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DEFASCISM, PROPOSED LEGISLATION, AS TO OFFICIALS APPOINTED OR REMOVED BY AMG
AUG. - OCT. 1945

Cabinet

Minutes

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HEADQUARTERS ALLIED COMMISSION
APO 394
OFFICE OF THE CHIEF COMMISSIONER

AC/4039/4/L. /rlp. 22 August 1945.

My dear Mr. Prime Minister:

I thank you for your letter of 7 August 1945 enclosing the draft of a proposed decree on the status of officials appointed by AMG to public offices, and of officials removed or dismissed by AMG in the process of epuration.

The principles of the proposed decree are entirely acceptable to this Commission and I agree that it will be most helpful if the decree is passed as soon as possible in order that officials appointed or removed by AMG may have no doubt as to their true legal status.

Yours very truly,

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

Professor Ferruccio Parri,
The President of the Council of Ministers,
Italian Government
Rome

3962

COPY

Translation

The President of the Council of Ministers
11878.2/1.3.1.

Rome, 7 August 1945

My dear Admiral,

according to the agreements previously made to settle the legal effect of the handing over of the territories by the Allied Military Government to the Italian Administration, it was decided that the appointments and dismissals from public or private charges, ordered by the Government itself, would remain unchanged, being considered as fully valid in relation to Italian laws.

On the basis of the former agreements, the R.L.D. of February 11th, 1944, n. 31, concerning the juridical regime of the territories which have been returned to Italian Administration, explicitly confirms, in the second para of art. 1, the validity of the appointments and dismissals mentioned, rendering them equal to acts of the Italian Government. The regulation has been reproduced in identical terms, in the following decree, which issued new orders about the said legal regime (art. 1, third para, Decree of the Lieutenant 20 July, 1944, n. 162).

As you well know, ever since it was first enforced, this principle received a logical modification, for it was admitted that similar AMG regulations were to be considered as not having a definitive character, and liable therefore to revokation on the part of the Italian authorities, in agreement, of course, with the Allied Commission.

Later on, the Mac Millan Memorandum, of February 24th, acknowledged a still greater autonomy to the Italian Government, for what concerns the appointments, granting them greater powers, also regarding those made by the Allied Authorities. Besides, as for the dismissals ordered by AMG for motives of epuration, the Allied Commission ordered them to be assimilated to purely suspensive regulations, so as in no way to prejudice the definitive decisions following the epuration judgements.

Considering this new juridical situation, the clause which, formerly, referred to the efficaciousness of the appointments made by AMG has been eliminated in Document A, which goes with the various restitutions of territory to the Italian Government.

However, as the regulation contained in the above mentioned art. 1 of the DLL n. 162 remains in force, the Italian Government is still linked, speaking from a strictly legal point of view, to the appointment and dismissal acts issued by the Allied Authorities. The question takes a particularly delicate character for what concerns the replacement of people summoned by AMG to fulfil certain charges, for, according to the Italian law which is now in force, the persons concerned might argue of the validity of the charge, going on after the passage of the territories, and also take legal action to support their claims.

Such being the case, it is urgently necessary to make an adequate modification to the regulation in question.

To my mind, the most advisable criterion would be to consider every appointment made by AMG as the pure and simple conferring of a mission to exercise given functions. Such a solution, while perfectly in accordance with the agreements already made on this subject with the Allied Organs, would enable the Italian Administration to revoke any moment the said charges, and make all the replacements which would be deemed necessary in the offices in question, according to the Italian laws on such charges, except for what concerns such registering in the establishment as would be deemed advisable. Besides, the new Decree should be drafted so as to have the people appointed by the Allies carry on their functions as long as no other administrative act on the part of the Italian Authorities intervenes; this to have the continuity of functions in public offices assured at the time of the handing over of the territories, and enable the Italian Government to proceed, gradually, to make new appointments.

The enclosed legislative decree, which I want to communicate to you, has been drafted on such lines. As you well understand, this regulation is most urgent in relation with the recent passages of territories, and those which will take place later on.

Waiting to hear your opinion on this matter, I remain, my dear Admiral,

Yours very truly,

/s/ Ferruccio PARRI

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TRANSLATION No 877

Art 1

As far as it affects Italian law, positions in public offices conferred by the Allied Military Government in the territory under its jurisdiction shall be considered as being of a temporary character.

Art 2

Those who, upon the restoration of the territory to the Italian Administration hold public offices conferred to them by the AMG, shall continue to hold these offices until such time as their substitution is ordered by the proper authorities of the Italian Government, unless they are admitted into the regular list (ruolo).

For purposes of remuneration, employees not belonging to the Administration shall be considered on an equal basis as the regular employees in the State classification who perform the same duties. This equal basis shall be established by decree of the Ministry having jurisdiction in conjunction with the Ministry of the Treasury.

Employees not belonging to the Administration and working in bodies other than those of the State shall be paid those salaries established by present laws or by regulations issued for those positions whose duties they perform.

Art 3

Employees of the State or of the bodies referred to in art 11 of DLL 159 of 27 July 1944 who have been removed or dismissed from office by the AMG for epuration purposes, shall be considered as being suspended from office in accordance with art 22, para 3 of DLL 159 of 27 Jul 44.

This suspension shall be effective from the date on which the above mentioned measures were taken.

The charges shall be contested, for the purpose of the epuration trial, within three months from the restoration to the Italian Administration of the territory in which the said measures were taken or, if the territory was already restored, from the effective date of the present decree.

Any other disciplinary measure to be taken against the said employees as a result of penal proceedings taken against them shall be excluded from the above provision.

Art 4

The provision of the present decree shall be valid also for the measures taken by the AMG in the territory which is restored to the Italian Administration before this said decree becomes effective.

Art 5

The present decree shall become effective the day following its publication in the Gazzetta Ufficiale del Regno.

We order.....