



Volume 8. Occupation and the Emergence of Two States, 1945-1961
Control Council Directive No. 38 (October 12, 1946)

Control Council Directive No. 38 of October 1946 gave concrete form to the denazification called for in the Potsdam Agreement. The commanders of occupation zones were to assume primary responsibility for this process. All adult Germans were to appear before denazification courts [*Spruchkammern*], where their conduct during the Third Reich would be examined. Afterwards, they would be placed into one of five groups: major offenders, offenders, lesser offenders, followers, or exonerated persons. The directive sought to give precise definition to the kinds of behavior associated with each category and to lay out the appropriate punishment. Punishment could range from the death penalty or long prison sentences for major offenders, to the confiscation of property, a ban on exercising one's profession, pay cuts, travel restrictions, or compulsory registration with the authorities.

Control Council Directive No. 38: The Arrest and Punishment of War Criminals, Nazis, and Militarists and the Internment, Control, and Surveillance of Potentially Dangerous Germans.

The Control Council directs as follows: —

PART I

1. *Object*

The object of this paper is to establish a common policy for Germany covering:

- (a) The punishment of war criminals, Nazis, Militarists, and industrialists who encouraged and supported the Nazi Regime.
- (b) The complete and lasting destruction of Nazism and Militarism by imprisoning and restricting the activities of important participants or adherents to these creeds.
- (c) The internment of Germans, who, though not guilty of specific crimes are considered to be dangerous to Allied purposes, and the control and surveillance of others considered potentially so dangerous.

2. *References*

- (a) Potsdam Agreement, Sec. III, Para. 3, I(a);
- (b) Potsdam Agreement, Sec. III, Para. 3, III;
- (c) Potsdam Agreement, Sec. III, Para. 5;
- (d) Control Council Directive No. 24;
- (e) Control Council Law No. 10, Article II, Para 3 and Article III, Paras. 1 and 2.

3. *The Problem and General Principles*

It is considered that in order to carry out the principles established at Potsdam, it will be necessary to classify war criminals and potentially dangerous persons into five main categories and to establish punishments and sanctions appropriate to each category. We consider that the composition of categories and the nature of penalties and sanctions should be agreed in some detail but without limiting in any way the full discretion conferred by Control Council Law No. 10 upon Zone Commanders.

4. A clear definition of Allied policy with regard to the obviously dangerous as well as to only potentially dangerous Germans is required at this time in order to establish uniform provisions for disposing of these persons in the various Zones.

5. *Categories and Sanctions*

Composition of categories and sanctions are treated in detail in Part II of this Directive. They shall be applied in accordance with the following general principles:

(a) A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied Cause.

(b) Zone Commanders may, if they so desire, place an individual in a lower category on probation, with the exception of those who have been convicted as major offenders on account of their guilt in specific crimes.

(c) Within the categories, Zone Commanders will retain discretion to vary the sanctions if necessary to meet the requirements of individual cases within the limits laid down in this Directive.

(d) The classification of all offenders and potentially dangerous persons, assessment of sanctions and the review of cases will be carried out by agencies to be designated by the Zone Commanders as responsible for the implementation of this directive.

(e) The Zone Commanders and tribunals will have the authority to upgrade or downgrade individuals between categories. Zone Commanders may, if they wish, use German tribunals for the purpose of classification, trial and review.

(f) In order to prevent persons dealt with under this Directive avoiding any of the consequences of the Directive by moving to another Zone, each Zone Commander will ensure that the other Zones know and understand the methods employed by him in endorsing the identity documents of classified individuals.

(g) To implement this Directive, it is recommended that each Zone Commander will issue Orders or Zonal Laws conforming in substance to the provisions and principles of this Directive in his own Zone. Zone Commanders will supply each other with copies of such Laws or Orders.

(h) Provided that such Zonal Laws are in general conformity with the principles here set forth, full discretion is reserved to the individual Zone Commanders as regards their application in detail in accordance with the local situation in their respective Zones.

