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Human Trafficking – Can the German Reform Address the Complexity of the Phenomenon?[1]

Abstract

German criminal law regarding human trafficking was reformed in 2016 in order to implement European goals and objectives, for example, the effective cooperation between member states' law enforcement authorities.[2] This article examines the problems connected with the implementation of the reforms from different perspectives. It also takes into account that the laws were also changed to close perceived gaps in the Criminal Code and to simplify the classification of any action linked to human trafficking.[3] Thus, it will show that the phenomenon of human trafficking cannot be addressed by implementing stricter criminal laws alone, since the main causes lie in the poor living conditions of the countries of origin and the way in which modern societies consume. What is needed is a broad-based awareness, an international interconnected system and appropriate victim protection resulting in an interdisciplinary, human rights-oriented approach to fight human trafficking and exploitation.

Introduction

Even though human trafficking dates back to Antiquity and is therefore not a new problem that has arisen in modern times, it is nonetheless increasingly being described as the "underside of globalisation".[4] Desolate economic and social circumstances en-

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1 This contribution is a translation by Verena Beck of the German contribution "Menschenhandel – Kann die Reform der Komplexität des Phänomens gerecht werden?" to the German volume of the collaborative research project "Criminal Law Discourse of the Interconnected Society" (CLaDIS) funded by the Ministry of Science and Culture of Lower Saxony (Germany) in the program framework "Zukunftsdiskurse".

2 *J. Eisele* in: A. Eser (ed.), Schönke/Schröder, Strafgesetzbuch Kommentar, 30th ed., 2019, § 232, margin no 4.

3 *F.-C. Schroeder,* Das Rechtsgut der neuen Vorschriften gegen den Menschenhandel, Neue Zeitschrift für Strafrecht (NStZ) 2017, p. 320 et seq.

4 *ILO*, Schluss mit der Zwangsarbeit, Gesamtbericht im Rahmen der Folgemaßnahmen zur Erklärung der IAO über grundlegende Prinzipien und Rechte bei der Arbeit, 2001, p. 51 et seq. with reference to human trafficking into forced labour.

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courage those affected to leave their country of origin.[5] Filled with hope they set in pursuit of better living and working conditions in foreign countries – and instead become victims of exploitation, slavery, and forced prostitution.[6]

German criminal law regarding human trafficking was reformed in October 2016 in order to implement European goals and objectives. As human trafficking is linked to international organized crime, the amended versions of the laws are intended to facilitate the effective cooperation between member states' law enforcement authorities in their fight against it.[7] This article examines and evaluates the problems connected with the implementation of the reforms, particularly with regard to the fundamental principles of German Criminal Law, from different perspectives. It will also have to take into account the fact that the criminal laws were not only changed in order to implement the directive but also to close possibly perceived gaps in the Criminal Code and to simplify the classification of any action linked to human trafficking.[8]

A. Reform of Criminal Acts regarding Human Trafficking in Germany

The criminal provisions regarding human trafficking were amended by the Act to Improve Action Against Human Trafficking and to Amend the Federal Central Criminal Register Act and Book VIII of the Social Code[9], which came into force on 15 October 2016, and now includes §§ 232 – 233a of the German Criminal Code (StGB). The amendment transposed Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims into national law.

The German legislator adopted a new concept for §§ 232 et seq. StGB with the goal of improving the **protection of victims of human trafficking**. The explanatory memorandum of the Act states that the following legal interest is protected directly; "Self-determination [...] a freedom to determine free of coercion to utilize labour including the determination to engage in prostitution, prostitution-related sexual contact as well as socially censured or illegal activities."[10] Probably also protected are the exercise of

5 See in general: *G. Schöler/C.-P. Hanelt*, Wege aus der Flucht – Warum Menschen fliehen, 2018, p. 9 et seq.

6 This follows inter alia *UNODC*, Global Report on Trafficking in Persons 2018, p. 10.

7 *J. Eisele* in: A. Eser (ed.), Schönke/Schröder, Strafgesetzbuch Kommentar, 30th ed., 2019, § 232, margin no 4.

8 *F.-C. Schroeder,* Das Rechtsgut der neuen Vorschriften gegen den Menschenhandel, Neue Zeitschrift für Strafrecht (NStZ) 2017, p. 320 et seq.

9 BGBl. 2016 I, 2226.

10 BT-Drs. 18/9095, p. 18 [„Selbstbestimmung (...) als Freiheit einer von Zwang freien Bestimmung über die Verwertung ihrer Arbeitskraft einschließlich der Bestimmung über die Ausübung von Prostitution, prostitutionsnaher sexueller Kontakte (…) sowie sozial verachteter oder illegaler Betätigung."].

