TABLE OF CONTENTS

Pref	ace			V
Biog	raphi	cal Note	es 2	XIX
Abb	reviat	ions		XX
			Part I Framework	
I.1	Intro	duction	1	3
I.2	Syst	em and	Standard of Social Services	4
I.3	The	Positio	n of Women in Society	5
1.4	Assessment and Significance of Family Planning and Termination of Pregnancy 4.1 Preliminary remarks 4.2 Sociopolitical and individual dimensions of family planning 4.3 Governmental measures in the area of family planning 4.4 The significance of the termination of pregnancy in relation to other methods of birth control 4.5 Assessment of the termination of pregnancy from a religious perspective 4.5.1 The Roman Catholic Church 4.5.2 Protestant churches 4.5.3 Other Christian churches 4.5.4 Islam 4.5.5 Judaism 4.5.6 Hinduism 4.6 The stance of the medical community regarding the termination of pregnancy 4.6.1 Regulations on the termination of pregnancy in professional codes of ethics 4.6.2 Other determinants of the legal position of the medical community 4.6.3 Assessment		77 77 77 99 100 111 122 133 133 144 144 155 166 166	
I.5	Rem 5.1 5.2 5.3	'Abor On the	Historical Developments tion tourism' e significance of case law and criminal prosecution practice e relative importance of demographic policy	18 18 19 20

Part II Current Laws Regulating the Termination of Pregnancy

Intro	troduction						
II.1			ces and Regulatory Methodology Behind the Law on the n of Pregnancy	26			
	1.1	Regul	atory scope: between criminal and social welfare law	26			
	1.2	Classi	ification into categories of crime: from homicide to moral turpitude	27			
II.2	Basi	Basic Concepts in Legal Regulation					
		Prelim	ninary remarks	29			
	2.1	Legisl	lative intent: from semi-official proclamations to diffuse				
			lations	29			
	2.2		values: from the protection of individual life to general				
			graphic policy and sexual ethics	30			
	2.3		itutional foundations: from apparent absence to binding guidelines				
			e legislature	34			
		2.3.1	Survey	36			
		2.3.2	Ranking in light of guidelines for the legislature	40			
	2.4		regulatory models: from (virtually) absolute prohibition to				
			st) complete permission	42			
		2.4.1		42			
		2.4.2		45			
			A. 'Prohibition Model'	46			
			B. Pure 'Indication Model'	46			
			C. Combined (successive) 'time limit – indication models'	49			
			D. Pure 'time limit models'	50			
		2.4.3	Comprehensive assessment: disregarding extremes leaves three distinct regulatory approaches	51			
	2.5	Conce	ept of termination of pregnancy: fluid borders – terminological,				
		substa	antive and temporal	57			
		2.5.1	C	58			
		2.5.2	Varying scope of substantive coverage: from intervention during the course of pregnancy to successful killing	59			
		2.5.3	The varying temporal range of termination: from conception to				
			the end of the birth process	60			
II.3	Permissible Termination of Pregnancy						
			ninary remarks	69			
	3.1	Overv	view of the essential prerequisites for and the varying scope of legal				
		termin	nations	70			
	3.2	Indica		72			
		3.2.1	Significance and terminology	72			
		3.2.2	Recognized indications: from life-threatening risk to reduced				
			standard of living	74			
		3.2.3	Particulars regarding the 'medical' and 'medical-social' indication	76			
		3.2.4	Particulars regarding the 'eugenic' indication	79			

	3.2.5	Particulars regarding the 'criminological' indication	81
	3.2.6		83
	3.2.7	6 6	
		pregnancy	86
		A. Termination grounds in the person of the pregnant woman	87
		B. 'Illegitimacy' of the expected child	87
		C. Unusual social factors	87
		D. The pregnant woman's status as a foreigner	87
	3.2.8	Contraindications	87
3.3	Conse	nt	88
	3.3.1	Consent of the pregnant woman: significance – substitutability	88
	3.3.2		91
	3.3.3	Special problems associated with pregnant women who are	
		underage and those with limited mental/psychological	
		competence	92
	3.3.4	Rights of the partner to participate in decisions on termination –	
		involvement of the woman's social milieu	93
3.4	Proced	dural prerequisites: counseling – third-party review	95
	3.4.1		96
	3.4.2	A closer look at third-party review and determination of	
		indications	97
	3.4.3	Individual aspects of counseling	101
3.5	Perfor	mance requirements: physician – hospital – procedures	106
	3.5.1		106
	3.5.2	*	107
	3.5.3	Issues of control and sanctioning	108
3.6	Subse	quent obligations: documentation – reporting – notification	109
	3.6.1	Scope and goals	109
	3.6.2	Varying degrees of confidentiality	110
	3.6.3	Analysis	111
3.7	The le	gal nature of exemptions of terminations from punishment	111
	3.7.1	Disparate levels of discussion: from disputes regarding	
		constitutionality to indifference	112
	3.7.2	· · · · · · · · · · · · · · · · · · ·	114
	3.7.3	· · · · · · · · · · · · · · · · · · ·	116
	3.7.4	Prohibition and permission in the sense of rule and exception	117
3.8	Legal	claims of the pregnant woman	118
	3.8.1	Claim to the performance of a permissible termination	118
		A. Claims when a medical indication is present	119
		B. Area of application of more broadly defined indications as	
		well as of time-bound exemptions from punishment	120
		C. Other narrowly defined indications	121
		D. Limitations applying to foreign women	122
	3.8.2	Compensation for the costs of termination	123
		A. Survey	123
		a) Medical indication as the sole ground for permissible	
		termination	124