(i) In Berlin the Allied Kommandatura will have the responsibility for implementing the principles and provisions of this Directive and will issue such regulations and orders as are required for that purpose. Whatever discretion in the implementation of this Directive is left to Zone Commanders Will be exercised by the Allied Kommandatura in Berlin.

(j) Apart from the categories and sanctions set forth in Part II of this Directive, persons who committed war crimes or crimes against peace or humanity as defined in Control Council Law No. 10, will be dealt with under the provisions and procedures prescribed by that Law.

PART II

ARTICLE 1

Groups of Persons Responsible

In order to make a just determination of responsibility and to provide for imposition (except in the case of 5 below) of sanctions the following groupings of persons shall be made:

1. Major offenders;
2. Offenders (activists, militarists, and profiteers);
3. Lesser offenders (probationers);
4. Followers;
5. Persons exonerated. (Those included in the above categories who can prove themselves not guilty before a tribunal.)

ARTICLE 2

Major Offenders

Major Offenders are:

1. Anyone who, out of political motives, committed crimes against victims or opponents of national socialism;
2. Anyone who, in Germany or in the occupied areas, treated foreign civilians or Prisoners of War contrary to International Law;
3. Anyone who is responsible for outrages, pillaging, deportations, or other acts of brutality, even if committed in fighting against resistance movements;
4. Anyone who was active in a leading position in the NSDAP, one of its formations or affiliated organizations, or in any other national socialistic or militaristic organization;
5. Anyone who, in the government of the Reich, the Länder, or in the administration of formerly occupied areas, held a leading position which could have been held only by a leading national socialist or a leading supporter of the national socialistic tyranny;
6. Anyone who gave major political, economic propagandist or other support to the national socialistic tyranny, or who, by reason of his relations with the national socialistic tyranny, received very substantial profits for himself or others;
7. Anyone who was actively engaged for the national socialistic tyranny in the Gestapo, the SD, the SS, or the Geheime Feld- or Grenz-Polizei;
8. Anyone who, in any form whatever, participated in killings, tortures, or other cruelties in a concentration camp, a labour camp, or a medical institution or asylum;
9. Anyone who, for personal profit or advantage, actively collaborated with the Gestapo, SD, SS or similar organisations by denouncing or otherwise aiding in the persecution of the opponents of the national socialistic tyranny;
10. Any member of the High Command of the German Armed Forces so specified;
11. In Part I of Appendix 'A' a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in paras. 1-10 of this Article, as well as the positions occupied by them, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as major offenders and punished if found guilty.

ARTICLE 3

Offenders

A. Activists

I. An activist is:

1. Anyone who, by way of his position or activity, substantially advanced the national socialistic tyranny;

2. Anyone who exploited his position, his influence or his connections to impose force and utter threats, to act with brutality and to carry out oppressions or otherwise unjust measures.
3. Anyone who manifested himself as an avowed adherent of the national socialistic tyranny, more particularly of its racial creeds.

II. Activists are in particular the following persons, insofar as they are not major offenders:

1. Anyone who substantially contributed to the establishment, consolidation or maintenance of the national socialist tyranny, by word or deed, especially publicly through speeches or writings or through voluntary donations out of his own or another's property or through using his personal reputation or his position of power in political, economic or cultural life;
2. Anyone who, through national socialistic teachings or education, poisoned the spirit and soul of the youth;
3. Anyone who, in order to strengthen the national socialistic tyranny, undermined family and marital life disregarding recognised moral principles;
4. Anyone who in the service of national socialism unlawfully interfered in the administration of justice or abused politically his office as judge or public prosecutor;
5. Anyone who in the service of national socialism agitated with incitement or violence against churches, religious communities or ideological associations;
6. Anyone who in the service of national socialism ridiculed, damaged or destroyed values of art or science;
7. Anyone who took a leading or active part in destroying trade unions, suppressing labor, and misappropriating trade union property;
8. Anyone who, as a provocateur, agent or informer, caused or attempted to cause, institution of a proceeding to the detriment of others because of their race, religion or political opposition to national socialism or because of violation of national socialist rules;
9. Anyone who exploited his position or power under the national socialistic tyranny to commit offences, in particular, exertions, embezzlements and frauds;
10. Anyone who by word or deed took an attitude of hatred towards opponents of the NSDAP in Germany or abroad, towards Prisoners of War, the population of formerly occupied territories, foreign civilian workers, prisoners or like persons;
11. Anyone who favored transfer to service at the front because of opposition to national socialism.

