

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

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

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DEFASCISM, PROPOSED LEGISLATION, REGULATIONS
UNDER DLL 159, PART II
JULY-OCT. 1944

Page

Rules of procedure for the operation of the Administration
Order No. 159 of 27 Jul 44 (No. 285 of 23 Oct 44)

The Italian version of this decree is the only authoritative text.

The version below is not a literal translation; its object is to inform officers conveniently of the provisions contained in the decree.

Officers are referred to the Italian text for all points of detail or matters of procedure or dispute. The brackets indicate additions to the original text made to clarify the meaning.

1 except as provided in Art 2 hereof proceedings for operation under
Art 11 of No. 159 shall be initiated by the High Commissioner for Defendants (HD).

2 The Bodies referred to in art 14 of No. 159 shall ^{and is} supply the HD with
a list of their employees who are within the provisions of arts 14 and 17
of that decree and also such evidence as is in their possession concerning
employees to whom the provisions of arts 12 and 13 of the said decree are
^{concerned} alleged to apply.

When, however, any such Body is of opinion that it has sufficient
evidence to justify operation proceedings against any employee, it may file a
charge with the appropriate hearing Commission, which, before entering the
case, shall send to the HD a list of the names of the persons accused.

The HD may, if he so desire, reserve to himself the initiation of any
such proceeding.

(Appendix)

patterns of procedure or dispute. The brackets indicate additions to the original text made to clarify the meaning.

1. except as provided in Art 2 hereof proceedings for expunction under Part II of this Law shall be initiated by the High Commissioner for Defendants (HD).

2. The Body referred to in art 11 of this Law shall ^{and} supply the HD with a list of their employees who are within the provisions of arts 14 and 17 of that Decree and also such evidence as is in their possession concerning employees to whom the provisions of arts 12 and 13 of the said Decree are ^{concerned} alleged to apply.

Then, however, any such Body is of opinion that it has sufficient evidence to justify expunction proceedings against any employee, it may file a charge with the appropriate hearing Commission, which, before entering the case, shall send to the HC a list of the names of the persons accused.

The HD may, if he so desire, reserve to himself the initiation of any such proceeding.

The HD shall commence expunction proceedings before the Commission of ^(expunction) first instance against those whom, on the evidence received by him from ^{the} Bodies, Commissions or obtained in answer to enquiries originating in his own office, /is of opinion should be dismissed or receive some other punishment authorized by part II of the said Decree.

3. Every Body will supply to the HD all information and documents ~~in~~ ^{may demand} he may demand.

Where political or military secrets are involved, prior authorization shall be obtained from the President of the Council of Ministers, who may

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lay down the formalities to be observed during the examination and transmission of such documents.

4. The Commission of First Instance, on receiving with the relative documents a request for the commencement of proceedings, shall ^{be informed} ~~notify in form~~ ~~ensure that~~ the person concerned of the charges against him and invite him to submit his defense within a stated time limit which in any case shall not be less than ten days.

During such period the person concerned shall have the right to consult ^(consulted) records in the Secretariat of the Commission.

5. The defense shall be filed with the Secretariat of the Commission, in duplicate living in a document other than that in which the Commission in located may file his defense through the head of the office in which he works.

The head of the office will without delay forward the same to the Secretariat of the Commission.

6. The Commission of First Instance shall ^{such} ~~also~~ further enquire under Art 19 of IEL 159 as it may deem necessary in view of the evidence before it and the defense of the person concerned and shall then pronounce its finding supported by short reasons for the same.

7. In ~~the~~ cases under Art 14 of IEL 159, where there is no evidence of fascist authoritarian or intolerant, the question Commission may, instead of a fine, as allowed by the said article.

(continued)
[Provisions in the Secretariat of the Commission.]

5 The defense shall be filed with the Secretariat of the Commission.
in duplicate filed in a secure other than that in which the Commission
is located may file his defense through the head of the office in which
he works.

The head of the office will without delay forward the same to the
Secretariat of the Commission.

6 The Commission of first instance shall take ^{such} further inquiries under
Art 19 of the 159 as it may deem necessary in view of the evidence before
it and the defense of the person concerned and shall then pronounce its
finding supported by short reasons for the same.