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free will[11] and limited capacity for resistance as a limitation of personal freedom[12] as are, by dint of some of the qualifications, personal freedom and physical integrity.[13] The norms also cover human trafficking for the purpose of exploiting labour – and the prevention of exploitation thus also protects financial assets and asset components, as human trafficking prevents the victim from taking advantage of other employment opportunities, and the prohibition is intended to restore the victims' freedom to pursue other work or employment.[14]

A new systematization has been introduced as a result of the reform; it is no longer primarily a question of the exploitation itself, but rather of the measures preceding it. This is why § 232 StGB now covers the "trade" with people in the true sense of the word, i.e. the actions that take place in the lead-up to the later exploitation. The victims are to be protected from being taken into an exploitative situation in which they can no longer resist or can resist only to a limited extent.[15] By undertaking this change, the legislator shows that it recognizes the grave injustice that the victims of human trafficking suffer.

Lastly, the introduction of criminal liability for clients of forced prostitutes, § 232 a (6) StGB („**Freierstrafrecht**"), represents an important addition. The exploitation of a predatory situation as a client now constitutes a crime as well, irrespective of any potential contribution to the bringing about of the victim's forced circumstances. This is intended to strengthen the protection of victims and their legal interests by reducing demand. It also explicitly communicates to society the reprehensibility of both human trafficking and the exploitation of predatory situations. This is to be welcomed as a matter of principle and the aim of communicating the reprehensibility of human traffic is to be supported in its intention. However, encodification as a criminal act is not unproblematic. For instance, criminal liability requires intent on the part of the client in relation to the victim's forced situation as the result of human trafficking. In many cases, however, this intent will not be easy to prove. This is only one of the problems raised by this new criminal act, which will be examined in detail under section E later in this article.

B. International and European legal framework

The reforms of national criminal laws on human trafficking must be considered in the context of the relevant International and European framework.

11 *S. Bürger,* Die Reform der §§ 232 ff. StGB und ihre Auswirkungen auf das Transplantations-, Arbeits- und Sexualstrafrecht, Juristische Rundschau (JR) 2017, p. 143, 144.
12 *Schroeder,* NStZ 2017, p. 320 et seq. [„eingeschränkte Widerstandsfähigkeit als Beeinträchtigung der persönlichen Freiheit"].
13 *Schroeder*, NStZ 2017, p. 320, 321; *J. Renzikowski* in: G. Sander (ed.), Münchener Kommentar zum StGB, Book 4, 3rd ed., 2017, § 232, margin no 95.
14 *Schroeder*, NStZ 2017, p. 320, 321.
15 *Renzikowski* (fn. 11), § 232, margin no 1.

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The **Universal Declaration of Human Rights** of the United Nations is one relevant document. Its aim is, among other things, to protect fundamental human rights such as the dignity and worth of the human person and equal rights for men and women.[16] The Declaration is considered an ideal to be pursued by all peoples and nations.[17] Art. 4 and Art. 23 UDHR have a special significance in the context of human trafficking. According to Art. 4 UDHR, no one may be held in slavery or servitude. According to Art. 23 (1) UDHR, everyone has the right to work, to free choice of employment and to just and favourable conditions of work.

Modern history of the fight against human trafficking begins in 2000 with the Palermo Convention, adopted by a resolution of the United Nations General Assembly.[18] Art. 3a of the Palermo Protocol provides, for the first time, a broad definition of trafficking in human beings, not limiting it to sexual exploitation, but also including labour exploitation, illegal removal of organs, illegal adoption and forced marriage. Under the terms of this provision, the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation constitutes a criminal offence (lit. a).

The **Convention on Action against Trafficking in Human Beings** of the Council of Europe of 16 May 2005[19] adopts the definition from the Palermo Protocol in Art. 4. In addition to human trafficking as a phenomenon of cross-border organised crime, it also categorises human trafficking within countries as a human rights violation. Appropriate criminal offences are to be introduced (Art. 18), and the Convention already calls for the criminalization of the use of services of trafficked persons in cases where the client knows that the provider of the service is a victim of trafficking.[20] A new development is also the non-punishment provision contained in Art. 26 covering victims of human trafficking, e.g. in respect of violations of immigration law and offences related to document forgery.[21]

The **Council Framework Decision of 19 July 2002** is also a relevant document.[22] With respect to acts that are to be penalized, the Framework Decision is based on the Palermo Protocol, but occasionally exceeds it with the objective of harmonizing crimi-

16 Universal Declaration of Human Rights 1948, Preamble of the Declaration.
17 Universal Declaration of Human Rights 1948, Preamble of the Declaration.
18 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.
19 Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005.
20 *Renzikowski* (fn. 11), § 232, margin no 27.
21 *Renzikowski* (fn. 11), § 232, margin no 27.
22 Council Framework Decision of 19 July 2002 on combating trafficking in human beings, 2002.

