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

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DRAFT DECREE ON RE-APPOINTMENT OF JUDICIAL OFFICIALS
DISMISSED FOR POLITICAL OR RACIAL REASONS
AUG. 1944

2142

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FIDE CLOSED 6 August 1944

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File

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

(2A)

Tel.No. 478525
ACC/4104/23/L

E3/ap
6 Aug 44

SUBJECT : Draft decree on Reappointment of judicial
officials dismissed for political or racial
reasons.

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

1. This is to inform Your Excellency that this
Subcommission has no comment to make in respect to the
above draft decree a copy of which is returned herewith.

G. G. HANNAFORD,
Lt. Colonel,
Officer i/o Italian Branch,
for Acting Chief Legal Officer.

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4104/23

1A

Draft of Legislative Decree.

Re-appointment of magistrates of judicial rank dismissed on political or racial grounds.

UMBERTO DI SAVOIA etc

Having seen Decree law of Lieutenant General of the Kingdom
25 June 1944 No.151

" " R.D.L. of 6 Jan 1944 No.9 and of 20 Jan 1944 No.25.
etc.etc.

ART. I

Re-appointment within the meaning of Royal Decree laws 6 Jan 1944 No. 9 and 20 Jan 1944 No.25 of magistrates of judicial rank who had been dismissed on political or racial grounds, shall be made by the Council of Ministers on the proposal of the Minister of Pardon and Justice always providing that it be shown that they are in possession of the necessary qualifications, according to the existing laws and regulations, to remain in service.

ART. II

The Council of Ministers shall be empowered on the proposal of the Minister of Pardon and Justice and having studied the record of such a person and taken into account the development of the career of other magistrates who held the same position at the time of the dismissal, to appoint magistrates re-admitted to service to a rank higher than that which they held at the time of the dismissal- but in no case shall this be higher than grade III.

By the same decision the position in the order of seniority of each re-appointed magistrate shall be established.

ART. III

This decree etc.

Note

Royal decree laws of 6 Jan 44, No.9 and of 20 Jan 44, No.25 make regulations in a general way for the re-appointment of members of public administrations who have been dismissed on political or racial grounds.

As is known according to these provisions, integrated by RDL 12 April 44 No.101, re-appointment is made by the Council of Ministers as regards employees of grade higher than the fifth and by an appropriate Commission presided over by a Minister or by an Under Secretary of State for employees of lower rank.

Persons readmitted are to hold the position and rank held by them on the rolls at the time of their dismissal, but individual positions of persons re-appointed will be examined within six months with a view to any necessary promotions, which cannot be to a rank higher than that which the reappointed person could have reached by examination as to suitability or by such and merit together, had he remained in the service.

This system is scarcely adequate in regard to the particular order of promotion of magistrates which is based principally on the system of competitive examinations. To make the general rules adequate it should be established that magistrates re-appointed to the service may be given a rank higher than that which they held at the time of their dismissal, taking into account their former attainment and the development of the careers of other magistrates who held the same position at the time of the dismissal.

This power is to be limited by establishing that in no case may a re-appointed magistrate be given a rank higher than grade III since the first and second grades, through the fact that they are only exceptionally conferred, are absolutely outside the normal development of a career.

According to the general rules the Council of Ministers will make provisions only regarding magistrates of grade IV and higher but in order to secure uniformity of direction and assessment, considering the particularly delicate nature of the judicial office it has been thought advisable to establish that the Council of Ministers shall decide in all cases. It is always better for obvious reasons of prestige of the magistrates that the re-appointment and promotion should be discussed not at several different times but at one session.

