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

ACC

10000/142/921

A.M. COURT CASES IN
AUG. 1946 - JAN. 1947

10000/142/921

A.M. COURT CASES IN VENEZIA GIULIA, "POLICY"
AUG. 1946 - JAN. 1947

4193

FILE
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21 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-5 834.43, 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.

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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.

ELERY W. STONE
Rear Admiral, USN
Chief Commissioner

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HEADQUARTERS, ALLIED MILITARY GOVERNMENT, VENEZIA GIULIA

Office of the Senior Civil Affairs Officer

AOB/jb/jen

CONFIDENTIAL

va/mag/s/1/60

14 January 1947.

Memorandum to: Chief Legal Officer.

1. It is highly desirable, for self-apparent reasons that the population of the several prisons of the Occupied Territory be reduced as far as possible at the time when this Government hands over portions of the Area under its jurisdiction to Italy, Jugoslavia and the Free Territory of Trieste, respectively.
2. Almost every person still incarcerated at that date is likely to be the subject of some dispute based on the nationality of the person, the character of the offence for which he has been imprisoned, or the jurisdiction of the court which tried him or for which he is being held for trial, etc. Occasion for such disputes should be avoided as far as reasonably possible.
3. All this applies with particular force to persons being held for trial.
4. The Legal Officer should continue with augmented intensity all pressure previously exerted on the local courts to make their calendars as nearly current as possible at an early date and should consider the taking over for trial by Allied Military Government courts of cases where delay has been particularly aggravated.
5. Serious consideration should be given to the release without trial of persons who have been held for considerable periods, either without charges being preferred against them or without evidence sufficient to bring them to trial having been obtained. Presumptions in favor of the innocence of such persons should be acted upon in the immediate future with even greater liberality than normally.
6. The Senior Civil Affairs Police Officer is requested, in addition to furnishing the standard reports now being supplied to the Legal Officer, to call his attention specifically to the more aggravated cases of prolonged imprisonment without trial.

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Memo: Chief Legal Officer - 2 - 14 January 1947.

7. The prerogative of executive clemency is available for deserving cases of sentenced persons, though no general amnesty is at the moment regarded as advisable.

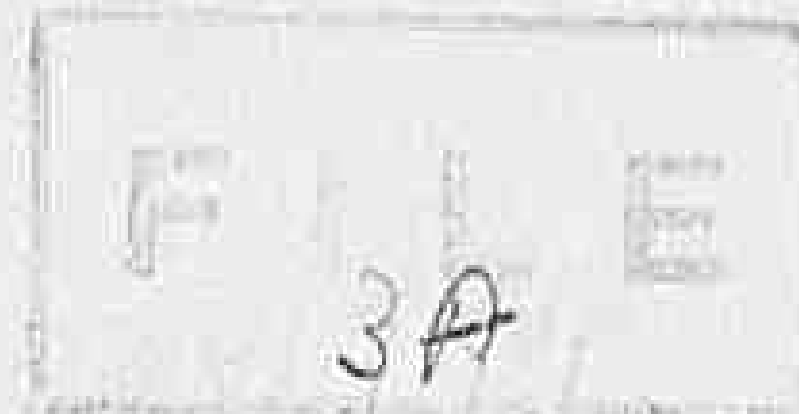
8. All concerned are urged to cooperate to the utmost to simplify to the greatest possible degree the many problems which will arise in connection with individual cases at the date of the respective handovers.

ALFRED C. BOWMAN
Colonel, J.A.G.D.
Senior Civil Affairs Officer

Copy to: Allied Commission, Rome.
ACOS G-5, AFHQ.
Chief of Staff, GHO, GAF.
SCAFO

LEGAL SUB - COMMISSION	
CID-GLA	
DGLD	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	17 JAN 1947

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION



4193
AC/4225/2

EE/ns
7 January 1947.

SUBJECT : A.M.G. and State employees.

TO : Chief Legal Officer
VENEZIA GIULIA.