7 In the cases under Art 14 of the 159, where there is no evidence of
fascist sectarianism or intolerance, the Commission Commission may, instead
of dismissal, award such lesser punishment as is allowed by the said article.

8 No ^{person} ~~person~~ shall be ^{eligible} ~~eligible~~ when a title mentioned in Art 14 of
the 159 of 27 July 44 has been awarded as more honour and the person con-
cerned did not participate in the events for which the honour was first
awarded.

Similarly those who became officers in the MVEI as a result of a collec-
tive draft into the militia of units which existed in other Government ser-
vices shall not be penalised unless the person concerned made a specific
request for such transfer.

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Nevertheless dismissal or any other penalty authorized by Art 14 of the above-mentioned Decree may be ^{ordered in the case of} ~~imposed~~ on those who have exploited such titles or their position in the militia in order to obtain for themselves any particular advantage which, generally speaking, other persons similarly situated could not obtain.

9 Any appeal by the person concerned or by the HC against a decision of the Commission of first instance shall be filed at the Secretariat of the said Commission and shall be forwarded by the latter, together with the relevant records, to the Central Commission.

An employee living in a commune other than the one in which the Commission of first instance is located may present his appeal to the head of his office who shall without delay forward the same to the Secretariat of ^(Administrative) the Commission of first instance for further action as above.

10 The finding of an epuration Commission shall be communicated, by the appropriate Secretariat, to the Body employing the person concerned which shall issue such order as may be necessary to carry out the finding.

11 Whenever the HC is of opinion that an employee against whom epuration proceedings have been commenced should be suspended, he shall make to the appropriate Minister or Prefect a recommendation to that effect supported by his reasons. The latter shall then take action in accordance with

Art 22 of D.L. 159.

Any Minister or Prefect who does not desire to accept the HC's recom-

the relevant records, to the Central Commission.

An employee living in a commune other than the one in which the Commission of first instance is located may present his appeal to the head of his office who shall without delay forward the same to the secretary of the Commission of first instance for further action as above.

10 The finding of an expiration Commission shall be communicated, by the appropriate Secretariat, to the Body employing the person concerned which shall issue such order as may be necessary to carry out the finding.

11 Whenever the HC is of opinion that an employee against whom expiration proceedings have been commenced should be suspended, he shall make to the appropriate Minister or Prefect a recommendation to that effect supported by his reasons. The latter shall then take action in accordance with

Art 22 of D.L. 159.

Any Minister or Prefect who does not desire to accept the HC's recommendation shall at once notify the latter and refer the matter to the President of the Council of Ministers (PCM) for decision.

Should the circumstances, which caused any suspension to be ordered, cease to exist the order of suspension may, with the approval of the HC at any time and even during actual expiration proceedings, be revoked by the authority which made it.

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See evidence may be presented to the Central Commission either by the person concerned or by the DE.

The Central Commission even if there is no ^{suggestion} ~~request~~ by the DE, may award a severer penalty than that given by the Commission of first instance.

13 The operation of private public utility undertakings which have their offices and whose activities are exercised in one province only, will be undertaken by ~~the~~ Commission established by Art 18, para 3 of MIL 159.

The Prefect shall issue orders as may be necessary to carry out the findings in respect of such personnel.

In the case of a private utility undertaking, a public authority or other public body

14. An official of either the undertaking concerned or of the administrative or other public body responsible for supervising such undertakings may be appointed as second member ^{of} the expiration commission for special undertakings which operate under public authorities or bodies.

Except as provided in the preceding para whenever a single commission deals with more than one undertaking

changes in respect of such personnel.

In the case of a change in the composition of the Commission, the President of the Commission shall be notified.

14. An official of either the undertaking concerned or of the administrative or other public body responsible for supervising such undertakings may be appointed as second member of the operation commission for specified undertakings which operate under public authorities or bodies.

Except as provided in the preceding para ~~wherever~~ a single commission deals with more than one undertaking, the competent authority may select the second member from among the personnel of any of the undertakings concerned.

The provisions set out in the first para of this article shall apply also to undertakings which ~~have been designated~~ ^{are} of general importance to the ~~administrations~~ ^{State} controlling them.

15. In derogation from the provision contained in Art 18, para 3 of OLL 159, the duration of commissions of bodies referred to in the said para and in Art 13 hereof shall be appointed by the RM, after consultation with the competent Minister and with the RC; the provision of the preceding article concerning the composition of the Commissions shall apply to the undertakings referred to therein.