			b) Models with a more broadly defined scope of			
			permissibility	124		
			B. Comparative observations	126		
	3.9	The right of medical personnel to refuse to participate in the termination				
		proced	lure	127		
		3.9.1	Concrete scope	128		
		3.9.2	Scope of applicability with regard to 'persons'	128		
		3.9.3	Procedural rules governing the exercise of the right to refuse	130		
II.4	Impermissible Termination of Pregnancy					
	Prel	-	remarks	131		
	4.1		ructure of the criminal offense: from the uniform model to the			
			ite model and beyond	131		
	4.2		s of commission: from an all-encompassing approach to special			
			ratory, participatory and other related offenses	133		
		4.2.1				
			offense	133		
		4.2.2	1 2 3	134		
		4.2.3	1 0 3	135		
		4.2.4	Supplementary crimes of preparation, participation and other related offenses	137		
	4.3	Logol	consequences of a punishable termination of pregnancy: from	137		
	4.3		o life imprisonment	139		
		4.3.1	General categories	140		
		4.3.1	Special grounds for reducing and enhancing punishment	140		
	4.4		nation of pregnancy and international criminal law	143		
	4.4	4.4.1		143		
		4.4.2	Principles of jurisdiction: from (limited) territorial application to	173		
		1.1.2	an (extended) extraterritorial approach	144		
		4.4.3	Discrepancies between the punishability of termination at home	111		
		1.1.5	and abroad	145		
		4.4.4		147		
		4.4.5	Summary	147		
			•			
II.5		Special Role of the Physician 5.1 Requirement that terminations of pregnancy be performed by physicians				
	5.1 5.2		ons of physicians in preliminary proceedings	153 154		
	3.2	5.2.1		154		
		5.2.1		134		
		3.4.4	performing stages	156		
	5.3	Rules	covering performance of terminations of pregnancy	156		
	5.4		al criminal provisions and sanctions pertaining to physicians	157		
		5.4.1	Sanctions related to the performance of terminations	157		
		5.4.2	Criminal sanctions with respect to 'preliminary procedure'	159		
			A. In cases of exemptions from punishment based on some sort			
			of indication	159		
			B. In cases of exemptions from punishment based on time limits	160		
			C. Criminal provisions applicable to more than one model	161		

			TABLE OF CONTENTS	XV	
		5.4.3	Other criminal sanctions	163	
		5.4.4	Disciplinary and professional sanctions applicable to the termination of pregnancy	163	
II.6	Prev	entive 1	Measures	164	
	6.1	Addit	ional criminal offenses	164	
		6.1.1 6.1.2	Prohibitions against advertising and dissemination of	164	
			information	165	
	6.2		nment services	166	
			Legislative intent	166	
		6.2.2	Individual measures	167	
II.7			mination of Pregnancy in the Prosecutorial Arena	171	
	7.1		to report terminations of pregnancy already committed	171	
	7.2		to report planned illegal terminations	172	
	7.3		al rules on the statute of limitations	173	
	7.4	-	al rules for prosecuting cases of illegal termination	173	
		7.4.1	Prosecutorial discretion Features peculiar to the criminal process	173 174	
			Part III		
			Statistical Information		
Intro	ducti	on		177	
III. 1	Tern	ninatior	n Statistics	178	
	1.1	State	of the data	178	
	1.2	Comp	arative prevalence of terminations of pregnancy	179	
		1.2.1 1.2.2	Comparison in the relationship to the respective regulatory	179	
			model and counseling system	180	
		1.2.3	Developments in the number of terminations over time	181	
	1.3	Consi	derations regarding possible variables	182	
III.2		Crime Statistics			
	2.1		of the data	185	
	2.2	Comp	arison and evaluation	185	
III.3			tistics and Trends in Prosecution	187	
	3.1		of the data	187	
	3.2	Comp	arison and evaluation	187	

Part IV Concluding Reflections from a Legal Policy Perspective

Preli	minar	y Rema	arks	205
IV. 1	Revi	iew: Fin	ndings – Insights – Trends	207
			gical prejudices	207
	1.2		ality of the termination of pregnancy	209
		1.2.1	Termination of pregnancy: an ancient and worldwide	
			phenomenon	209
		1.2.2		210
		1.2.3	1 2	212
		1.2.4	1	215
		1.2.5		217
	1.3		e ways of regulating the termination of pregnancy	218
		1.3.1	Variety of regulatory approaches	218
		1.3.2	, , , , , ,	222
		1.3.3		223
		1.3.4		228
	1.4		e role of criminal law – other leading factors	231
		1.4.1	e e	231
		1.4.2		237
		1.4.3	Determining conduct by means of proceedings?	241
IV.2	Outlook: Starting Points – Guidelines			
1 V.Z	2.1		atory maxims	244 244
	2.1	2.1.1	Clarity with regard to the regulatory goal and normative	277
		2.1.1	preconditions	244
		2.1.2	<u>.</u>	247
		2.1.3		277
		2.1.3	message	252
	2.2	Protec	ted values and conflicting interests	255
	2.2	2.2.1		256
		2.2.2		259
		2.2.3	The pregnant woman: autonomous yet bound by an obligatory	237
		2.2.3	weighing-up process	267
		2.2.4	Status-specific responsibilities	270
	2.3		tion and legitimation through procedure	276
	2.5	2.3.1		277
		2.3.2		285
		2.3.3	· ·	291
		2.5.5	nawiai termination of pregnancy	201
IV.3	A Pı	roposed	Regulation	295
		y remai		295
	3.1		ns and guiding principles	296
			sal of a law to regulate the termination of pregnancy	300

TABLE OF CONTENTS	XVII
Appendix A: Country Reports	309
Appendix B: Publications	311
Index	319