

Territorial Ordinances for the Principality of Saxe-Altenburg (1705)

Abstract

German principalities continued to regulate premarital and extramarital sexuality during the long eighteenth century, showing remarkable continuity with official concerns about sexual sin and female sexual honor from earlier centuries. Likewise, the physical punishments prescribed in this 1705 territorial ordinance from Saxe-Altenburg are similar to those that magistrates resorted to in the sixteenth and seventeenth centuries: corporal punishment and banishment for fornication or prostitution and execution with the sword for adultery, rape, and incest.

Source

[Chapter IV]

Title X

On the punishment of adultery / rape / incest / prostitution and all extramarital intercourse

Extramarital sexual relations of any kind are strictly forbidden.

Because GOD our LORD views fornication and extramarital intercourse as an abomination, our officials and courts should seriously punish extramarital or premature [i.e., before public marriage] intercourse, prostitution, adultery, and also other infractions of this nature.

On the punishment of engaged couples who engage in intercourse before taking vows before a priest

When two betrothed individuals engage carnally before their public union and vows, the woman, even if she does not become pregnant, should go to church [for the wedding] with her head covered and without the bells being rung, and both shall be banished from the jurisdiction for one year.

And should it come to light after their church wedding that a couple has engaged in sexual intercourse prior to the consummation of their vows, they should be punished along the same lines outlined above.

On the punishment of any man who has relations with another man's betrothed, and also of the fallen bride

Should a man other than the bridegroom have sexual intercourse with the betrothed bride in full knowledge that she has been publicly engaged to another, both of them shall be flogged in public and banished permanently, unless the bridegroom chooses to take the bride anyway, in which case she shall be sentenced to time in prison and the man who defiled her shall be nonetheless flogged and banished forever.

On the punishment of an engaged bridegroom who engages in intercourse with an unmarried maid

And if a publicly engaged bridegroom should have something to do with an unattached maid, he should, if his bride does not want to forgive him, be flogged, and the girl should be banished.

On the punishment for adultery

If a man has sexual relations with another's wife, whether he himself be married or not, they shall both be put to death by the sword. And the same punishment applies to a husband who, despite his existing marriage, has intercourse with a single woman, and the single woman should be in this case flogged and banished.

On the effects of forgiveness extended to the guilty spouse by the blameless one

In the case, however, that a husband engages in intercourse with a single woman, or a wife allows the carnal attention of a single man, and the blameless spouse should ask that, despite the broken vow and trust, the perpetrator should maintain their conjugal life, then the marriage should be honored in that the guilty party is spared the death sentence but banished for eternity instead and the blameless party can follow the spouse from the land and no longer live there nor spend considerable time there. The single man, however, who has intercourse with a married woman, as outlined above, shall be nevertheless put to death by the sword, even if the husband pardons the wife, and, similarly, the single woman who engaged in fornication with a married man shall be flogged and banished forever.

Cases in which the blameless spouse is not allowed to forgive the adulterer

If the two individuals who have committed adultery are both married, their spouses will not be permitted to pardon them, but both are to be, as outlined above, executed with the sword.

On the punishment for rape

Should anyone who is not married, in order to satisfy his own desires with violence, violently rape a woman, whether single or married, a maiden or a widow, or any other woman, against her will, he should be put to death by sword.

On the punishment of those who defile maidens under twelve years of age or children or the mentally insane

And if someone should defile a maiden and she should be under twelve years old, he should be flogged and banished for life, but if the victim is still a delicate child that he has defiled, he shall be punished with the sword. And if a single male person has intercourse with a senseless or insane single woman, the perpetrator shall not only provide a livelihood for the victim as deemed appropriate but should also be flogged and banished.