III. An activist shall also be anyone who, after 8 May 1945, has endangered or is likely to endanger the peace of the German people or of the world, through advocating national socialism or militarism or inventing or disseminating malicious rumors.

B. *Militarists*

I. A Militarist is:

1. Anyone who sought to bring the life of the German people into line with a policy of militaristic force;
2. Anyone who advocated or is responsible for the domination of foreign peoples, their exploitation or displacement; or
3. Any who, for these purposes, promoted armament.

II. Militarists are in particular the following persons, insofar as they are not major offenders:

1. Anyone who, by word or deed, established or disseminated militaristic doctrines or programs or was active in any organization (except the Wehrmacht) serving the advancement of militaristic ideas.

2. Anyone who before 1935 organized or participated in the organization of the systematic training of youth for war;
3. Anyone who, exercising the power of command, is responsible for the wanton devastation, after the invasion of Germany, of cities and country places;
4. Anyone without regard to his rank who as a member of the Armed Forces (Wehrmacht), the Reich Labor Service (Reichsarbeitsdienst), the Organization Todt (OT), or Transport Group Speer, abused his official authority to obtain personal advantages or brutally to mistreat subordinates;
5. Anyone whose past training and activities in the General Staff Corps or otherwise has in the opinion of Zone Commanders contributed towards the promotion of militarism and who the Zone Commanders consider likely to endanger Allied purposes.

C. *Profiteers*

I. A profiteer is:

Anyone who, by use of his political position or connections, gained personal or economic advantages for himself or others from the national socialistic tyranny, the rearmament, or the war.

II. Profiteers are in particular the following persons, insofar as they are not major offenders:

1. Anyone who, solely on account of his membership in the NSDAP, obtained an office or a position or was preferentially promoted therein;
2. Anyone who received substantial donations from the NSDAP or its formations or affiliated organizations;
3. Anyone who obtained or strove for advantages for himself or others at the expense of those who were persecuted on political, religious or racial grounds, directly or indirectly, especially in connection with appropriations, forced sales, or similar transactions;
4. Anyone who made disproportionately high profits in armament or war transactions;
5. Anyone who unjustly enriched himself in connection with the administration of formerly occupied territories.

D. In Part II of Appendix 'A' a list of categories of persons is given who, because of the character of the crimes allegedly committed by them, shown in this Article, paragraphs A, B and C, will be carefully investigated and, if the results of the investigation necessitate a trial, must be brought to trial as offenders and punished if found guilty.

ARTICLE 4

Lesser Offenders (Probationers)

I. A lesser offender is:

1. Anyone including former members of the Armed Forces who otherwise belongs to the groups of Offenders but because of special circumstances seems worthy of a milder judgment and can be expected according to his character to fulfil his duties as a citizen of a peaceful democratic state after he has proved himself in a period of probation;
2. Anyone who otherwise belongs to the group of followers but because of his conduct and in view of his character will first have to prove himself.

II. A lesser offender is more particularly:

1. Anyone who, born after the first day of January 1919, does not belong to the group of major offenders, but seems to be an offender, without however having manifested despicable or brutal conduct and who can be expected in view of his character to prove himself;
2. Anyone, not a major offender, who seems to be an offender but withdrew from national socialism and its methods, unqualifiedly and manifestly, at an early time.
3. In Part III of Appendix 'A' a list of categories of persons is given who will be carefully investigated and, if there is evidence of guilt in accordance with the provisions of paras. I and II of this Article, will be charged as lesser offenders and punished if found guilty.