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nal offences relating to human trafficking in the EU.[23] Victim protection did not play a major role at that time, but was a topic addressed by the Victim Protection Directive of 29 April 2004[24]. The scope of victim protection provided by this Directive is largely based on the victim's willingness to cooperate with prosecution authorities.[25]

The international treaties described are relatively recent and are primarily focused on law enforcement and international cooperation.[26] At the European level, a system protecting human rights exists in the form of the **ECHR**. Under certain conditions, these rights can also be interpreted as the basis for an obligation of the state to protect individuals against attacks by other private individuals, and this obligation would be violated if the state did not adopt sufficient legislative and regulatory measures.[27] Where human trafficking is concerned, Arts. 3, 4 and 8 ECHR are particularly relevant.[28] Reference also needs to be made to Art. 5 (3) of the EU Charter, which expressly prohibits trafficking in human beings.

The main current development is the obligation under Art. 2 (1) **Directive 2011/36/EU preventing and combating trafficking in human beings,** according to which the Member States must now implement those measures necessary to enable the criminal sanctioning of the following intentional acts: "The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."[29]

These guidelines contain three elements of wrongdoing, namely the action, the means and the purpose of the act.[30] Acts includes several activities at the supply and

23 *Renzikowski* (fn. 11), § 232, margin no 27.

24 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

25 *Renzikowski* (fn. 11), § 232, margin no 30.

26 *C. Post*, Kampf gegen den Menschenhandel im Kontext des europäischen Menschenrechtsschutzes: eine rechtsvergleichende Untersuchung zwischen Deutschland und Russland, 2008, p. 101.

27 *Siliadin v France*, Application no. 73316/01, Judgement 26. July 2005; *X and Y v Netherlands*, Application no. 8978/80, Judgement 26. March 1985.

28 Art. 3 ECHR covers the prohibition of torture and inhuman or degrading treatment or punishment. Human trafficking as inhuman or degrading treatment can touch upon the protection area ["Schutzbereich"] of Art. 3 ECHR. Art. 4 ECHR prohibits slavery and servitude as well as forced or compulsory labour and therefore covers human trafficking. Art. 8 ECHR protects private and family life, home and correspondence. For the context of this article, the protection of private life and of sexual self-determination are especially relevant.

29 Art. 2 I Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 2011.

30 Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, no. 74.

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logistics level, ranging from recruitment to exploitation (recruitment, transportation, transfer, harbouring and receipt).[31] The perpetrator must employ certain means in order to exert control over the victim (threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability).[32] This must be done with the purpose of exploiting the victim, which according to Art. 2 (3) of the EU Directive means the exploitation for the purpose of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The EU's provisions have occasionally been criticized for their lack of clearly defined contours, as some of the terms used are worded rather vaguely (e.g. abuse of power, abuse of a position of vulnerability).[33] It must be noted, however, that under the terms of Art. 83 TFEU, the European Parliament and the Council can only set out minimum guidelines concerning criminal offences and sanctions, while during implementation the legislator in the Member States is at liberty to exceed them and to stipulate the offences to be penalized.[34] In essence, Art. 83 TFEU provides Member States with room for manoeuvre in implementing the provisions of EU legislation.[35] This latitude allows Member States to prevent evaluative contradictions with existing provisions when implementing the new provisions. The incidence of criminal conduct being de facto defined by Union law occurs only if the national legislator limits itself to the minimum requirements. The vague formulations mentioned above may then indeed be insufficiently precise – exactly because they are intended to make it possible for the legislator of a Member State to implement EU law requirements that are in line with its interests and adapted to national circumstances and criminal law structures.[36] In fact, the legislator in the Member State is, therefore, obliged to comply with the requirements of the principle of precision in the implementation of such provisions.

C. Analysis: Human Trafficking in the context of Globalisation

The phenomenon of human trafficking has various causes, many of which are connected to advancing globalisation. Even if there is currently only unreliable empirical data available,[37] we can nonetheless make some observations that are reasonably plausible.

31 *J. Renzikowski*, Strafvorschriften gegen Menschenhandel und Zwangsprostitution de lege lata und de lege ferenda, 2014, p. 7.
32 *M. Böse,* Menschenhandel – Konturlose Tatbestände dank EU-Vorgaben?, Kriminalpolitische Zeitung (KripoZ) 2018, p. 16, 17.
33 *Böse* (fn. 30), p. 16, 17; *H. Satzger/F. Zimmermann/G. Langheld*, The Directive on Preventing and Combatting Trafficking in Human Beings and the Principles Governing European Criminal Policy – A Critical Evaluation, European Criminal Law Review (EuCLR) 2013, p. 107, 114.
34 *M. Böse,* Europäisches Strafrecht mit polizeilicher Zusammenarbeit, 2013, § 4, margin no 13.
35 *Böse*, KripoZ 2018, p. 16, 17.
36 See also *Böse*, KripoZ 2018, p. 16, 18.
37 See the article by *A. Schmidt* in this book.