What these weak womenfolk who claim to have been raped by strangers and unidentified men should require for compurgation

Because fallen women, when their disgrace becomes known and public, often claim to have been raped in out-of-the-way places by unknown persons whose identity cannot be determined, and because they hope with this revelation and oath to avoid the corporal punishment outlined above, and often under such suspicious circumstances, one must suspect that they do not consider the reproach and drastic punishments of perjury but rather act against their conscience and seek to falsely evade the temporal shame and punishment by these means. Thus it has been deemed necessary, in order to keep such suspicious, objectionable tendencies at bay and combat the accumulation and entrenchment of such depravity, to declare that any woman who claims to have been defiled by rape, especially by strangers or persons not resident of these lands, and who is unable while under the power of the defiler in the act to quickly summon others who might be witnesses on her behalf, should be prepared without delay and before her condition or resulting pregnancy becomes evident, to give an account of the episode to at least two collateral blood relatives (for the parents might be less than trustworthy in this case) or noble men or women or two other honest people in confidence but with evidence, and via this account of the circumstances (again with the stipulation that the witnesses provide legally acceptable testimony) to provide a trustworthy appearance of which she might later avail herself if the matter should become

public or in the case that neither her denial nor her oath, should it appear too base or slovenly, should be considered but rather she should be severely punished as the situation demands.

And how the oath of compurgation should occur if the outlined procedure is followed but suspicions of falsity persist.

In order that this decree not be evaded and to ensure that both the general aim as well as the vice of perjury should be avoided to the fullest extent possible: if the pregnant woman has made such denunciations but uncertainties remain about the surrounding circumstances and the claims of having been coerced, to avoid deception, she should be required to swear an oath of her innocence after having been instructed of the strict punishments for perjury but without any other particular solemnities.

And how to proceed if the outlined procedure has not been followed.

When, however, the appropriate denunciations have not been made and, contrary to this ordinance, the use of coercion has been concealed from all, and where there are no credible circumstances to support the maid's innocence, in such a case a judicial decision shall be made about how to proceed against her.

On the punishment of unwed persons who engage for the first time in fornication.

In the case of two unwed persons who have not previously transgressed having consensual relations but not agreeing to marry, both should be banished from the province, city, and jurisdiction where they committed this infraction for ever, and never set foot there again, but where this is converted into a monetary punishment, it shall not be withdrawn from the court.

On the punishment of unwed persons who engage in prostitution for the second time.

If the one or other should defile themselves with this sin for a second time, they shall incur a stricter punishment.

If they desire to take each other in marriage.

If the person who have thus disgraced themselves desire to be married, they should be banished from the jurisdiction for a year or pay a monetary penalty.

What is to be done? When, in addition to pregnancy, there are allegations of marriage.

In the case they do not marry but the weaker is otherwise known to be of good character, and demands are made for financial support and the provision and education of the child, the decision shall be passed before punishment is carried out.

On casting public whores out of the land.

Public or other forms of common whores shall by no means be tolerated nor ignored in this land. Rather those who are found to be guilty of this vice should be imprisoned, pilloried, and driven from the land.

On the punishment for incest and illicit relations between such persons as are not allowed to marry due to close blood relations or affinity.

If natural parents and children, and those persons related by blood in direct lineage, commit incest, both parties shall be punished, man and woman, shall be executed by the sword. If however, the punishment for one or both should be mitigated due to youth or other important circumstances, these parties should be flogged and banished from the land. But stepfathers, stepmothers, stepsons, stepdaughters, surviving spouses, and siblings of a deceased person, and all other persons who are related by virtue of blood or

affinity so closely that they may not marry according to divine law, when they are not married and have relations with each other, as well as unmarried persons who knowingly sleep with an unmarried mother and daughter or two unmarried sisters, or have intercourse with father and son or two unmarried brothers, should be, according to the circumstances, likewise flogged. But siblings, like surviving spouses and the children of siblings of the deceased, as well as those who are related in two degrees due to affinity in the same line, and then those who are related by three degrees in a collateral line by blood or affinity, should be handled according to the circumstances and the customary laws of the present principality and punished. And no distinction is to be made whether the blood relation stems from a legitimate birth or an extramarital relationship.

Fornication shall be reported to the authorities as necessary.

And so that those who commit such obscene acts should not be spared the punishment they deserve, anyone who learns of such should report it quickly to the appropriate places. Because it has been noticed that some are negligent in this regard, the negligent shall not be spared but should incur serious punishments.

Source: *Fürstlich Sächßisch Altenburgische Landes-Ordnung*. Anderer Theil. Von Weltlichen Sachen (Cap. IV, Tit. X). Altenburg, 1705, p. 286–94. Available online: https://www.google.com/books/edition/Fürstlich_Sächßisch_Altenburgische_La/HyBGAAAAcAAJ?hl=en&gbpv=1&dq=landes-ordnung+1705&printsec=frontcover

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