1. Reference VG/AMG/LD/12/3689 of
24th Nov. '46.

2. In the enclosure to your letter the
S.C.A.O. raises the question whether permanent officials
in the military administration in Venezia Giulia should
be described as "A.M.G. employees" or "State employees",
and the comments of this Division are asked upon the
matter. In view of the fact that the S.C.A.O. referred
the matter for decision to G-5; A.M.G. on 14th November
last it is doubtful whether any comments made by this
Division will serve any purpose, as directions upon the
point have probably already been given by G-5.

3. The opinion of Dott. Cecovini upon the
question from the aspect of international law, with
which you appear to agree, seems to us perfectly sound.
Although the fact is frequently overlooked, the powers
of A.M.G. are definitely limited and restricted by the
provisions of Hague Convention (1907). The following
passage from Oppenheim sets out the position clearly.
"But, although as regards the safety of his army and
the purpose of war the occupant is vested with an almost
absolute power, as he is not the sovereign of the terri-
tory he has no right to make changes in the laws, or in
the administration, other than those which are temporarily
necessitated by his interest in the maintenance and
safety of his army and the realization of the purpose
of war. On the contrary, he has the duty of administering
the country according to the existing laws and the
existing rules of administration...." The obligation
upon the occupant to abide by the laws he finds in force

- 2 -

in the occupied territory is one from which he cannot escape ("... while respecting, unless absolutely prevented, the laws in force in the country." Art. 43 of the Hague Convention). From this it follows that the employees in the public service who are continued in their posts by A.S.G. must be employed in accordance with the Italian laws and regulations governing State employees. Any description of these employees in any Order or any other official document issued by A.S.G. which would in any way interfere with the rights they have under the Italian laws governing state employees would be contrary to the Article of the Convention just cited.

4. This Division is in full agreement with the view of Dott. Cecovini that the employees should be referred to as "State employees" so as to preserve all the rights they enjoy under Italian legislation governing state employees.

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

Col. Hamford,

C.L.A. asked me to look at this & discuss it with you.

The S.C.A.O. has asked G-5's directions on the matter: the C.L.O. has asked for our comments, but these will not be of great use, since the question is already (since 14 Nov) before G-5 for decision.

As I read Col. B's letter to G-5, the question is whether the permanent officials in the administration should be described as "A.M.G. employees" or "State employees."

I don't think the view expressed by Col. B in para 7 is correct viz. that all persons employed belong to one category, "A.M.G. employees."

I agree with the opinion of both Cocovini that the permanent employees should be described and treated as "State employees" in order to preserve their acquired rights as state employees.

Is there any issue involved other than this?

As I have already said, I do not think our comments will serve any purpose, but if they may do so, then I think

g

15th C.L.O.

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It is sufficient to say that the legal team agrees with
the opinion expressed by Dr. Cecovini.

16/X11

A handwritten signature in cursive script, appearing to be "Amor", with a flourish at the end.

We should be informed if there are any state employees who are receiving higher rates of pay than persons filling the same post in State territory. If so they may be considered as having waived the rights as State employees.

Occupying power has no right to interfere the permanent State employees. To treat them as AMG employees is wholly at variance with the duties of an occupying power as laid down by int'l law.

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Italian legislation governing state employees.

J.K. Wilson

SLA

(LA)

There is no doubt in my mind
 that individuals who were
 state employees before AMG came into
 operation remain state employees
 under AMG. (See German occupation of
 Belgium & France in 1940-43 & 1940-45)
 Those appointed by AMG however should not
 alter the status of state employees
 because they are merely temporary functioning -

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT

~~12 CORPS~~

VENEZIA GIULIA

LEGAL DIVISION

SM/zs

24 Nov. 46

FILE REF. : VG/ANG/LD/12//3689

SUBJECT : A.M.G. and Statal employees.

