contribute nothing to the amelioration of prison conditions.

c - The sentences of early AWG cases which it is considered that they are more suitable for a review
reduction of sentences.
ation of prison conditions.
It is considered that they are more suitable for a review
reduction of sentences.
ation of prison conditions.

It is considered that a pardon for the removal of our errors rather than a pardon for the removal of our errors would be a large commitment to undertake because for the removal of all cases would be a large commitment to undertake because a phase was out of balance. A review of the whole would delay and confuse the act of clemency has an immediate political and benevolent effect and in no way prejudices a review of particular group of cases whether by area or prior to a certain stated date.

CA Section
1 NOV 45

S.H. WHITE Lt Col

[Faint, mostly illegible handwritten text, possibly a letter or memorandum, covering the majority of the page.]

John D. Chapman

[Faint handwritten text, possibly a title or address.]

25 Oct 1945

C O P Y

Ref. No. 29098

Naples, August 18th 1945

SUBJECT : Indult for the Victory.

Honourable
ALLIED MILITARY COMMAND
Legal Office
ROME

and, for attention :

Honourable
MINISTRY OF PARDON AND JUSTICE
General Direction Institutes of Prevention and Pains
ROME

With reference to what I had the honour to expound by word of mouth few days ago to that Hon. Command I subjoin as follow :

The brilliant Victory of the Allied Potencies, that on have so gloriously and completely crowned the efforts and reckoned the constancy and the valour, has had very lively amplex and profound resonance in the Italian people. This, if has could appears as enemy, if ill-fatedly and without his fault figures amongst the woe, for his inward, profound, sincere sentiment has never feel enmity with those Potencies that were his natural friends, has never in his great and more sound majority, actively participate to the hostilities, has never dispecked the triumph of tyranny, and is for that reason that to-day participate with effusion and spontaneousness to the joy for that Victory that, although in little part, for watch was conceded from the limited possibilities, feel to be also his work.

In this jubilation's and exultation's hour more opportune on would recognize the adoption of a remedy of magnanimity and of clemency that a long national tradition, common besides to the others civil States, has always done conclude in the same kind of circumstances. The question is to do penetrate

- 2 -

a ray of the general joy, to do hurl an echo of the common joy in the sad world of the prisons and with an act of generous indulgence alleviate the lacks of many on happiness.

Actually a great mass of individuals is groaning in the prisons, individuals that, under a certain sight, can be considered as indirect victims of the war. Are the authors of acts that only the illfatedly conditions of life connected to the emergency state have rendered inculpably, while in normal conditions should have not been considered as crimes: are individuals convicted to exuberant pains, rendered necessary when the action more than repressive, intimidatory and exemplary, of the convictions on rendered necessary for the exceptionality of the times; but now that this, fortunately, is ceased on does not as recognized.

is better which should have been equality for the
have to spend more resources heavy sentences
 Crimes of easy entanglement, that the ordinary legislation should have considered pains very easy, for great part at this time already all served, tried, instead, with the criterious and the mentality necessarily adequate to the exceptionality of the moment have been, instead, productive of more heavy consequences, for which, for yet long time, will stay far the father from the family, the husband from the wife, the relative from his relatives etc etc.

The high sense of comprehension, the elevate sentiment of human solidarity that has always nobly inspired the behaviour and the attitudes of that Authority is the rewards of this population, the whom feel in her the pride to have never been really enemy and that enjoy to-day of the honour to be cobelligerent, in the ray expectation of better relations, more responding to the reality, will also in that, incline the souls to mildness and indulgence, with the concession of a remedy that will attenuate all these patiences, that will dry up so much tears, that will carry back the joy and the smile in so much afflicted families.

21

Perhaps a total remedy that will cancel without other the consequences of those that have only been war's crimes, under form of an amnesty, would be an hope more bold and difficultly obtainable, but an insult that will attenuate the pains already given, abridging the course for those more long, cancelling the ulterior expiation for those that would re-enter in the

- 3 -

limits of the concession, would represent the providence more indicate to the case, and of it, with the present on invoke the adoption.