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A central cause for willingness to migrate is poverty in the countries of origin.[38] Many residents of such countries only rarely have access to medical care, social welfare or protection through the legal system. The threat of impoverishment and destitution brings about a greater willingness in people to accept risk in order to help themselves or their relatives (push factor). In addition, awareness of global inequality is growing: Awareness of the availability of better opportunities in Western countries causes those affected to migrate towards them in the hope of employment and the chance to financially support their families.[39] This in turn encourages human traffickers who make profit by exploiting the people in vulnerable situations.

But globalisation also plays an important role for those benefiting from human trafficking. Trade in human beings could not flourish if there was no demand in the destination countries (pull factor),[40] and in Western countries there is demand, especially in low-wage sectors such as the care or service sectors and in the informal sectors of the construction and agricultural industries.[41] With regard to prostitution, the high demand can, arguably, be explained by the desire for appreciation (which Western men claim to be no longer receiving, thanks to the ongoing emancipation of Western women), the desire for care, the expression of power as well as the exotic appeal of foreign women.[42] Prosperity in the destination countries enables citizens there to take advantage of these services.

At the same time, globalized markets increase cost pressure on its participants. The profit orientation of the market economy promotes exploitation of people affected in order to meet demand in ways that cover costs. Therefore, human trafficking is omnipresent in modern society and by no means a phenomenon only in distant developing countries.[43] Rather, people's behaviour as consumers means they repeatedly contribute to the exploitation of other humans under slave-like conditions.[44] For example, the modern "consumer society" benefits economically from the low-cost products offered by large supermarket discounters and clothing companies.

38 *Post* (fn. 24), p. 72.

39 *E. Hill/M. Bibbert*, Zur Regulierung der Prostitution, Eine diskursanalytische Betrachtung des Prostituiertenschutzgesetzes, 2019, p. 134.

40 See also C. *Bearder,* Über Menschenhandel: "Die Nachfrage ist ausschlaggebend", 2016, https://www.europarl.europa.eu/news/de/headlines/society/20160509STO26419/catherine-bearder-uber-menschenhandel-die-nachfrage-ist-ausschlaggebend, last accesed on 20.11.2019.

41 *Post* (fn. 24), p. 76.

42 For motivational reasons relating to marriage migration and the desire for an "exotic" marriage with traditional roles with conservative values, see *S. Stelzig*, Zunahme der Heiratsmigration nach Deutschland, Migration und Bevölkerung (MuB) 2005, p. 10 et seq.

43 *A. McQuade,* Der Kampf für die weltweite Abschaffung der Sklaverei*,* Jahrbuch Menschenrechte (JM) 2008, p. 15, 17; *F. Merz/T. Keatinge/A.-M. Barry*, Disrupting Human Trafficking: The Role of Financial Institutions, SIRIUS – Zeitschrift für Strategische Analysen (SIRIUS) 2018, p. 86; *J. Renzikowski*, Contemporary Problems of Labour Exploitation, in: E. Hilgendorf /J.-C. Marschelke /K. Sekora (eds.), Slavery as a Global and Regional Phenomenon, 2015, p. 116.

44 *Renzikowski* (Fn. 11), § 232b, margin no 7.

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In general, **developments in economic policy** can have enormous consequences for affected citizens in the countries of origin and can thus contribute to promoting human trafficking. Currently, the interdependence of international trade is being hampered by sanctions imposed by US President Donald Trump and his America First policy. The short-term effects of the attendant tariff increases are likely to be only minor for developing countries, but these developing countries are firmly integrated in the global value chain, at the top of which are industrialized countries which are directly affected by retaliatory measures to Trump's punitive tariffs.[45] In the medium to long term, any deterioration in the multilateral trading model will probably also have an adverse impact on developing countries, as the production processes of industrialized countries include semi-manufactured products from developing countries which enable production costs to be cut and efficiency to be increased. The upward spiral of tariffs between the US, the EU and China can lead to destabilized conditions in poorer countries, resulting in industrialized countries either producing less in those countries or working conditions there deteriorating in consequence of the increasing cost pressures. The citizens affected are at the mercy of political power games.

The negative impact of globalisation can also be observed in **the ways human trafficking takes place**: Global interdependence, together with technological networks or reduced border controls, provides the basis for expansion of human trafficking networks.[46] Globalized markets and modern information technologies are opening up new dimensions in marketing.[47] The Internet is an important tool for recruitment to and promotion of prostitution, child pornography and marriage migration.[48] The first contacts between parties involved are also established via the Internet, for labour in agriculture, the construction industry, household-related services, care and other low-wage sectors as well as in connection with forced marriage or adoption[49].

