

The Right to Legal and Safe Abortions in Germany

Germany violates international human rights obligations

A Centre for Feminist Foreign Policy Briefing

The Legal Status in Germany

According to paragraph 218 of the German Criminal Code, an abortion in Germany is illegal and punishable by imprisonment of up to one year for the pregnant person¹ and up to five years for the personnel carrying out the abortion. An abortion is legal in Germany if it is carried out on the basis of a medical or criminological indication. It can be exempt from punishment – but still not legal – if it is carried out up to the 12th week of pregnancy after a mandatory counseling and an additional waiting period of 3 days. According to §218 Criminal Code, this counseling serves to protect the unborn life; further provisions for its implementation are regulated in §5 Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (SchKG).

International Human Rights Law

While §218 Criminal Code still criminalises abortion in Germany, international human rights organisations are clearly calling for a decriminalisation. In 2018, the UN Human Rights Committee reaffirmed that safe, legal, and effective access to abortion is a human right protected by the International Covenant for Civil and Political Rights (ICCPR), in particular under article 6, the right to life (United Nations Human Rights Committee 2018 and Zillo 2019). In addition, the right to sexual and reproductive health in general is an integral part of the right to health, which is guaranteed in article 12 of the International Covenant on Economic, Social and Cultural Rights, which Germany ratified as early as 1973 (United Nations Committee on Economic, Social and Cultural Rights 2016). The Working Group on Discrimination against Women in Law and Practice has emphasised that the “right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, involving intimate matters of physical and psychological integrity, and is a precondition for the enjoyment of other rights” (United Nations General Assembly 2018). The denial of access to legal and safe abortion is a form of gender discrimination. The UN Special Rapporteur of the Human Rights Council has clearly stated that laws criminalising abortion “infringe women’s dignity and autonomy by severely restricting decisionmaking by women in respect of their sexual and reproductive health” (United Nations General Assembly 2011).

¹ While international law often only mentions women who can become pregnant unintentionally, we consciously speak of “pregnant people/individuals”, since not only women can become unintentionally pregnant.

In addition, in 2020 the organisation German Alliance for Choice identified extensive violations of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The German legal situation violates Art. 2 CEDAW in particular. Accordingly, access to abortion must not be delayed (United Nations Committee on the Elimination of Discrimination Against Women 2010, Para 29-30); Art. 10 (h) CEDAW also includes the right to secure access to medical information about methods of contraception and family planning options. Art. 12 CEDAW standardises the right to equality and non-discrimination. Art. 12 CEDAW grants non-discriminatory access to contraceptives, free access to information about abortions, access to voluntary and open counseling and a guarantee of adequate care (quality of medical services and quantity of places to perform abortions) (United Nations Committee on the Elimination of Discrimination Against Women 2017 and United Nations Committee on the Elimination of Discrimination Against Women 1999).

According to the international human rights documents and conventions just described, German legislation clearly violates international human rights law. In order to strengthen human rights protection for women, we have the following demands on the German Federal Government:

- The abolition of paragraphs 218ff Criminal Code without replacement.
- Ensuring safe and legal access to abortion, as well as local medical care for abortion in all regions of Germany.
- The coverage of all costs for contraceptive methods and abortion by the statutory health insurance companies.
- Ensuring the right to voluntary pregnancy conflict counseling for all pregnant individuals as well as the provision of counseling services close to home.
- The legal protection against so-called “pavement nuisance” by radical anti-abortionists and fundamentalists in front of medical facilities and counseling centers.

References

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