A such kind of remedy, besides that inspire to the high sentiments of humanity and clemency aforesaid, would answer also to exigencies of nature exquisitely political and social, since would contribute to the patroned dispersment of the prisons, actually congestioned by an excessive number of prisoners, with all the consequences economics, disciplinary, demographical etc..... that to it are inhereents.

On confiding of a benevolent reception, as on done almost hope to me, on anticipate the sentiments of the more devout recognities.

With distinct observance.



THE REGIONAL INSPECTOR
(Doct Ermete Bonomi)

20

This copy received from Public Safety

24/10/45

Proclamation

23 OCT. 1945

The President of the Council of Ministers

n. 47792/2.1.2

23 OCT. 1945

Rome, 19 October 1945

Dear Admiral,

I think I must draw your attention on the advisability, in the present situation of the country, of an act of clemency on the part of the Allied Authorities in favour of those who were condemned by Allied courts either according to our laws, or according to the ordinances and proclamations of the A.M.G. I can assure you that an amnesty for the above mentioned offences is eagerly expected by Italian public opinion, now that unavoidable war requirements which often caused severe sentences on the part of the Allied courts, sentences which were rarely commuted, no longer exist because of the victory on Nazi-fascism.

Besides, such a possibility would avoid the great difference of treatment at present existing between those who were tried by Italian courts and those who were condemned by Allied courts. For the latter only, no amnesty has been granted, while the former benefitted from the amnesty of April 25th 1944, and will in all probability benefit from a further favour which is at present being studied.

I think that the said amnesty could conveniently be granted on the occasion of the handing over by A.M.G. to the Italian Government of the remaining part of the national territory, and could take the form of a regulation by the Italian Government, previously approved by the Allied Commission.

On this subject, I must inform you that in a meeting which lately took place between the members of the legal sub-commission and the Minister of Justice, the Director of the legal sub-commission, Colonel A.M. Behrens, mentioned, as his personal opinion, that the Allied Commission could take the above mentioned amnesty in consideration. It is useless to add that the Allied Authorities would of course fix the limits of such a concession and except such offences as they consider to have been most prejudicial to their interests.

Will you kindly let me know your opinion on this plan; should you agree to it on general principles, it can then be studied in detail by the Ministry of Justice and the legal sub-commission, in collaboration.

Believe me, my dear Admiral,

19

Yours very truly,

S. Ferruccio Parri.

Admiral Allery W. Stone
Chief Commissioner
Allied Commission
Rome

trans.e/c

EC DIST. 23 Oct

ACTION CA SEC (2)

INFO CHIEF COMMR

EX COMMR

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(OFF EXAMINER)



17792/84.2
*Il Presidente
del Consiglio dei Ministri*

Roma, 19 OCT 1944

OCT 20 RECD

23 OCT 1944

6B

Caro Ammiraglio,

ritengo utile farLe presente quanto sarebbe opportuno nell'attuale situazione del Paese un atto di clemenza da parte delle Autorità Alleate a favore di coloro che sono stati condannati dai Tribunali Alleati sia in base alle nostre leggi, sia in base alle ordinanze e ai proclami dell'A.M.G. - Le assicuro in proposito che una amnistia per i reati di cui sopra è vivamente attesa dall'opinione pubblica italiana ora che con la vittoria sui nazi-fascisti sono terminate le insopprimibili e contingenti necessità della guerra, le quali hanno sovente imposto da parte dei Tribunali Alleati condanne molto dure e soltanto raramente mitigate dall'accoglimento dell'istanza di grazia.

Tale possibilità eviterebbe inoltre una grave sperequazione che per il momento esiste tra la condizione di coloro che sono stati giudicati dai Tribunali italiani e quella dei condannati dalle Corti Alleate. Solo per questi ultimi infatti non è stata concessa alcuna amnistia, mentre i primi hanno usufruito dell'amnistia 5 aprile 1944¹⁸ e con tutta probabilità godranno di un ulteriore benefi-

./.

All'Ammiraglio Ellery W. Stone
Commissario Capo della Commissione
Alleata

R O M A

5/19



*Il Presidente
del Consiglio dei Ministri*

- 2 -

ciò che è attualmente allo studio.