- 5 -

The Commission for the regulation of private public utility undertakings and of concerns of national importance shall be appointed by the competent authority, as laid down in RL 159, and also by the RL.

- 16 Sub-commissions with jurisdiction over one or more provinces may be appointed in the manner set out in Art 16, para 1, to deal with government departments which have a large staff distributed in many offices.
- 17 A Commission may establish its seat in any provincial town.

- 18 In every province the President and ^Erepresentative of the RL shall jointly be responsible for preparing the cases against employees to be brought before an operation Commission.

- 19 The Central Commissions established by Art 23, para 3 of RL 159, shall be composed of a President; two judicial or administrative magistrates (active or retired); four members nominated by the appropriate Minister, after the consultation with the authority, if any, responsible for the keeping of the register for some of persons practicing any profession, art or trade, and of two other members designated by the RL.

In appointing any such Commission the appropriate Minister or a body authorized by him, need not appoint persons to represent an authority responsible for keeping a register if in fact

jointly be responsible for preparing the cases against employees to be brought before an operation Commission.

18

The Central Commissions established by Art 23, para 2 of ML 159, shall be composed of a President; two judicial or administrative magistrates (active or retired); four members nominated by the appropriate Minister, after the consultation with the authority, if any, responsible for the keeping of the register per zone of persons practicing any profession, art or trade, and of two other members designated by the ML.

In appointing any such Commission the appropriate Minister or a body authorized by him, need not appoint persons to represent an authority responsible for keeping a register if in fact ^{such authority} it does not exist.

19

The Commissions responsible for reviewing the entries on any register referred to in Art 23 of ML 159 shall apply Arts 12 ~~et seq~~ (1), 13 and 14 of the said Decree (to persons on such registers).

The case of any person whose behavior has compromised the decorum and dignity of his profession or who has in any way shown himself unworthy to practice his profession, art or trade, shall be struck off the register.

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is permitted under any special Government authorization or license the removal of any name from a register shall have the effect of revoking such government authorization or license.

20 A Commission responsible for reviewing any register shall have the powers ~~given to an~~ ^{under} ~~Revision Commission~~ by Art 19 of D.L. 159.

Proceedings before such Commission shall be commenced by a request of the H.C. to whom the Bodies charged with keeping the registers shall send the documents in their possession and any denunciations received by them.

In any case of particular gravity the Commission may, during revision of the proceedings, suspend the person concerned from his profession, art or trade until the proceedings are concluded.

21 Appeals against the decisions of the Commission for the revision of any register shall be filed in the Secretariat of such Commission and shall be sent by that Commission to the Central Commission together with (all relevant) documents.

22 When the time limit for any appeal has expired without an appeal having been filed the finding of any Commission responsible for reviewing any register (or where there has been an appeal, ^{in the event of}

In any case of particular gravity the Commission may, ^{after} ~~after~~ revision of the ~~proceedings~~, suspend the person concerned from his profession, art or trade until the proceedings are completed.

21 Appeals against the decisions of ~~the~~ Commission for the revision of any register shall be filed in the Secretariat of such Commission and shall be sent by that Commission to the Central Commission together with (all relevant) documents.

22 When the time limit for any appeal has expired without an appeal having been filed the finding of any Commission responsible for reviewing any register (or where there has been an appeal) ^{in the} ~~of~~ the Central Commission shall be communicated by the Secretariat to the ~~body~~ ^{body} responsible for keeping such register who will put the said finding into effect.

23 The last para of Art 18 of the 159 shall apply to ~~the~~ Commission ^{responsible} for reviewing any register.

Where one Body is responsible for keeping more than one professional register, the appropriate Minister may, in the large number of entries taken it desirable, form

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25 4. proceedings for expiration shall be deemed to be commenced on the date on which, in accordance with the provisions of Art 25 of ULL 153, the charges against him were communicated to the person concerned.

provided that when an employee has been suspended before such communication the proceedings shall be deemed to have commenced either on the day on which he was suspended or where such day was prior to the one on which this Decree came into force, the proceedings shall, ^{irrespective of the date} ~~irrespective of the date~~ ^{on which the communication of the charges was made, be deemed to have commenced} on the 10th day following that on which this Decree came into force.

