



Volume 2. From Absolutism to Napoleon, 1648-1815

The General Law Code for the Prussian States, proclaimed on February 5, 1794, effective June 1, 1794 (1794)

The “rationalization” of public and private law through systematization and codification was an Enlightenment precept that Frederick II aimed to fulfill. The overseer of the project was jurist Carl Gottlieb Svarez (1746-98). The “General Law Code for the Prussian States” was first published in 1791. At the time, some of its provisions, particularly those curbing acts of government by royal fiat (i.e., monarchical “absolutism”), appeared as dangerously radical to Frederick William II and his advisers, especially against the background of the unfolding French Revolution. Withdrawn and issued in a more conservative form in 1794, the Code, with its some 19,000 detailed paragraphs, exerted great influence on Prussian law until its supersession by the German Empire’s Civil Law Code [*Bürgerliches Gesetzbuch*] of 1900. Notable was the Code’s effort to establish equality before the law and a general “rule of law” [*Rechtsstaat*] while maintaining the social inequalities of the Old Regime “society of estates,” including peasant serfdom in those east-Elbian districts where it had survived. The Code also often descended into petty detail, but its provisions concerning divorce and women’s property rights were relatively liberal.

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## The General Law Code for the Prussian States

### *Introduction*

#### I. *Regarding the laws generally.*

§ 1. The General Law Code contains the ordinances according to which the rights and duties of the inhabitants [*Einwohner*] of the state are to be judged, insofar as these are not determined by special laws.

§ 2. Special provincial ordinances and statutes by individual communities and societies attain the power of law only through the territorial [*Landesherrliche*] confirmation.

§ 3. Common law [*Gewohnheitsrechte*] and observance, which are to have the power of law in the provinces and individual communities, must be recorded in the provincial law books. [ . . . ]

*Publication.*

§ 10. The law first becomes legally valid at the time at which it is duly announced.

§ 11. Therefore, all legal ordinances and the complete contents thereof must be publically posted at the customary places, and extracts must be made public in the newspapers [*Intelligenzblättern*] of the province in which they are issued.

§ 12. However, it is also up to each inhabitant of the state to inquire about the laws that apply to him or his trade and his actions; and no one can excuse himself by claiming ignorance of a duly publicized law.

§ 13. Only in cases where actions that were previously allowed or viewed with indifference are newly restricted or prohibited by criminal laws should a hearing still be given to the violator's pleas that he, without having neglected his duties [to the state], was not informed of the prohibition before committing the deed.

*Application of the Laws.*

§ 14. New laws cannot be applied to actions and events that occurred in the past.

§ 15. However, the exception is the duly public announcement of an old law, if the lawmaker finds this necessary, in all cases that have yet to be decided. [ . . . ]

*To Whom the Laws Apply.*

§ 22. The laws of the state apply to all members of the state, without regard to class [*Stand*], rank, or gender. [ . . . ]

*Interpretation of the Laws.*

§ 46. In decisions on contentious cases, the judge may attach no other meaning to the laws than the words and their coherence, or the immediate unquestionable basis of the law, as it clearly casts light on the contentious matter.

§ 47. If the judge finds the actual meaning of the law dubious, then he must, without naming the litigating parties, notify the legal commission [*Gesetzcommission*] of his doubts, and request their ruling.

§ 48. The questioning judge is then duty bound to base his decision in the matter on the decision of the legal commission; however, the parties are not deprived of their customary legal

means against it [*den Parteyen bleiben aber die gewöhnlichen Rechtsmittel dagegen unbenommen*].

§ 49. If a judge finds no law that could serve to decide the contentious case, then he must search in the law books for accepted general principles and for decisions [*Verordnungen*] on similar cases, as best he can.

§ 50. At the same time, he must notify the chief of justice of this supposed lack of legal precedent. [ . . . ]

§ 54. Privileges and granted freedoms [*Freiheiten*] must, in doubtful cases, be declared in a way that leads to as little disadvantage to third parties as possible.

§ 55. Otherwise, the granted privileges and freedoms are to be interpreted in a way that does not miss or thwart the well-intentioned aim of the grantor.

§ 56. Privileges and freedoms that have been acquired through a disagreeable contract are to be interpreted and judged according to the rules applicable to contracts.

§ 57. Furthermore, all of the same special laws and ordinances are to be declared in such a way that they closely conform to the provisions of the general law and to the ultimate purposes of the state.

§ 58. In general, more consideration is to be shown for the actual substance of the privilege in doubtful cases than for the motivations given in the initial granting. [ . . . ]

## *II. General Principles of Law.*

§ 73. Each member of the state is duty bound to support the welfare and security of the commonwealth in relation to his class and wealth.

### *Relationship of the State to its Citizens.*

§ 74. Individual laws and the advantages of individual members of the state must yield to the rights and duties that promote the common good when there is a real conflict between the two.

§ 75. However, the state is obligated to compensate those who are forced to sacrifice their individual rights and advantages for the benefit of the commonwealth.

§ 76. Every inhabitant of the state is justified in demanding that the state protect his person and his property.

§ 77. However, no one is allowed to take the law into his own hands.

§ 78. Self-defense can only be used as an excuse in cases when the help of the state would come too late to prevent irretrievable loss.

§ 79. Each inhabitant of the state must leave the resolution of disputes, as well as the determination of the punishments to be imposed, to the lawfully appointed courts.

§ 80. Legal disputes between the head of state and his subjects, also, should be argued and decided in the ordinary courts in accordance with the rule of law.

§ 81. The state expects protection against foreign enemies to occur solely from the orders of its head.

*Source of Law.*

§ 82. The rights of the person [*Menschen*] arise from his birth, from his class [*Stand*], and from actions or circumstances that have certain legal consequences.

§ 83. The general rights of Man are based on the natural freedom to seek and promote his own fortune, without infringing upon the rights of others. [ . . . ]

*Second Part.*

*Twentieth Title: Regarding Crime and Its Punishment.*

*Eleventh Section: Regarding Bodily Harm.*

*6) Kitchenware*

§ 728. No one should use copper containers without tin coating for food preparation.

§ 729. Coppersmiths and all others who sell wares that are insufficiently plated with tin should be punished with the confiscation of their stock and a fine of ten to twenty taler; however, in the case of a repeat offense, their rights as a master should be declared forfeited.

§ 730. The same punishment is reserved for those professionals who use a supplement of lead to coat copper kitchen wares with tin.

§ 731. The careless use of coal in closed rooms, where the smoke can be dangerous to the people therein, is to be punished with a three to ten taler fine or an arbitrary jail sentence, even if no harm is done.

Source of original German text: *Allgemeines Landrecht für die Preußischen Staaten von 1794. Textausgabe* [General Law Code for the Prussian States from 1794. Text Edition], edited by Hans Hattenhauer. Frankfurt/Berlin: Metzner, 1970. pp. 51-54, 695.

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