Ritengo che l'amnistia in parola potrebbe essere concessa convenientemente in occasione della restituzione al Governo italiano da parte dell'A.M.G. del rimanente territorio nazionale e potrebbe assumere la forma di un provvedimento legislativo del Governo italiano previo consenso della Commissione Alleata.

Sempre a tale riguardo Le comunico inoltre che in un recente incontro tra i membri della Sottocommissione Legale e il Ministro della Giustizia, il Capo Legale Colonello W.E. Behrens ha fatto cenno, sia pure come opinione personale, alla possibilità di prendere in esame quanto sopra da parte della Commissione Alleata. E' superfluo aggiungere che spetterebbe naturalmente all'Autorità Alleata fissare i limiti di tale concessione ed eccettuare quei reati dai quali ritenesse maggiormente lesi i propri interessi.

La prego pertanto di volermi far conoscere il Suo pensiero in merito a tale progetto che, ricevendo la Sua adesione di massima, potrebbe essere studiato nei dettagli dal Ministero della Giustizia e dalla Sottocommissio-

./.



*Al Presidente
del Consiglio dei Ministri*

- 3 -

Legale in reciproca collaborazione.

L'occasione mi è gradita, caro Ammiraglio, per
porgerLe i sensi della mia più alta considerazione

Enrico Bani

(5A)

HEAD QUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/40797/L

18 October 1945^{/LN}

SUBJECT : Amnesty

TO : The Executive Commissioner.

- 3A
1. Reference your 2604/72/EC dated 9 October 1945.
 2. In response to an oral directive from the Chief Commissioner, I have prepared the draft of a proposed scheme of clemency for persons convicted by Allied Courts. Herewith is attached a copy of the letter containing such draft.

Incls.

JOHN K. WEBER
Col., Infantry,
Chief Legal Advisor,
for Chief Civil Affairs Officer

48

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4079/L.

/rlp.
18 October 1945.

SUBJECT : Amnesty.

TO : The Chief Commissioner.

1. In response to your oral directions, I have considered the matter of granting clemency in some form to persons convicted by Allied Courts. Based on the following observations, I have come to the conclusion set forth below.

2. Under International law we, as an occupying power, come into the territory under a solemn mandate to maintain law and order. In so doing, the offences which we encounter fall into two main categories: (a) those which are dangerous to our own security, and (b) those which, although not dangerous to our security, disturb peace and order, and are violations of the domestic law.

3. In considering the question of amnesty, the cases falling into the second category (not dangerous to our security) give us little concern. They are tried under Italian law by Italian courts. It is true that some of these cases were tried by AMG courts as a matter of expediency, but they present no difficulties because the sentences were given under and according to Italian law. The machinery for dealing with them has been adopted in toto and of necessity the mitigating features have followed as an integral part.

4. It is with cases of the first category that we are concerned in deciding whether or not clemency is to be granted. Here again these cases are of two types:

First, purely occupational offences - such as wire cutting, possession of Allied property, travelling without a properly authorized pass, etc. There is nothing inherently wrong in the act which constitutes the offence, but we have declared it to be an offence in order to protect our own security. It is made an offence only because of the condition of war existing. This is borne out by the fact that the punishment imposed is not directed against the accused, but rather as a deterrent against the condition existing.

Second, are those offences which are malum in se, i.e., murder, robbery, etc. The act constituting the offence is inherently wrong and is a violation of the domestic law - irrespective of existing war conditions.

5. As pointed out above, purely occupational offenses are conditioned upon the state of war existing. Since that condition no longer exists and, since the deterrent purpose of the punishment has ceased to be, it appears that clemency in some form should now be given. In this respect, however, great care must be exercised for the following reasons:

(a) this is the first occupation of its kind and we are setting a precedent in International Law;

(b) any policy established by us will have no small effect in Japan, Germany, Austria, and Venezia Giulia, where occupational government is just beginning;

(c) in order to prevent it from becoming an instrument of political propaganda we, who imposed the sentences, should grant any clemency that might be given rather than allow Italian legislation on the matter as suggested by the Prime Minister.