A differentiation must be made between different action levels here: Human trafficking ranges from the recruitment of the victims *(*supply level) to the transfer of the

45 *A. Berger*, US-Zollerhöhungen – Welche Auswirkungen haben sie für Entwicklungsländer?, Die aktuelle Kolumne (DaK), 23. March 2018.

46 *P. El-Samalouti*, Kriminalität und Sicherheit im Lichte der Globalisierung, in: T. Mayer/R. Meyer/L. Miliopoulos/H.-P. Ohly/E. Weede (eds.), Globalisierung im Fokus von Politik, Wirtschaft, Gesellschaft, 2011, p. 144.

47 In general see *T. Jäger*, Transnationale organisierte Kriminalität, Aus Politik und Zeitgeschichte (APuZ) 2013, p. 15, 19.

48 *Bundeskriminalamt*, Bundeslagebild Menschenhandel und Ausbeutung 2016, p. 20; *N. Döring*, Prostitution in Deutschland: Eckdaten und Veränderungen durch das Internet, Zeitschrift für Sexualforschung (Z Sexualforsch) 2014, p. 99 et seq.; *S. Lamnek*, Sex and Crime: Prostitution und Menschenhandel, in: S. Lamnek/M. Boatcă (eds.), Geschlecht-Gewalt-Gesellschaft, 2003, p. 475.

49 Recital 11 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 2011.

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victims (logistics level) to the actual exploitation (base level)[50] and finally to the users (in the case of prostitution, these are the clients, in other cases usually consumers). It is becoming quite evident here that at no level can the phenomenon of human trafficking be traced back to an individual perpetrator; instead, a large number of actors are typically involved. Structural circumstances often leave only very limited possibilities for the individual participants to act.

The analysis illustrates how complex a phenomenon human trafficking is and how embedded it is in our society, how structurally intertwined the actors are, how difficult it is to determine precisely when actions cross the line into criminality, which actions are still socially acceptable – especially in the realm of consumers and beneficiaries. From a criminological point of view, the problem of human trafficking is exacerbated by increasing globalisation, regularly entails crossing borders and is linked with the international and interconnected actions of organized crime.

D. The Diffusion of Traditional Concepts and Opposites

It is necessary, therefore, to differentiate between the different levels of actions involved in human trafficking, and due note must be taken of the structural integration of events. At each level, the question arises as to whether acts contributing to human trafficking rise to the level at which punishment is necessary and whether no other, more lenient, approach is possible to achieving the same goal as punishment of the action.[51] Before we assess the reforms in question in greater detail,we must, however, first examine a special aspect of the concept in relation to the criminalisation of human trafficking, namely the associated diffusion of concepts and contrasts in criminal law.

As an example, we can look at the blurring of the traditional concepts of "**perpetrator**" and "**victim**" and the antagonism they represent. Victims of human trafficking may become perpetrators insofar as they are occasionally forced to commit crimes themselves in the course of their exploitation. Much more frequently, they also become "perpetrators" with regard to other legally protected interests: Because of their illegal residence status, they frequently violate residency and immigration laws.[52] For this reason, investigating authorities often treat and classify them as perpetrators rather than offering them assistance and aid in order to protect them as witnesses. This is undoubtedly counter-productive, since a victim-oriented interview could produce important information on the illegal actions of the actual perpetrators of human trafficking. The victims of human trafficking remain "perpetrators" and, due to the consequences

50 *Renzikowski* (fn. 11), § 232, margin no 11; *J. Renzikowski/H. Kudlich*, Reform der Menschenhandelsdelikte im zweiten Anlauf – und immer noch nichts gelernt, Zeitschrift für Rechtspolitik (ZRP) 2015, p. 45 et seq.

51 *Renzikowski* (fn. 11), § 232, margin no 11.

52 *A. Herz,* Menschenhandel: Eine empirische Untersuchung zur Strafverfolgungspraxis, 2005, p. 25; *A. Kartusch*, Menschenhandel – Eine menschenrechtliche Herausforderung für die OSZE, OSZE-Jahrbuch 2002, p. 289, 293.

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they themselves face, are unable to establish sufficient levels of trust in authorities; the traffickers' crimes do not come to light.

Other factors also blur the traditional contrast between perpetrator and victim: It is not unusual for **former victims** of human trafficking later in their lives to provide the perpetrators with new victims, in order to escape threats from criminal organisations.[53] They act not in order to enrich themselves, but in order to survive and to protect their families. It is hard to disagree that these forced actions do not correspond to the typical image of a perpetrator in criminal law.