ARTICLE 5

Followers

I. A follower is:

Anyone who was not more than a nominal participant in, or a supporter of, the national socialistic tyranny.

II. Subject to this standard, a follower is more particularly:

1. Anyone who as a member of the NSDAP or of one of its formations, except the HJ and BDM, did no more than pay membership fees, participate in meetings where attendance was obligatory, or carry out unimportant or purely routine duties such as were directed for all members.
2. Anyone, not a major offender, an offender, or a lesser offender, who was a candidate for membership in the NSDAP but had not yet been finally accepted as a member;
3. Anyone being a former member of the Armed Forces who, in the opinion of the Zone Commander, is liable by his qualification to endanger Allied purposes.

ARTICLE 6

Exonerated Persons

An exonerated person is:

Anyone who, in spite of his formal membership or candidacy or any other outward indication, not only showed a passive attitude but also actively resisted the national socialistic tyranny to the extent of his powers and thereby suffered disadvantages.

ARTICLE 7

Sanctions

In accordance with the extent of responsibility the sanctions set forth in Articles 8-11 shall be imposed in just selection and gradation, to accomplish the exclusion of national socialism and militarism from the life of the German people and reparation of the damage caused.

ARTICLE 8

Sanctions against Major Offenders

I. Major Offenders having committed a specific war crime will be liable to the following sanctions:

- (a) Death;
- (b) Imprisonment for life or for a period of five to fifteen years, with or without hard labour;

(c) In addition, any of the sanctions listed in Paragraph II of this Article may be imposed.

II. The following sanctions may be imposed upon other Major Offenders:

(a) They shall be imprisoned or interned for a period not exceeding 10 years; internment after 8 May 1945 can be taken into account; disabled persons will be required to perform special work in accordance with their capability;

(b) Their property may be confiscated. However, there shall be left to them an amount necessary to cover the bare existence after taking into consideration family conditions and earning power;

(c) They shall be ineligible to hold any public office, including that of notary or attorney;

(d) They shall lose any legal claims to a pension or allowance payable from public funds;

(e) They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party;

(f) They shall not be allowed to be members of a trade union or a business or vocational association;

(g) They shall be prohibited for a period of not less than ten years after their release:

i) To be active in a profession or, independently, in an enterprise or economic undertaking of any kind, to own a share therein or to supervise or control it;

ii) To be employed in any dependent position, other than ordinary labor;

iii) To be active as teacher, preacher, editor, author, or radio commentator;

(h) They are subject to restrictions as regards living space and place of residence, and may be enlisted for public works service;

(i) They shall lose all licences, concessions and privileges granted them and the right to keep a motor vehicle.

ARTICLE 9

Sanctions against Offenders

1. They may be imprisoned or interned for a period up to ten years in order to perform reparation and reconstruction work. Political internment after 8 May 1945 can be taken into account.

2. Their property may be confiscated (as a contribution for reparation), either as a whole or in part. In case the property is confiscated in part, capital goods (Sachwerte) should be preferred. The necessary items for daily use shall be left to them.

3. They shall be ineligible to hold any public office, including that of notary or attorney.

4. They shall lose any legal claims to a pension or allowance payable from public funds.

5. They shall lose the right to vote, the capacity to be elected, and the right to be politically active in any way or to be members of a political party.

6. They shall not be allowed to be members of a trade union or business or vocational association.

7. They shall be prohibited, for a period of not less than five years after their release:

(a) To be active in a profession or, independently, in an enterprise or economic undertaking of any kind, to own a share therein or to supervise or control it.

(b) To be employed in any dependent position, other than ordinary labor.

(c) To be active as a teacher, preacher, editor, author, or radio commentator.