With respect to the *malum in se* cases no amnesty can be granted. To do so would in effect, place a premium on trials in AMG Courts and would affect the peace and dignity of the Italian State.

6. Therefore, no general amnesty should at present be granted. It is suggested that a review board of AMG be formed to examine all outstanding cases with unexpired sentences. This military board would separate the purely occupational offenses from those offenses which are *malum in se*. The board would then dispose of the occupational offenses and, with the advice and assistance of an Italian Cassation Judge, would categorize the *malum in se* cases and adjust the sentences to make them correspond to that which the Italian Courts would have given under Italian law. Thereafter, the normal Italian mode of grace and pardon can be applied to them.

7. Apparently no one has considered this need to review the cases from the standpoint of review personnel between now and 1st December, or thereafter. If considered, no allocation of personnel has been provided. There are a vast number of cases outstanding, and the record of all cases must be examined to determine which have expired and which have not. The task would require a board of three officers a minimum of two months. The Consolidated Instructions for Allied Military Courts require that a reviewing officer be a Lieutenant Colonel or above. It is recommended that Major Nugent who has been with me in the field and here six months as Chief Counsel be elevated to that rank at once (we have no Lieutenant Colonel available) and, with two other officers, appointed as a board of review. In all cases where the Review Board is in agreement he could make final disposition, otherwise they would be referred to the Chief Legal Advisor for final decision. 3

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

NOTE BY C. L. F. 413

C. H.

We are together on two premises:

- (a) The entire question is one of policy and not judicial in character
- (b) Clemency in some form should be forthcoming from the Allied Forces in favor of convicted persons in jail under Allied decrees.

2. We differ as to the method by which it ^{may} be accomplished. While our ^(legal) opinion does not say that we considered the plans which we suggested in your minute, it was in fact considered, and after much deliberation was decided in favor of the one announced. 12
3. It is not to be assumed that

2. We differ as to the method by which it may be accomplished. While our ^(Legal) opinion does not say that we considered the plan which is suggested in your memo, it was in fact considered, and after much deliberation was decided in favor of the one announced.¹²

3. It is not to be assumed that the plan announced by you was considered to be without merit. Quite to the contrary, by its adoption, the serious task of large dimensions would have been avoided by the Legal sub. Commission. We need hardly comment that such virtue was not idly discarded.

4. What seems to us to be the great barrier against the plan which is set forth by you is the fact that

the law which we ~~have~~ are
~~the~~ administering in Italy is the
 International law of war of Occupation.
 In domestic law, the punishment is
 made to fit the crime and the reforma-
 tion of the offender. Not so in Occupational
 law. Here the sentence is bottomed in
 military necessity. As said in Article
 26, paragraph "C", Consolidated

Instructions: "Remember that the
 principle ^{has been} ~~is~~ laid down that the
 purpose of military Courts is to
 impose sentences which will be
 a deterrent to others" That is the
 rule, with which sentences are being
 given in Senegian Guinea at the

present time, and if we grant 11
~~any~~ clemency for ^{our} ~~the~~ sentences
 and in the same breath demand
 that ~~the~~ ^{our courts} continue

purpose of military Courts is to impose sentences which will be a deterrent to others" That is the rule, ^{under} with which sentences are being given in Georgia. Besides at the present time, and if we grant **11** ~~our~~ clemency for ~~the~~ sentences and in the same breath demand that ~~our~~ ^{our counts} continue giving the same type of sentences against which we have given relief, we have jockeyed ourselves into an awkward position. This observation is not to the merits of clemency but to the method by which it is determined.

4. I must confess I am quite unhappy about the proposed Board of review. It means an unusual burden

on Legats But, ~~even~~ if we grant
 clemency by sentence revision ^{part}
 without regard to the type of cases,
 many will be beneficiaries who
 have killed and ^{our soldiers;} robbed ~~the~~
 the Italians, ^{government} ~~do not~~ have ^{our} ~~the~~ case
 records to examine - they are in
 our archives. All the Italian Government
 has is over mere record of sentences.