TO : ALLIED COMMISSION -
Legal Division

1. Reference attached letter to S.S.A.O. and enclosures on above subject.

2. I would appreciate your comments on the above matter as presented in the correspondence.

For the Senior Civil Affairs Officer:

CHARLES M. MUNNECKE
Lt. Colonel, Infantry
CHIEF LEGAL OFFICER

Incl.

LEGAL SUB - COMMISSION	
CJO - GLA	
DCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	NOV 29 1946

CLM/EF

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
~~13 CORPS~~

VENEZIA CIVILIE

LOCAL DIVISION

24 November 1946

FROM HQ. : VG/AMG/D/

PERSON : A.M.C. and Postal employees.

TO : F.C.C.D.

1. Ref. your VG/AMG/162 dated 14 Nov. addressed to A.F.H.Q. above subject, copy attached.
2. The comment of Mr. Cecovini Chief Executive of this Division (Head Italian Counsel) is in my opinion worthy of serious consideration, copy is herewith enclosed. (1).
3. This matter is also germane to the position I advised you of in order 235. (Restoration of War Veterans to State and Private Industry) wherein I advised that the members of what would be state administrative in Italy, serving in Venezia-Civile should be so referred to here rather than as members of public administration as appears in the order. It would appear that to refer to these employees as other than state employees might seriously interfere with certain future rights they might have. In my opinion the term "state" in this sense serves the sole function of "descriptive" and does not in any way violate the principles of sovereignty as expressed in Col. Weber's complete memo on the subject. I discussed this with Col. Weber on his recent trip and as was indicated to agree with me, reserving his complete opinion pending a study of the matter.
4. I am forwarding a copy of this memo to Allied Commission for their comments.

FILE REF. : W/MS/37

SUBJECT : I.S.G. and Postal employees.

TO : P.C. 10.

1. Ref. your VO/AM/162 dated 11 Nov. addressed to A.F.S.O. above subject, copy attached.

2. The comment of Mr. Cecovini (Chief Scientific of this Division (Head Italian Counsel) is in my opinion worthy of serious consideration, copy is herewith enclosed. (1).

3. This matter is also germane to the position I advised you of in Order 235. (Restoration of War Veterans to State and private Industry) wherein I advised that the members of what would be state administrations in Italy, serving in Veterans-Civilie should be so referred to here rather than as members of public Ad- ministrations as appears in the prior. It would appear that to refer to these employees as other than writer employees might seriously interfere with certain future rights they might have. In my opinion the term "writer" in this sense serves the sole function of "descriptive personnel" and does not in any way violate the principles of sovereignty as expressed in Col. Robert's complete memo on the subject. I discussed this with Col. Robert on his recent trip and he was inclined to agree with me, reserving his complete opinion pending a study of the matter.

4. I am forwarding a copy of this Memo to Allied Com- mission for their comments.

CLM

CHARLES W. HUMPHREYS
Lt. Colonel,
Chief Counsel Officer

Copy to : Allied Commission ✓
A.F.S.O.
Finance Division

(1) Under the convention of August of 1907 an occupying force had to follow and respect the laws existing in the occupied territory as far as they are not inconsistent with the Armed Forces' interests.

(2) The organization of public offices (Statel, parastatal, provincial and communal) is certainly not inconsistent with Armed Forces' purposes and interests. Therefore it should be respected.

(3) A considerable part of the said organization consists in the particular status of the employees, who have, under it, a quite definite and permanent juridical status (pension, seniority, etc.).

(4) Personnel employed by A.M.G. (including those who depend upon the Area Commissioners Offices) have no juridical status, or, in any case, have no right to pension, seniority, etc. like civil public employees; they perform a public duty mainly on behalf of the Occupying Force and are paid by them. Their job has clearly a temporary nature and at the end of it they will be dismissed as temporary employees.

(5) By considering both categories on the same level, i.e. as A.M.G. employees, the statel employees would lose their qualification of permanent employees to get instead that of temporary employees. This is a loss which is not justified by the interest of an Armed Force, I think.