At the same time, not all victims of human trafficking can be regarded **as victims in the classical sense** – more than a few of them deliberately actively choose to engage in exploitative activities.[54] Against the background of social inequality and extreme poverty in countries of origin, these activities may nevertheless seem more attractive to them than alternatives in their native country. Normalisation effects can also play a role, resulting in those affected accepting circumstances and leading to them no longer seeing such activities, normally unacceptable in their cultural and social environment, as reproachable. By ascribing to them the role of victims, they are denied the opportunity to earn a living by the means they have chosen. If they are deported, they are forced back into the very structures that led to their exploitation. This in turn often conflicts with the freedom to self-determination of the person concerned, which might permit the exploitation of the person on their own terms as long as this is a choice based on their own free will. Constellations of this kind certainly do not correspond with the classic image of victims in traditional criminal law.

There are also new categories on the perpetrator side that are difficult to classify: The **beneficiaries**. Beneficiaries indirectly encourage human trafficking by creating demand. At the same time, they are neither integrated into the organized networks nor directly involved in the process. The decision as to whether these promoters of human trafficking act culpably enough to warrant criminal punishment cannot be reached by means of conventional categories of punishable behaviour or accustomed notions of criminal act and perpetrator. In particular, it can be argued that, if criminalisation of a prostitute's client is really to be more than a sexual offence under a different name, the same approach should actually also lead to punishment for staff and clients of exploiting companies, and ultimately also to the punishment of consumers who are aware of the circumstances, since their behaviour promotes low wages and inhumane working conditions. This issue does not necessitate a decision here, but it must be pointed out that singling out some of the beneficiaries as criminally culpable is will always be difficult to reconcile with conventional categories and ideas.

These shifts and diffusions are of central interest in assessing the current German legal situation. Even if the situation for the victims of human trafficking is undoubtedly

53 *J.Eigendorf/M.Neller/U.Müller*, Yamina (15), die Geschichte eines Wegwerfmädchens, https://www.welt.de/vermischtes/weltgeschehen/article11285252/Yamina-15-die-Geschichte-eines-Wegwerfmaedchens.html, last accessed on 08. September 2020.

54 *M. Wersing*, Regulierung der Prostitution: Es gibt keine einfachen Lösungen, Zeitschrift des Deutschen Juristinnenbundes (djbZ) 2015, p. 47 et seq.

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very difficult and worthy of condemnation and even if the exploitation of the population of poor countries to maintain the prosperity of the "Western World" does indisputably violate fundamental concepts of justice and value, a delineation in criminal legal terms which leaves the safe ground of traditional concepts often proves (highly) problematic and brings about contradictions within the system.

E. Evaluation of the legal situation

The following section is concerned with critical evaluation and assessment of the reform in Germany. On the one hand, a strictly internal legal perspective is adopted, i.e. the reform is viewed with respect to supranational law, to higher-ranking national law and to possible contradictions with equally-ranked law. On the other hand, however, the actual circumstances and difficulties with regard to traditional concepts as outlined above are examined.

I. Internal legal evaluation

With the new legislation, the German legislator has not only amended existing law to meet international standards (in particular EU law), but has also in part surpassed them by sanctioning acts committed in connection with human trafficking. It is a welcome step that the legislator has taken up this important issue and intends to improve protection for victims, who are often isolated and in dire need. It should, however, be pointed out that the mere expansion of criminal responsibility does not necessarily increase victim protection if that expansion is not successfully implemented into legal practice. As described above, the actual effectiveness of the criminal provisions is extremely questionable on account of the potential consequences for victims who give evidence or testify.

In addition, the criticism must be raised that, with regard to supranational law, the orientation towards EU legislation is only partially effectual. The reform in Germany is based on the concept of economic exploitation, while with Directive 2011/36/EU the EU prioritizes the fundamental importance of human rights and regards human trafficking as a serious violation of these rights.[55] For example, "exploitation" in the European guidelines is to be understood not just in the economic sense, as can be seen from the fact that in international law the terms "sexual abuse" and "sexual exploitation" are largely used as synonyms, i.e. it is not about exploitation only but also about abuse.[56] The question of whether an occupation is exploitative or not should be judged primarily with regard to the employment conditions and the damage suffered by the victims and not according to who earns how much money.

55 *Renzikowski* (fn. 11), § 232, margin no 32.
56 *Renzikowski* (fn. 11), § 232, margin no 32, 73.