On the other hand, if we grant
 clemency as to offenders then
 some one will have to resort
 to the cases to ascertain the
 beneficiaries. If the cases have
 to be resorted to, then why not
 face the problem in sequence
 and do now what ultimately
 will have to be done? Even if we
 announce clemency, and then
 have to make an examination

C.H.C.
 Legats
 report
 to
 Legats
 clemency
 as to
 Legats

some one will have no more to the cases to ascertain the beneficiaries. If the cases have to be resorted to, then why not face the problem in sequence and do now what ultimately will have to be done? Even if we ¹⁰⁰ announce clemency, and then have to make an examination to determine beneficiaries, what little advantage is gained in the announcement of a principle is lost in the delay in actual result. Or, is this an error in my thinking?

At any rate, I can say in truth, we are sub-consciously agreed on a third premise: to

get done with a task that needs
to be done, and as each of us ^{is} ~~is~~
wedded to that premise and
not to a plan, I think we can
arrive at something in the
contemplated discussions; and
you have my assurance that I
will be ready to go along on
whatever is decided, ~~and~~
come what come may. After all,
what we have put forth is a
plan, not the plan.

Worwester
Colonel, Infantry
~~Reg~~ Chief Signal Advisor.

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HEADQUARTERS ALLIED COMMISSION

APO 394

Office of the Executive Commissioner

P
legat

3A

Ref: 2604/72/EC.

9 October 45.

SUBJECT: Amnesty.

100TH 1945

TO : Civil Affairs Section.
(For Chief Legal Adviser).

2A

1. Reference your AC/4079/1 dated 2 October 45.
2. Would you be good enough to submit for consideration the draft of a scheme you consider suitable, bearing in mind the points raised in the copy of the Executive Commissioner's minute of 6 October 45, given below.

"On p.58 the P.M. asks for an amnesty for persons convicted by Allied Courts either under Proclamation or Italian law. Four C.L.A. agrees that in certain cases an amnesty would be desirable. Polads agree in principle.

We need to be very careful about this. Sentences passed by Allied Courts are not to be lightly reversed or reduced. We must always remember that the death sentence is irrevocable, and that an amnesty passed on other sentences would rightly make capital sentences appear unjust.

Moreover, we still have AMG in Venezia Giulia and Udine and must relate our clemency to law and order in those areas.

C.I.A., should, however, I submit, put up a scheme."

T.H.W. Cleary

Chief Staff Officer,
To the Executive Commissioner.

6694

LEG. DISTRICT NO. 10
CITY OF LOS ANGELES
CHAS. J. [illegible]
CLERK

1. [illegible]
[illegible]
10 OCT 1945

FILE

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

2A

AG/4079/L.

GGH/lc.
2 October 1945.

SUBJECT : Amnesty.

TO : The Chief Commissioner.

Herewith translation of draft of letter which the
Prime Minister proposes to address to you in the near future.

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

Copy to : Exec. Commissioner.

8

7

UNITED STATES OF AMERICA
DEPARTMENT OF STATE
OFFICE OF THE SECRETARY

Rome,

LA

TO HON. ADMIRAL STONE,

I should like to inform you how opportune would be in the present state of the country an act of clemency by the Allied authorities in favour of those who have been condemned by Allied tribunals either under our laws or under the orders and proclamations of A.M.G..

I assure you that an amnesty for the above-mentioned offences is keenly awaited by public opinion in Italy now that the indispensable but temporary necessities of war have ended with victory over the Nazi-Fascists. Such necessities often obliged Allied tribunals to impose severe sentences which have been only rarely mitigated by a grant of pardon.

Such provision for an amnesty would moreover avoid the serious difference now existing between the conditions of those condemned by Italian tribunals and those condemned by Allied courts. No amnesty has been granted for the latter, while the former have enjoyed the amnesty of 5th April 1944, and with the probability that they will enjoy a further benefit that is now under consideration.

I think, my dear Admiral, that the amnesty in question would be suitably granted on the occasion of the restoration by A.M.G. to the Italian Government of the remaining national territory

7 6

with victory over the Nazi-Fascists. Such necessities obliged Allied tribunals to impose severe sentences which have been only rarely mitigated by a grant of pardon.