(6) When the time is come for the cessation of A.M.G. the statel employees will keep their qualification and the rights connected therewith also under the new Government, while A.M.G. employees will probably cease to be employees.

(7) The difference between the two categories is therefore substantial and not only formal. Considering that the present situation does not involve any inconsistency, I do not see any reason for taking steps which on the contrary involve a damage for the employees concerned.

in the particular statute of the employees, who have, under it, a quite definite and permanent judicial status (pension, seniority, etc.),

(4) Permanent employed by A.M.C. (including those who depend upon the Area Commission Offices) have no judicial status, or, in any case, have no right to pension, seniority, etc. like civil public employees; they perform a public duty mainly on behalf of the Occupying Force and are paid by them. Their job was clearly a temporary nature and at the end of it they will be dismissed as temporary employees.

(5) By considering both categories on the same level, i.e. as A.M.C. employees, the stated employees would lose their qualification of permanent employees to get issued that of temporary employees. This is a loss which is not justified by the interest of an Armed Force, I think.

(6) When the time is come for the cessation of A.M.C., the stated employees will keep their qualification and the rights connected therewith also under the new Government, while A.M.C. employees will probably cease to be employed.

(7) The difference between the two categories is therefore substantial and not only formal. Considering that the present situation does not involve any inconvenience, I do not see any reason for taking steps which on the contrary involve a damage for the employees concerned.

ENCLOSURE

copy

HEADQUARTERS, ALLIED MILITARY GOVERNMENT, VENETIA GIULIA

Office of the Senior Civil Affairs Officer

14 November 1946.

VG/AMG/102

Colonel A.S. HANBURN
Assistant Chief of Staff G-5
Allied Force Headquarters.

Dear Colonel,

1. Your letter G-5 275.12 of 30 October, and its reply, recall a related problem which has occurred from time to time and has given rise to some anomalies.

2. Throughout Allied Military Government operations in Italy, American and British Civil Affairs Officers dealt with two classes of civilian assistants:

- (1) State employees, and
- (2) Allied Military Government employees.

3. There was no difficulty in defining each class. One worked for the Italian government; the other for the Allied Forces.

4. There is a tendency to combine the same distinction in this territory--which is quite natural in view of the long experience of many of our technical specialists in Italy and the fact that many of the civilians working in our prefecture and municipalities were employees of the Italian State long before we came here, except some day to receive retirement or other benefits from that source, and regard themselves as being in substantively the same position now as they were say two years ago.

5. At the same time, we are employing in the case of Popolo and other Allied Military Government offices on the territorial level a large number of people performing governmental functions as such who have no "opposite numbers" in any civilian governmental structure, and in this area, where the Italian government does not and apparently will

1. recall a related problem which has occurred
time and has given rise to some anomalies.

2. Throughout Allied Military Government operations in Italy, American and British Civil Affairs Officers dealt with two classes of civilian assistants:

- (1) Statist employees, and
- (2) Allied Military Government employees.

3. There was no difficulty in defining each class. One worked for the Italian Government; the other for the Allied Forces.

4. There is a tendency to continue the same distinction in this territory which is quite natural in view of the long experience of many of our technical specialists in Italy and the fact that many of the civilians working in our presence and many of the employees of the Italian State long before we came here, expect some day to receive retirement or other benefits from that source, and regard themselves as being in substantially the same position now as they were any two years ago.

5. At the same time, we are employing in the base del Popolo and other Allied Military Government offices on the territorial level a large number of people performing governmental functions as such who have no "opposite numbers" in any civilian governmental structure, and in this area where the Italian Government does not and apparently will not operate, seem to be on principal "statist" employees to exactly the same extent as persons working under the area presidents. These are still called "I.M.G." employees.

6. That functional consideration causes one of these groups of people to be regarded as "statist" and the other as "military." The practical consequences of either designation are considerable, relating to pay, emoluments, holidays, pensions, unemployment benefits, and a number of other points on which the rights of governmental employees

... which are quite different from those of persons employed by the Allied Forces".