26 Then, after the liberation of territories not yet liberated, important evidence, which could not previously have been discovered, is discovered against any person who may be liable to expiration proceedings, the RCM may by Decree order that the time limit, contained in Art 25, para 1 of ULL 153, shall in the case of such persons commence from the date mentioned in the para 3 of that article.

27 In more serious cases such as those to which para 2 of Art 22 of U

on the 10th day following that on which the person came into force.

When, after the liberation of territory not yet liberated, important evidence, which could not previously have been discovered, is discovered against any person who may be liable to extradition proceedings, the ICC may by decision order that the time limit, contained in Art 25, para 1 of the 1959, shall in the case of such person commence from the date mentioned in the para 3 of that article.

27 In more serious cases than those to which para 2 of Art 22 of the 1959 refers, any person who has been referred after 25 Jul 43 may be submitted to extradition proceedings. Any such proceeding shall be carried out in the manner and within the time limits to determine whether or not any person might be forfeited otherwise easily. Any such proceeding shall be carried out in the manner and within the time limits to determine whether or not any person might be forfeited otherwise easily. Any such proceeding shall be carried out in the manner and within the time limits to determine whether or not any person might be forfeited otherwise easily.

28 The review of any decision under Art 44, para 2 of the 1959, shall be originated by an application of the person concerned. Such application shall be lodged with the Secretariat of the competent Extradition Commission or with the body to which the employee belonged, within 90 days from the date this person came into force.

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30 This document shall come into force on the day of its publication in the
Gazette (7 Nov 44).

Declassified E.O. 12356 Section 3.3/NND

No.

785016

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

To : Deputy C.L.A.

MINUTES

English version reviewed - Alterations made in red.

NO. 11. 44

Thompson

(file received on 20th, Nov.)

1 5207

MINUTES

for public utility etc. who have two concurrent activities?

Apr 16, send pass the competent Minister ^{designate} used not ~~delegated~~ the Affairs
checkers with the keeping of the rolls, where they do not exist.

Apr 27 - New. persons whose after 25 July 1943 may be suspended, in
order to deprive them of their pension.

W. H. H. H.
Dec.

15 Nov 44

13.

Recd at

Apr 12, 1944 The English version of the Revised Procedure

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MINUTES

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Since minutes are handwritten, accuracy of transcription is not guaranteed. If you find any errors, please make corrections. If you find any errors, please make corrections. If you find any errors, please make corrections.

MINUTES

C.A.S.

1. A translation of the substantial alterations is attached.
2. It appears illogical that in Art 15 the Commission for such Commission as the appoints by the President of the Council of Ministers; for Rome by the Minister of Education.
3. No further comment.

W. J. J. J.
11 Oct. 44. *CA*
for C.A.S.

11 Oct.

Legal

It is understood that the Commission will be appointed by the President of the Council of Ministers. The Commission will be appointed by the President of the Council of Ministers. The Commission will be appointed by the President of the Council of Ministers.

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CAS

MINUTES

7

Re: when Sec.

1. Translation revised as per notes on 6A.
2. As to discrepancy between art. 11 para. 2 & art. 21 of ETL 159
Latter provides definitely for "normal authority" to carry out findings
of commission & put into effect punishments; in former extra
a case when such authority doesn't want to act. There is a
technical conflict. However, let's get to art. 11 para. 2 principally,
in the ground that it gives an opportunity to pass the track -
clog the course of minutes with cases that should be dealt
with at lower level.
3. As to that there is real conflict between art. 12 of Regulations and
arts 14+20 of ETL 159. The former appears to provide an opportunity
of hearing evidence including addendum evidence on an appeal
but 20 does not provide that appeal shall be on record only, although
that previously implied that to be the intention.
4. Paras 1, 173

MINUTES

1. Translation revised as per notes on 6A.
2. As to discrepancy between cert. 11 para 21 & cert 21 of 22-2-159
 latter provides definitely for "normal authority" to carry out findings
 of commission & put into effect punishments; the former contains
 a case where such authority does not want to act. There is a
 technical conflict. However, let it be put in para 2 principally
 in the form that it gives an opportunity to pass the buck" &
 clog the course of matters when cases that should be dealt
 with at lower level.