Such provision for an amnesty would moreover avoid the serious difference now existing between the conditions of those condemned by Italian tribunals and those condemned by Allied courts. No amnesty has been granted for the latter, while the former have enjoyed the amnesty of 5th April 1944, and with the probability that they will enjoy a further benefit that is now under consideration.

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I think, my dear Admiral, that the amnesty in question would be suitably granted on the occasion of the restoration by A.M.G. to the Italian Government of the remaining national territory and could take the form of a legislative provision of the Italian government with the previous consent of the Allied Commission.

Referring to the same question I inform you moreover that at a recent meeting between the members of the Legal Sub-Commission and the Minister of Justice the Chief Legal Adviser Col. W.E. Behrens, not officially but in his private capacity, has indicated that the Allied Commission would be able to examine the above question. It is unnecessary to add that it will be for the Allied authorities to fix the limits of such a concession, and exclude those offences which are considered more harmful to their own interests

- 2 -

Would you therefore, my dear Admiral, kindly tell me your opinion regarding this proposal which with your general approval could be considered in detail by the Minister of Justice and the Legal sub-Commission in collaboration.

I have the honour to be etc. etc.

4 5

IL PRESIDENTE DEL CONSIGLIO
DEI MINISTRI

Roma, 11

Preg.mo Ammiraglio Stone,

Ritengo utile farle presente quanto sarebbe opportuno nell'attuale situazione del Paese un atto di clemenza da parte delle Autorità Alleate a favore di coloro che sono stati condannati dai Tribunali Alleati sia in base alle nostre leggi, sia in base alle ordinanze e ai proclami dell'A.A.S. L'assicuro in proposito che un'amnistia per i reati di cui sopra è vivamente attesa dall'opinione pubblica italiana ora che con la vittoria sui nazi-fascisti sono terminate le insopportabili e contingenti necessità della guerra, le quali hanno sovente imposto da parte dei Tribunali Alleati condanne di una certa gravità e soltanto raramente mitigate dall'accoglimento dell'istanza di grazia.

Tale possibilità eviterebbe inoltre una grave sperequazione che per il momento esiste tra la condanna di coloro che sono stati giudicati dai Tribunali italiani e quella dei condannati delle Corti Alleate. Solo per questi ultimi infatti non è stata concessa alcuna amnistia, mentre i primi hanno usufruito dell'amnistia 5 aprile 1941 e con tutta probabilità godranno di un ulteriore beneficio che è attualmente allo studio.

Ritengo, illustre Ammiraglio, che l'amnistia in parola è costantemente in occasione della

1A

sopra è vivamente attesa dall'opinione pubblica italiana, che con la vittoria sui nazi-fascisti sono terminate le insopportabili e contingenti necessità della guerra, le quali hanno sovente imposto da parte dei Tribunali Alleati condanne di una certa gravità e soltanto raramente mitigate dall'accoglimento dell'istanza di grazia.

Tale possibilità eviterebbe inoltre una grave sperequazione che per il momento esiste tra la condanna di coloro che sono stati giudicati dai Tribunali italiani e quella dei condannati delle Corti Alleate. Solo per questi ultimi infatti non è stata concessa alcuna amnistia, mentre i primi hanno usufruito dell'amnistia 5 aprile 1944 e con tutta probabilità godranno di un ulteriore beneficio che è attualmente allo studio.

Ritengo, illustre Ammiraglio, che l'amnistia in parola potrebbe essere concessa convenientemente in occasione della restituzione al Governo italiano da parte dell'A.M.T. del rimanente territorio nazionale e potrebbe assumere la forma di

All'Ammiraglio STONE
Presidente della Commissione Alleata
R O M A

2.

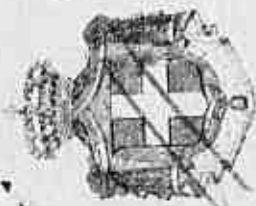
un provvedimento legislativo del Governo italiano previo consenso della Commissione Alleata.

