

**Federal Constitutional Law of 29 November 1988  
on the Protection of Personal Freedom  
- unofficial consolidated version -**

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**[NOTE: This is an unofficial translation]**

The National Council has ruled as follows:

**Article 1**

(1) Everyone shall have the right to liberty and security (personal freedom).

(2) No one may be arrested or detained on grounds other than as stated herein or in a manner other than as prescribed by law.

(3) Deprivation of personal freedom may be provided for by law only if it is necessary in accordance with the purpose of the measure; any deprivation of personal freedom shall in all cases be permissible only if and insofar as it is not disproportionate to the purpose of the measure.

(4) Anyone who is arrested or detained shall be treated with respect for his human dignity and with the greatest possible consideration and he shall be subject to only such restrictions as are reasonable for the purpose of the arrest or are necessary for maintaining safety and good order at the place of his arrest.

**Article 2**

(1) A person may be deprived of personal freedom in the manner prescribed by law in the following cases:

1. If deprivation of liberty has been imposed by virtue of a punishable act;
2. If the person is suspected of having committed a specific offence that is liable to punishment by the judicial or revenue authority:
  - (a) For the purpose of terminating an assault or immediately establishing the facts of the case if the suspicion is closely related in time to the offence or arises out of the person's possession of a specific object;
  - (b) In order to prevent the person from evading the proceedings or from interfering with evidence; or
  - (c) In the case of an offence that is subject to a substantial penalty, in order to prevent the person from perpetrating a similar offence or from organizing its commission;
3. For the purpose of the person's appearance before the competent authority on suspicion of an administrative infraction in whose commission he was discovered *flagrante delicto*, insofar as his arrest is necessary to guarantee the proceedings or to prevent the commission of further similar punishable acts;
4. In order to enforce compliance with a lawful decision of a court or the fulfilment of an obligation prescribed by law;
5. If there is reason to assume that the person constitutes a source of risk as regards the spread of infectious diseases or on account of mental illness represents a danger to himself or to others;

6. For the purpose of necessary educational supervision measures in the case of a juvenile;
7. If required in order to guarantee an intended deportation or extradition.

(2) No one may be arrested or detained solely by reason of inability to fulfil a contractual obligation.

### **Article 3**

(1) Deprivation of liberty by virtue of a punishable act may be imposed only by a court.

(2) However, the administrative authorities' imposition of a custodial sentence and fixing of terms of imprisonment in default of payment of fines may be provided for if the duration of the deprivation of liberty does not exceed six weeks or, where the decision is incumbent upon an independent authority, three months.

(3) If a custodial sentence is not imposed by an independent authority or a term of imprisonment in default of payment of a fine is not fixed by an independent authority, the contesting of the decision before such an authority shall be guaranteed in full and with suspensive effect.

### **Article 4**

(1) Any arrest on the grounds set forth in article 2, paragraph (1) 2 (b) and (c), shall be admissible only in execution of a substantiated court order, which shall be served on the person concerned at the time of arrest and at the latest within 24 hours.

(2) In the event of impending danger and in the eventuality referred to in article 2, paragraph (1) 2 (a), a person may also be arrested without a court order. The person shall be released as soon as it emerges that no reason for his further detention exists or shall otherwise be handed over to the competent court without undue delay and at the latest within 48 hours.

(3) A person handed over to a court shall be examined without delay by the judge in connection with the circumstances of the case and the requirements for his detention.

(4) Any arrest on the grounds set forth in article 2, paragraph (1) 2 (b) and (c), on suspicion of an offence that is liable to punishment by the revenue authority shall be admissible only in execution of a substantiated order of an official empowered by law to exercise judicial functions. However, in the event of impending danger and in the eventuality referred to in article 2, paragraph (1) 2 (a), a person may also be arrested without such an order. In all other respects, paragraphs (1) to (3) above shall apply *mutatis mutandis* with the proviso that the person arrested shall be handed over without delay to the competent revenue authority.

(5) A person arrested on any of the grounds set forth in article 2, paragraph (1) 3, shall, unless the reason for his arrest has already ceased to exist, be handed over without delay to the competent authority. Such person may under no circumstances be detained for more than 24 hours.

(6) Every person arrested shall be informed, in a language understandable to him, at the earliest opportunity and if possible at the time of arrest, of the grounds for his arrest and of the charges brought against him. The foregoing shall be without prejudice to any rights accorded to linguistic minorities by federal law.

(7) Every person arrested shall, upon request, be entitled at his own choice to have a relative and a legal adviser informed of his arrest without undue delay.

### **Article 5**

(1) Any person detained by virtue of a suspicion of having committed an offence that is liable to punishment by the judicial or revenue authority shall have the right to completion of a trial, which has been opened on the charges brought against him, within a reasonable period or to release pending trial.

(2) If measures of a more lenient nature are sufficient, deprivation of liberty shall not be carried out. However, a person who by reason of an offence that is not subject to a severe penalty is detained in order to prevent him from evading the proceedings shall be released if he provides bail in the amount fixed by the court or official empowered by law to exercise judicial functions taking into consideration the gravity of the punishable act with which he is charged, his personal circumstances and the assets of the person standing surety; the adoption of additional measures of a more lenient nature in order to guarantee the proceedings shall be permissible.

### **Article 6**

(1) Every person who is arrested or detained shall have the right to proceedings in which the lawfulness of the deprivation of liberty is decided upon by a court or other independent authority and, in the event of its unlawfulness, his release shall be ordered. The decision shall be rendered within one week unless the detention has previously terminated.

(2) In cases of detention for an indefinite period, the need for such detention shall be reviewed by a court or another independent authority within reasonable time intervals.

### **Article 7**

Every person who was unlawfully arrested or detained shall have the right to full legal redress, including compensation for non-pecuniary loss.

### **Article 8**

(1) The present Federal Constitutional Law shall enter into force on 1 January 1991.

(2) Article 8 of the Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and States represented in the Imperial Council, Imperial Law Gazette (RGBl.) No. 142, and the Law of 27 October 1862 on the Protection of Personal Freedom, RGBl. No. 87, including the reference thereto in article 149, paragraph (1), of the Federal Constitution (B-VG), are hereby repealed.

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

(4) Upon the entry into force of the present Federal Constitutional Law, any pending proceedings relating to matters regulated hereunder shall be completed in accordance with the legal situation prevailing hitherto; the foregoing shall also apply to proceedings before the Administrative Court and before the Constitutional Court.

(5) Responsibility for the execution of the present Federal Constitutional Law shall be entrusted to the Federal Government.