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There is also some doubt as to whether the reform has created a situation that conforms to the Directive: The link with the condition that a situation of distress or helplessness specific to foreign countries exists, contains no corresponding criteria regarding the vulnerability of the victims. Although § 232 (2) StGB specifies that severe cases of trafficking in human beings are acts connected with coercion, deceit or abduction, neither the abuse of power that often occurs nor the exploitation of a special need for protection is identical with these characteristics and does comprehensively cover cases of human trafficking.[57] According to Art. 2 (2) Directive 2011/36/EU, for example, a special need for protection can also be considered to exist in the case of pregnant women, people with medical conditions, physical or mental impairments; according to the German legislation, however, these considerations do not necessarily constitute a situation of distress.[58]

The development of international and European legislation[59] for preventing and combating human trafficking shows that human rights are increasingly being given priority and that criminal prosecution and enforcement of immigration law are becoming secondary.[60] To comply with the State's protection obligations, the victims of §§ 232 et seq. StGB should not be regarded simultaneously as perpetrators in the sense of the national Residence Law („Aufenthaltsgesetz"). After all, the fundamental importance of human rights goes far beyond simply providing support for victims in criminal proceedings. In particular, fundamental human rights, such as the rights to life and health, physical and psychological integrity, freedom, security and a fair trial, are protected under Art. 2 – 6 ECHR and should not be directly linked to prosecutions carried out by the state, nor should they benefit victims only where they cooperate with state authorities.[61] Comprehensive care tailored to the specific needs of trafficked persons during their time in Germany includes, in particular, guaranteeing their subsistence, providing emergency medical treatment and offering trauma counselling, as well as providing interpreting services and free legal assistance.[62] In accordance with international guidelines and with Art. 12 of the Council of Europe Convention on Action against Trafficking in Human Beings, these existential measures are to be granted to all victims and not only to those who agree to testify as witnesses in criminal proceedings. There is also room to improve with regard to the possibility for victims to sue the perpetrators for damages. Although the ancillary proceeding ("Adhäsionsverfahren'") is intended for this purpose, this avenue is rarely taken in practice because the civil courts or labour courts often wait pending the outcome of the criminal proceedings before ruling, while the victims usually have to leave the EU for their home country, outside the EU, after the conclusion of the criminal proceedings. This inevitably makes pursu-

57 *Renzikowski* (fn. 11), § 232, margin no 33.
58 *Renzikowski* (fn. 11), § 232, margin no 33.
59 A detailed account: *Renzikowski* (fn. 11), § 232, margin no 25–31.
60 See in detail *V. Munro,* Über Rechte und Rhetorik: Diskurse um Erniedrigung und Ausbeutung im Kontext von Sexhandel, Kritische Justiz (KJ) 2009, p. 365 et seq.
61 See also *Renzikowski* (fn. 11), § 232, margin no 34.
62 *Post* (fn. 24), p. 233.

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ing their claims considerably more difficult.[63] Although this conclusion was introduced by the implementation of the EU Sanctions Directive[64] into § 25 (4b) "Aufenthaltsgesetz", the provision only applies to third-country nationals who are affected by serious labour exploitation and consequently receive a residence permit to enforce their claims. It does not cover any other victims of human trafficking.

At the national level, it should be noted that, in light of the principle of legal certainty ("Bestimmheitsgebot"), the concrete punishable acts must be described as precisely as possible. This means that when attempting to criminalize a rather diffuse phenomenon such as human trafficking, it is almost inevitable that there will be loopholes that are not always plausible. For example, it is not entirely convincing why the law largely covers exploitation for the purpose of prostitution, but not for the participation in pornographic films. In some cases, there is a deficit of well-thought-out harmonisation with other parts of the German Criminal Code, e.g. with regard to the protection of sexual self-determination. Then there is the problem of distinguishing human trafficking from migrant smuggling. In contrast to human trafficking, in which the perpetrators transport the victims into an exploitative situation by force, threat or deceit, migrant smuggling is a mutually agreed paid service with the purpose of illegally crossing borders.[65] Migrant smuggling can, however, lead to human trafficking if, as a result of subsequent control, the persons concerned lose their freedom of movement after their initial free decision to migrate. In order to regulate the phenomenon comprehensively, punishability in all these contexts has been moved very far towards the forefront of reprehensible actions.[66]

On the one hand, this is concerning, since the possibilities under which victims can find themselves in distress are varied and **not all of these possibilities** can be unambiguously and decisively defined. On the other hand, these norms complicate the process of classifying contributions to human trafficking to **levels of reprehensibility**. These problems are all connected to the difficulties of continuing to think in accustomed categories and concepts in this context: The question of what constitutes intolerable force for the victim, how to define reprehensible actions in this context, who to unambiguously categorise under which circumstances as a perpetrator and who to categorise as a victim, cannot be answered directly and consistently for all eventualities. And this is exactly what makes the criminal offences in this environment so very difficult to grasp, to define unambiguously and to distinguish from non-criminal behaviour.

63 *H. Rabe,* Die Ratifikation der Europaratskonvention gegen Menschenhandel, Deutsches Institut für Menschenrechte (DIfM) 2011, p. 1, 4.

64 See for example directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

65 *P. Follmar-Otto*, Ein Menschenrechtsansatz gegen Menschenhandel – Internationale Verpflichtungen und Stand der Umsetzung in Deutschland, Deutsches Institut für Menschenrechte (DIfM) 2009, p. 11, 17.

