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Abortion in Unified Germany (1995)

The abortion law for united Germany was passed in 1992. Only a year later, the Federal Constitutional Court ruled that major passages of the law were unconstitutional. As a result, the law had to be reworked in 1994 and 1995. First-trimester abortions have been illegal since 1995, but there is no punishment if the woman received counseling at a state-approved pregnancy counseling agency (so-called counseling regulation).

Paragraph 218
Pregnancy Termination

(1) Whoever terminates a pregnancy shall be liable to imprisonment for up to three years or to a fine. Acts whose effects occur before the conclusion of the implantation of the fertilized egg in the uterus shall not qualify as a pregnancy termination in the sense of this law.

(2) In especially serious cases, the punishment shall be imprisonment for six months to five years. An especially serious case typically exists if the perpetrator:

1. acts against the will of the pregnant woman; or
2. through gross negligence, puts the pregnant woman at risk of death or serious injury.

(3) If the act is committed by the pregnant woman, then the punishment shall be imprisonment for up to one year or a fine.

(4) The attempt shall be punishable. The pregnant woman shall not be punished for the attempt.

Paragraph 218a
Exemption from Punishment for Pregnancy Termination

(1) The offense described in Paragraph 218 shall not be deemed fulfilled if:

1. the pregnant woman requests the termination of the pregnancy and demonstrates to the physician, through the presentation of a certificate pursuant to Paragraph 219, Section 2, Sentence 2, that she obtained counseling at least three days before the operation;

2. the termination of the pregnancy is performed by a physician; and

3. not more than twelve weeks have elapsed since conception.

(2) A pregnancy termination performed by a physician with the consent of the pregnant woman shall not be unlawful if, considering the present and future living conditions of the pregnant woman, the termination of the pregnancy is necessary, according to medical opinion, to avert danger to the life of the pregnant woman or the danger of grave injury to her physical or mental health, and if the danger to her cannot reasonably be averted in any other way.

(3) The conditions described in Section 2 shall also be deemed fulfilled in the case of a pregnancy termination performed by a physician with the consent of the pregnant woman if, according to medical opinion, an unlawful act has been committed against the pregnant woman pursuant to Paragraphs 176 to 179 of the Penal Code¹, [and] there are strong reasons supporting the assumption that the pregnancy was caused by the act, and if not more than twelve weeks have elapsed since conception.

(4) The pregnant woman shall not be liable to punishment pursuant to Paragraph 218 if the termination of the pregnancy was performed by a physician after she received counseling (Paragraph 219), and if no more than twenty-two weeks have elapsed since conception. The court may dispense with punishment pursuant to Paragraph 218 if the pregnant woman was in exceptional distress at the time of the operation.

Paragraph 218b Pregnancy Termination without or under Incorrect Medical Certification

(1) Whoever terminates a pregnancy in cases described in Paragraph 218a, Sections 2 or 3, without having received written certification from a physician who did not himself perform the pregnancy termination as to whether the conditions described in Paragraph 218a, Sections 2 or 3, were met shall be liable to imprisonment for up to one year or to a fine, unless the offense is punishable under Paragraph 218. Whoever, as a physician, intentionally and knowingly makes an incorrect declaration regarding the [existence] of the conditions described in Paragraph 218a, Sections 2 or 3, for presentation according to Sentence 1 [of Paragraph 218a] shall be liable to imprisonment for up to two years or to a fine, unless the offense is punishable under

¹ These paragraphs deal with the sexual abuse of children and those incapable of resisting, and with sexual coercion and rape – eds.

Paragraph 218. The pregnant woman shall not be liable to punishment pursuant to Sentence 1 or 2.

(2) A physician may not make determinations pursuant to Paragraph 218a, Sections 2 or 3, if a competent agency has prohibited him from doing so because he has been legally convicted of an unlawful act pursuant to Section 1, or to Paragraphs 218, 219a, or 219b, or of another unlawful act that he committed in connection with the termination of a pregnancy. The competent agency may provisionally prohibit a physician from making determinations pursuant to Paragraph 218a, Sections 2 and 3, if an indictment has been admitted to trial based on the suspicion that he committed unlawful acts as indicated in Sentence 1.

Paragraph 218c
Breach of Medical Duties in Connection with a Pregnancy Termination

(1) Whoever terminates a pregnancy:

1. without having given the woman an opportunity to explain the reasons for her request for a pregnancy termination;
2. without having given the pregnant woman medical advice about the significance of the operation, especially about the course of events, the after-effects, risks, and possible physical and psychological effects;
3. in cases described in Paragraph 218a, Sections 1 and 3, without having previously convinced himself on the basis of a medical examination as to the length of the pregnancy; or
4. despite having counseled the woman according to Paragraph 218a, Section 1, pursuant to Paragraph 219²,

shall be liable to imprisonment for up to one year or to a fine, unless the act is punishable under Paragraph 218.

(2) The pregnant woman shall not be liable to punishment pursuant to Section 1.

² According to Paragraph 219, which is not reproduced here, the physician who carries out the pregnancy termination cannot be the counselor – eds.

Source of original German text: Strafgesetzbuch, Besonderer Teil, 16. Abschnitt – Straftaten gegen das Leben <http://www.dejure.org/gesetze/StGB/218.html>

Source of the English translation: http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGB_000P218 Reproduced with edits by the GHDI staff.