

Preventive Detention (December 4, 1916)

Abstract

Of the many measures to counter opposition to the war on the home front, preventive detention served the military leadership especially well. It removed dissidents and other potential critics from the general population. For the first two years of the conflict, these measures were effective. But the accumulating burdens of war in the later years of fighting succeeded where agitation had failed: the potential for mass unrest grew as privations continued.

Source

Supreme Headquarters, December 4, 1916

We Wilhelm, by the Grace of God German Emperor, King of Prussia, etc., decree in the name of the Empire, with the consent of the Federal Council and of the Reichstag, the following:

§1

An order of arrest or residency restriction against a German citizen is permissible under executive powers granted by Law of the State of War and Siege only when it is necessary to avert a danger to national security.

§2

The arrest order is to be in writing and is to be shown to the person being arrested during the arrest or, should this not be possible, immediately after the arrest. Upon demanding it, he is to be given a copy of the written order. The facts on which the arrest is based are to be listed in the arrest order.

§3

The arrested person has at all times the right of appeal to the National Military Court. When the arrest order is served, the person being arrested is to be informed of his right to appeal. In reaching its decision, the Military Court shall comprise four legal and three military members.

The Military Court can order oral proceedings, and indeed must do so should the arrested person call for it. The court can interrogate the arrested person through a judge whom it has commissioned or otherwise requested.

§4

No later than the day of his arrest, the arrested person must be examined by a judge as to the objections, if any, he has to register against his arrest.

§5

The arrest order is to be rescinded should the reason or purpose of the arrest have become invalid, or if the state of war or state of siege has been lifted, or if three months have passed since the day of the arrest.

The continuation of the arrest for more than three months can only be ordered on the basis of a new

examination of the facts and a new arrest order. Furthermore, even if no appeal has been submitted, the continuation of the arrest requires a decision of the National Military Court (§3).

§6

The execution of the arrest is regulated by the provisions of §116 of the Code of Criminal Procedure.

§7

The arrested person can consult defense counsel at any time. The provisions of §137, Paragraphs 2 and 138 of the Code of Criminal Procedure shall apply.

§8

The district court judge in whose district the arrest took place or where the person arrested is located can appoint, either upon request or ex officio, a defense counsel for the arrested person. The appointment must be provided if the arrested person has asked for it after two weeks' imprisonment. The arrested person is to be informed of this right during his hearing. The appointment is to be withdrawn if another defense counsel is expeditiously chosen and accepts his selection.

§9

The defense counsel is to be granted access to the arrest file. The arrested person is to be allowed to have both written and oral contact with defense counsel.

§10

The legal representative of the arrested person and the husband of an arrested woman is [sic] to be admitted as counsel and, should he request it, is to be allowed to speak at the hearing.

§11

The provisions of §§ 2 – 5 and 7 –10 of this law are to be applied as appropriate to residency restrictions.

§12

The period of detention served pending trial pursuant to this law can be deducted fully or partially from the sentence.

§13

Should the Military Court rescind the arrest or residency restriction, because the necessary grounds for ordering or enforcing them were not present, the injured person is entitled to claim compensation.

The Military Court can grant a claim for compensation upon application in other cases as well, even when it has not itself rescinded the arrest or residency restriction.

In the event that the order for arrest or residency restriction has been issued by a military commander or an official of the Reich, the claim is against Germany; in other cases, it is against that federal state whose official issued the order. Otherwise, the provisions of the Federal Law of July 14, 1904, apply to the claim and its execution. The Federal Council issues the statutes necessary for implementation.

Authenticated by our Royal Signature and Imperial Seal.

Issued Supreme Headquarters, December 4, 1916

Wilhelm

Dr. Helfferich

Source: "Gesetz, betreffend die Verhaftung und Aufenthaltsbeschränkung auf Grund des Kriegszustandes und des Belagerungszustandes vom 4. Dezember 1916". *Reichs-Gesetzblatt*, p. 1329; reprinted in Wolfdieter Bihl, *Deutsche Quellen zur Geschichte des Ersten Weltkrieges*. Darmstadt: Wissenschaftliche Buchgesellschaft, 1991, pp. 238–40.

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