8. They are subject to restriction as regards living space and place of residence.

9. They shall lose all licenses, concessions and privileges granted them and the right to keep a motor vehicle.

10. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding offenders to leave a Zone without permission.

ARTICLE 10

Sanctions against Lesser Offenders

If the finding of the tribunal places an individual in the category of lesser offenders, he may be placed on probation. The time of probation shall be at least two years but, as a rule, not more than three years. To which group a person responsible hereunder will be finally allocated will depend on his conduct during the period of probation. While on probation, the following sanctions will apply:

1. They shall be prohibited, during the period of probation:
 - (a) To operate an enterprise as owner, partner, manager or executive, supervise or control an enterprise or to acquire any enterprise in whole or in part, or any interest or share therein, in whole or in part;
 - (b) To be active as teacher, preacher, author, editor or radio commentator.
2. In the event the lesser offender is the owner of an independent enterprise, or any share therein, at the time of his classification, his interest in such enterprise may be blocked.
3. The term enterprise as used in paragraph 1 (a) and 2 of this article need not include small undertakings of craftsmen, retail shops, farms and like undertakings, having less than 20 employees.
4. Property values, acquisition of which rested upon use of political connections or special national socialistic measures such as aryanization and armament shall be confiscated.
5. For the period of probation additional sanctions, taken from these set forth in Article 11 hereof may be imposed, with just selection and modification, more particularly:
 - (a) Restrictions in the exercise of an independent profession, and prohibition to train apprentices;
 - (b) In respect of civil servants: reduction of retirement pay, retirement or transfer to an office with lesser rank or to another position with reduction of compensation, rescission of promotion, transfer from the civil service relationship into that of a contractual employee.
6. Internment in a labor camp or confiscation of the whole property may not be ordered.
7. Within the discretion of Zone Commanders sanctions may be included in zonal laws forbidding the lesser offenders to leave a Zone without permission.
8. Within the discretion of Zone Commanders sanctions may be included in zonal laws denying them the capacity to be elected and the right to be politically active in any way or to be members of a political party. They may also be denied the right to vote.
9. They may be required to report periodically to the police in the place of their residence.

ARTICLE 11

Sanctions against Followers

The following sanctions against followers may be applied at the discretion of the Zone Commanders:

1. They may be required to report periodically to the police in the place of their residence;
2. They will not be permitted to leave a Zone or Germany without permission;
3. Civilian members in this category may not stand for election at any level but may vote.
4. In addition, in the case of civil servants, retirement or transfer to an office with lesser rank or to another position, possibly with reduction of compensation or rescission of a promotion instituted while the person belonged to the NSDAP, may be ordered. Corresponding measures may be ordered against persons in economic enterprises including agriculture and forestry.

5. They may be ordered to pay single or recurrent contributions to funds for reparations. When determining contributions, the follower's period of membership, the fees and contributions paid by him, his wealth and income, his family conditions and other relevant factors shall be taken into consideration.

ARTICLE 12
Exonerated Persons

No sanction will be applied against persons declared to be exonerated by a tribunal.

ARTICLE 13

Persons in the categories defined in Articles 2 to 6 above who are guilty of specific war crimes or other offences may be prosecuted regardless of their classification under this Directive. Imposing of Sanctions under this Directive shall not bar criminal prosecutions for the same offence.

Done at Berlin on the 12th day of October 1946.

R. NOIRET,
General de Division

P. A. KUROCHKIN,
Colonel General

LUCIUS D. CLAY,
Lieutenant General

G. W. E. J. ERSKINE,
Major General

Source: Control Council Directive No. 38 (October 12, 1946), in *Official Gazette of the Control Council for Germany*, No. 11, October 31, 1946, p. 184; reprinted in Beata Ruhm von Oppen, ed., *Documents on Germany under Occupation, 1945-1954*. London and New York: Oxford University Press, 1955, pp. 168-79.