7. After frequent consideration of the question, I am inclined to the view that all people employed by this provincial government, whether on the area or territorial level, have exactly the same character and relation to higher authority as regards current status, whatever may be their future claims against the Italian government concerning pensions, unemployment benefits, etc. In other words, it seems to me that under existing circumstances here, all are military government employees, and as such employees of the Armed Forces.

8. It is not desired necessarily to raise so many which might result in "irregularizing" matters in which precedent has been established and which are proceeding satisfactorily. The pay of employees on the area level has been provided for in area budgets; that of employees on the territorial level by the budget as well, being governed by the agencies of military necessity as determined from time to time by the Senior Civil Affairs Officer or his assistant.

9. That the question does exist, however, and that the practice may some time be questioned, should be accepted.

10. This Headquarters will be glad to receive any instructions on the matters discussed which this communication may suggest to be appropriate.

ALFRED G. BOGEMAN
Colonel, J.A.U.D.
SENIOR CIVIL
Affairs Officer

Copy to: Chief of Staff, GHQ
Finance Division, and
Legal Division, and

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8. It is not desired unnecessarily to raise an issue which might result in "irregularizing" matters on which precedent has been established and which are proceeding satisfactorily. The pay of employees on the area level has been provided for in area budgets; that of employees on the territorial level by no budget at all, being governed by the exigencies of military necessity as determined from time to time by the Senior Civil Affairs Officer or his assistants.

9. That the question does exist, however, and that the practice may some time be questioned, should be accepted.

10. This Headquarters will be glad to receive any instructions on the matters discussed which this communication may suggest to be appropriate.

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

copy to: Chief of Staff, G-1,
Finance Division, AMG
Legal Division, AMG

1224

~~409-2/11~~ 4193.

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

IA

Original's Reference: FX 38065
Date/Time of Origin: AUG 241741B

Message Centre No: F/5206
Date Time Rec'd: AUG 251030B
Precedence: PRIORITY

FROM FREEDOM SIGNED SACMED CTTE FHGG
TO : ACTION 13 CORPS, ALCON ROME

Col Weber

SECRET

Phase speaks
was.

RECEIVED
25 AUG 1945

SECRET.

1. Message I O of 13 CORPS dated 9 August ⁽¹⁰⁾ refers.
2. Review of AMG court cases will be dealt with as technical matter in accordance with Article 32 Consolidated Instructions ALLIED COMMISSION. For this purpose SCAO 13 CORPS will be regarded as a Regional Commissioner. Cases other than those mentioned para 3 below will be reviewed by SCAO 13 CORPS or by a judicial officer not below the rank of Major appointed by him for that purpose.
3. The chief Civil Affairs officer or a judicial officer not below the rank of Lieutenant Colonel appointed by him for that purpose will review ^{cases} in which;
 - a. 1 or more of the charges is framed under Italian law.
 - b. Sentence on the accused or on any one of two or more persons tried together exceeds 2 years imprisonment or 50000 Lire fine or
 - c. On account of the importance of the case or for any other reason SCAO 13 CORPS submits the record for review by the Chief Civil Affairs Officer.
4. Such reviewing authority mentioned in para 3 will communicate the decision on review to Commanding General ~~of the~~ announce the decision on behalf of the military government.

~~CONFIDENTIAL~~
UNCLASSIFIED

Confidential
for Chief Civil Affairs Officer.

LEGAL SUB-COMMISSION
C/O
D/C
C/O

(M/C Note: No trace of 13 CORPS signal 10 of 9 Aug)

SECRET

ACTION: Legal SC
INFO: Chief Commissioner
Ex Commissioner 2
CA Sec
Est Sec
File

1225

MINISTERO DELLE CORPORAZIONI

Catania

Marmo

1226

Mario

EDIA • PL • PUGNACIA

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