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## **Federal Constitutional Law of 29 November 1988 on the Protection of Personal Liberty**

The National Council has adopted:

### **Article 1**

- (1) Everyone has the right to liberty and security (personal liberty).
- (2) No one may be arrested or detained on grounds other than those named in this Federal constitutional law or in a manner other than in accordance with the procedure prescribed by law.
- (3) The deprivation of personal liberty may be legally prescribed only if this is requisite for the purpose of the measure; deprivation of personal liberty may in any instance only occur if and inasmuch as this is not disproportionate to the purpose of the measure.
- (4) Whoever is arrested or detained shall be treated with respect for human dignity and with all feasible personal consideration and may be subjected only to such restrictions as are commensurate with the purpose of the detention or necessary for the maintenance of security and order in the place of his/her detention.

### **Article 2**

- (1) A person may in the following cases be deprived of his/her personal liberty in accordance with the procedure prescribed by law:
  1. if judgment has been pronounced by reason of an offence to which a threat of penalty applies;
  2. if he/she is suspected of a particular offence to which a threat of penalty by a legal or fiscal authority applies;
    - a) so as to end to aggression or to establish at once the actual circumstances in so far as the suspicion arises from the close link in time to the occurrence or is due to his/her possession of a specific item,
    - b) to prevent him/her from evasion of the trial or from interference with evidence, or
    - c) to impede him/her in the case of an offence to which a threat of substantial penalty applies from the commitment of a similar offence or the effectuation of such;
  3. for the purpose of bringing him/her before the competent authority on suspicion of being surprised in the commitment of an offence of administrative transgression if the arrest is necessary to ensure prosecution or for the prevention of further similar offence/s;

4. to enforce compliance with a valid judicial ruling or the fulfilment of any obligation prescribed by law;
  5. if there is reason to presume that he/she is a source of danger for the spread of infectious diseases or due to psychic disorder endangers himself/herself or others;
  6. for the purpose of necessary educational measures in the case of a minor;
  7. when necessary, to secure a proposed deportation or extradition.
- (2) No one may be arrested or detained simply because he/she is not in a position to fulfil a contractual obligation.

### **Article 3**

- (1) Only a court may pronounce upon a deprivation of liberty for an offence to which a penalty applies.
- (2) Provision may however be made for the imposition of a term of imprisonment or the establishment of alternative penalties by administrative authorities if the extent of the deprivation of liberty does not exceed six weeks or in so far as the decision rests with an independent authority three month.
- (3) If a term of imprisonment is not imposed by an independent authority or an alternative penalty established by it, there must be a guarantee for comprehensive appeal with suspensive effect being able to be lodged with such an authority.

### **Article 4**

- (1) An arrest under Art. (2), para. 1, sub-paras. 2b and c above is admissible only in execution of a substantiated judicial order which must be served on the person concerned on arrest or at the latest within 24 hours thereafter.
- (2) If delay entails danger as well as in the case of Art. (2), para. 1, sub-para. 2a above, a person may be arrested also without judicial order. He/she shall be set free as soon as it is established that no reason for his/her further detention is on hand, otherwise he/she shall be brought without needless deferment, at the latest however prior to the expiration of 48 hours, before the competent court.
- (3) A judge shall without delay interrogate a person brought before a court and inquire into the grounds for the detention.
- (4) An arrest under Art. (2), para. 1, sub-paras. 2b and a above on suspicion of an offence to which a threat of penalty by fiscal authority applies is admissible only in execution of a substantiated order by an officer authorized by law to exercise judicial power. If however delay entails danger as well as in the case of Art. 2, para. 1, sub-para. 2a above, a person may be arrested also without such an order. Furthermore paras. 1 to 3 above hold good analogously with the proviso that the person arrested shall be brought promptly before the competent fiscal penal authority.
- (5) A person arrested under Art. (2), para. 1, sub-para. 3 above shall, if the reason for the arrest has not already been obviated, be promptly delivered to the competent authority. He/she may on no account be detained for longer than 24 hours.

(6) Everyone arrested shall at the earliest opportunity, if possible at the time of his arrest, be informed in a language which he/she understands of the reasons for his/her arrest and of any charge against him/her. The rights accorded by constitutional law to the lingual minorities remain unaffected.

(7) Everyone arrested is entitled to have at his/her request a relative and a legal adviser of his/her own choosing notified without unnecessary delay of the arrest.

#### **Article 5**

(1) Whoever is detained on suspicion of an offence to which a threat of penalty by a legal or fiscal authority applies is entitled within a reasonable time to termination of the proceedings initiated on account of the charge against him/her or to release pending trial.

(2) If slighter means suffice, deprivation of liberty shall be waived. Whoever is detained to prevent him/her from evasion of the trial for an offence to which no severe penalty applies shall in any event be released if he/she furnishes the security established by the court or by the officer authorized by law to exercise judicial power taking into account the gravity of the penal offence with which he/she is charged, his/her personal circumstances, and the means of the person standing as security; additional slighter means to ensure the trial are admissible.

#### **Article 6**

(1) Everyone arrested or detained is entitled to take proceedings in which a court or other independent authority decides on the lawfulness of the deprivation of liberty and if the detention is not lawful orders his/her release. The decision must be issued within a week unless the detention should have already ended.

(2) In the case of detention for an indefinite period the need for such must be reviewed at appropriate intervals by a court or other independent authority.

#### **Article 7**

Everyone unlawfully arrested or detained shall have an enforceable right to full satisfaction including compensation for injury to other than material assets.

#### **Article 8**

(1) This Federal constitutional law enters into force on 1 January 1991.

(2) Art. 8 of the Basic Law of 21 December 1867, RGBI. No. 142, on the General Rights of Nationals in the Kingdoms and Laender represented in the Council of the Realm as well as the Law of 27 October 1862, RGBI. No. 87, on the Protection of Personal Liberty, including their mention in Art. 149 (1) of the Federal Constitution, are repealed.

(3) The Convention for the Protection of Human Rights and Fundamental Freedoms, BGBl. No. 210/1958, remains unaffected.

(4) Proceedings pending in respect of matters regulated by this Federal constitutional law shall at the time of entry into force of this Federal constitutional law be brought to a close in accordance with the hitherto prevailing legal position; this holds good likewise for proceedings pending at the Administrative Court and the Constitutional Court.

(5) The Federal Government is entrusted with the execution of this Federal constitutional law.