Sempre a tale riguardo la comunico inoltre che in un recente incontro tra i membri della Sottocommissione Legale e il Ministro della Giustizia, il Capo Legale Colonnello W.E. Behrens ha fatto cenno, sia pure come opinione personale, alla possibilità di prendere in esame quanto sopra da parte della Commissione Alleata. E' superfluo aggiungere che spetterebbe naturalmente all'Autorità Alleata fissare i limiti di tale concessione ed ecceettuare quei casi dai quali ritenesse maggiormente lesi i propri interessi.

La prego pertanto, illustre Ammiraglio, di volermi far conoscere il suo pensiero in merito a tale progetto che, ricevendo la sua adesione di massima, potrebbe essere studiato nei dettagli dal Ministero della Giustizia e dalla Sottocommissione Legale in reciproca collaborazione.

Voglio, gradire, illustre Ammiraglio, con l'occasione i sensi della mia più alta considerazione.

3



4049

Ministro di Grazia e Giustizia

PRO-MEMORIA PER IL MINISTRO

=====

(AMNISTIA RELATIVA ALLE CONDANNE INFLITTE DAI TRIBUNALI ALLEATI)

A seguito di quanto discusso nell'incontro del 20.c.m. tra il Ministro e la Sottocommissione Legale circa una eventuale amnistia relativa alle condanne pronunciate dai Tribunali Alleati, allo scopo di affrettare tale possibilità il Colonnello Hannaford ha suggerito che il Ministro faccia presente al Presidente Parri l'opportunità di inviare una lettera personale all'Ammiraglio STONE per chiedere quanto sopra.

Sembrirebbe utile in tale lettera accennare quanto un'amnistia per i reati di cui sopra sia vivamente attesa, ora che sono terminate le insopprimibili e contingenti necessità della guerra che hanno imposto pene particolarmente dure.

Questa amnistia potrebbe convenientemente essere concessa in occasione della restituzione al Governo italiano da parte dell'A.M.O. del rimanente territorio nazionale e potrebbe assumere la forma di un provvedimento legislativo del Governo italiano, previo consenso della Commissione Alleata.

A seguito di quanto discusso nell'incontro del 20.c.m. tra il Ministro e la Sottocommissione legale circa una eventuale amnistia relativa alle condanne pronunciate dal Tribunale Alleati, allo scopo di affrettare tale possibilità il Colonnello Hannaford ha suggerito che il Ministro faccia presente al Presidente Ferri l'opportunità di inviare una lettera personale all'Ammiraglio Stone per chiedere quanto sopra.

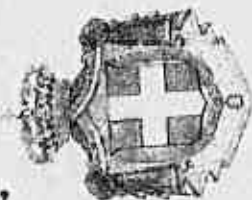
Sembrerebbe utile in tale lettera accennare quanto un'amnistia per i reati di cui sopra sia vivamente attesa, ora che sono terminate le insopprimibili e contingenti necessità della guerra che hanno imposto pene particolarmente dure.

Questa amnistia potrebbe convenientemente essere concessa in occasione della restituzione al Governo italiano da parte dell'A.N.D. del rimanente territorio nazionale e potrebbe assumere la forma di un provvedimento legislativo del Governo italiano, previo consenso della Commissione Alleata.

Sempre secondo il suggerimento del Colonnello Hannaford, nella lettera stessa converrebbe accennare che nell'incontro del 20 c.m. tra il Ministro della Giustizia e i membri della Sottocommissione legale, il Capo legale Colonnello W.M. Behrens ha fatto cenno, sia pure come opinione personale, alla possibilità di prendere in esame quanto sopra.

./.

Mod 1348 MG.

*Ministero di Grazia e Giustizia*

-2-

Naturalmente l'Autorità alleata fisserebbe i limiti di tale concessione ed eccettuerebbe quei reati dai quali ritenevasi maggiormente lesi i propri interessi. Qualora l'Amministrazione STONE accedesse di massima al progetto, lo studio particolare di questo potrebbe essere affidato in collaborazione al Ministero della Giustizia e alla Sottocommissione legale.

Howdy. **1**

1663