3. Do not think there is real conflict between cert 12 & regulations and
 cert 14 & 20 of 22-2-159. The former appears to provide an opportunity
 of hearing evidence including addresses evidence on an appeal
 but 20 does not provide that appeal shall be on record only, although
 that previously inferred that to be the intention.

MINUTES

Lagard

We are interviewing with some more. They explain what about some of the defendant's testimony and there is a reason for not forwarding with the hearing of going to the fact that the rules of procedure for hearings and also have prohibited and he asked that the rules should prevent certain function. Decision was asked our attention. He went that the rules had been and to the thinking of justice some time ago since when he would have nothing. Could we have them to state thus. The delay is probably caused by the material from in which the angle has been interpreted.

100% you please take up with the Ministry.

- a. Our objections to the draft as reported at 100%.
- b. The extreme urgency of the very early review of sufficient regulations to enable the Commission to start working.

3 This is most autocratic. It not only gives the Asst High Commissioner already power to appoint his own committee where a democratic committee in its existence but enables him to replace the personnel of a democratic committee by his own men. I do not think that this is intended. Most Ministries have their own democratic committees. It would be much better to provide that every Minister shall form an investigation committee representative of all parties other than fascist and clothe these committees with the powers mentioned in this Art.

4 There is a patent error here there is no sub-para 40(e) and I am unable to identify what is meant. Min 2 considers that it is intended to extend the time limit of Art 25 but I doubt this. On the other hand it might be intended to define the commencement of proceedings for the purpose of Art 10. If so the wording is not very apt. If it does not do this then that is an omission in the regulation which should be made good.

5 Arts 15, 16 and 17 create new offences and may be ultra vires.

6 I do not think the Commissioner should have any power to decide a case himself. If a denunciation is received the Asst High Commissioner should either order the case to be heard or refer the matter to the appropriate committee for investigation. It would be better if the instruction was simply that all denunciations received direct should be referred to the investigating committee.

7 Art 19 deprives ministries of their privileges to refrain from giving evidence from State records. Probably necessary but is ultra vires these regulations.

8 Art 21 nominally reverses the recognised procedure of Italian Law that a decree of a court of first instance is not enforceable before the time for appeal has lapsed in this case, only three days. The question is whether the change in law is intra vires.

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1313

ALL 25 OF 23 OCT 44

RELEAS OF PROCEEDING

for

EXPLANATION

under

Part II of ELL 108

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

17 JUL 12

04 SEP

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

DF/5.2

11a

Extract from letter from HC Defascism 14697/11 4 1 of 20 Oct
Original on file DF 5.9.

In regard to the appointment of the Commissions of epuration of the Provinces, entrusted to the President of the Council instead of to the Prefects, the relative provisions have been hastened by this Office, following the experience acquired from epuration work in several Prefectures, and are therefore the result of the necessity of accelerating epuration and of freeing it from local influences.

To this end this Office is already designating the members of the Commissions, whose names are to be submitted to the President of the Council.

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From Lt Col S.H. WHITE
CA Sec HQ AGO

10a

19 Oct 44

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DE/DA/CA

Dear Mr. Scorsellino,

Mr. Upjohn had interviews yesterday with both Mr. Count Spence and Mr. Scorsellino on the subject of the appointment of Provincial Commissioners when it was agreed that though the power to appoint the third member of a Provincial Commission would be vested in the High Commissioner he would normally delegate his powers to the local Prefect. In exceptional circumstances, where either there was reasonable ground for belief that the Prefect had fascist sympathies or there might on some other grounds be strong local feeling against the Prefect's probable nominee, the High Commissioner would himself make the appointment.

I am instructed to say that on this understanding AGO has no objection to the draft Rules of Procedure and it is hoped that you will now be able to get these issued quickly.

Yours very truly

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

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394
CA SECTION

~~DF/5.1/CA~~

18 Oct 44

Dear Mr. Sorrentino,

I enclose for your convenience notes of the meeting
between yourself and Brig Upjohn on 12 Oct 44.

Yours truly

S/ S.H. WHITE Lt Col
CA Section.

Mr. Antonio SORRENTINO
Capo dell'Ufficio Legale della Presidenza
del Consiglio dei Ministri.

R O M A

Copy to : DF/5.8/CA ✓
DF/5.9/CA ✗

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