66 *A. Petzsche,* Die Neuregelung des Menschenhandels im Strafgesetzbuch, Kritische Justiz (KJ) 2017, p. 236, 247.

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In addition, there is the problem[67] already familiar from other contexts: The collective structure of the phenomenon of "human trafficking". While simple events can easily be attributed to a single perpetrator in accordance with conventional criteria, the attribution of criminal responsibility in collective criminal constellations is problematic because of the difficulty of separating the various individual elements from the complex pattern.[68] In organizations with multifaceted network structures, it is difficult to identify clear personal responsibility because of the numerous complex workflows involved.

If in addition there are beneficiaries in the mix, a complex amalgam of attribution develops, which goes beyond the traditional approaches to evaluating the attribution of criminal behaviour. In the following, the new criminal offence introduced into § 232 a (6) StGB – the criminal liablity for clients of forced prostitutes – is discussed in detail. Until now, third parties who exploited the situation of victims to engage in sexual activities have not been criminally liable. In the same constellation, criminal liability as an accessory was also generally ruled out, as the criminal conduct in connection with the human trafficking had normally ceased at the time of the abuse and participation in the criminal offence was therefore no longer possible.[69] Art. 18 of Directive 2011/36/EU and Art. 19 of the Council of Europe Convention instructed the Member States of the European Union to consider introducing criminal liability for the demand side of human trafficking. The German legislator has complied with this instruction. The goal of the new provision is to strengthen victim protection and to deprive traffickers of the economic benefits of forced prostitution[70] – in other words, it is not exclusively designed to protect sexual self-determination, even if the law makes the person engaging in sexual acts with or causing such acts to be performed by another person in return for payment punishable where the person themselves exploits the personal and economic predicament or helplessness of the victim in the process.[71] With regard to the conventional categories of perpetrator, this represents a new phenomenon. The client of the prostitute encounters a situation that was created by others but in which they themselves did not participate. Without a doubt, they are neither a perpetrator nor a participant in the forced prostitution within the meaning of § 232 a (1–5) StGB. Nevertheless, their behaviour is now deemed criminal, as they are exploiting the situation of the victim for their own purposes where they are aware that the prostitution is forced.[72] By introducing criminal liability of the prostitute's client, the legislator has, therefore, created a kind of "third category" of criminal conduct.

67 See for this all other articles in this book, which nearly all reflect the difficulties of criminal law covering collective, international structures – this shows the importance of projects like CLADIS that reflect the parallels of these problems and the necessity of a shared debate.

68 For more information, see *K. Seelmann,* Kollektive Verantwortung im Strafrecht, 2011.

69 *Eisele* (fn. 5), § 232, margin no 38.

70 BT-Drs. 15/5326, p. 4 et seq.

71 *F. Zimmermann*, in: H. Satzger/W. Schluckebier/G. Widmaier (ed.), Kommentar zum Strafgesetzbuch, 4th ed., 2019, vor §§ 232 et seq., margin no 19.

72 *C. Pfuhl*, Die Nachfrage nach Opfern von Menschenhandel – Einführung einer Strafvorschrift?, Juristische Rundschau (JR) 2014, p. 278, 281; *J. Renzikowski*, An den Gren-

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This is due to the complex structures of human trafficking; however, this category does not fit easily into existing criminal law.

On the side of the subjective, mental aspects of the crime, at least intent of *dolus eventualis* is a minimum requirement with regards to both victimhood to human trafficking and the trafficked person's own use of the exploitative situation. This intent, however, will rarely be provable.[73] As such, even before the reform, criticism was raised that the perpetrator could always make declarations of protection and feign ignorance.[74] However, criminal law regarding sexual offences faces similar evidentiary problems, since acts of this kind usually involve only the perpetrator and the victim and elude the notice of neutral witnesses. Of course, this cannot lead to decriminalisation on grounds of evidentiary difficulties.[75] As is often the case in criminal proceedings, the mental attitude of the accused must be determined on the basis of the external evidence. With regard to the prior victimhood of the prostitute as well as the use of the exploitative situation by the prostitute's client, clues such as the use of violence, poor physical condition, barred windows, locked doors, poor language skills or a state of intimidation or fright in the prostitute can constitute evidence.[76] The way in which contact is made and whether transactions are handled exclusively by a prostitute's procurer can also speak in favour of the presence of forced prostitution.[77] Ultimately, the practicability of the norm will only become apparent over the course of time.

Criminal procedure law still harbours further criticism of the norm: Under suspicion of committing a crime, the client becomes the accused, and is, therefore, entitled to the right to remain silent pursuant to § 136 German Code of Criminal Procedure ("StPO") as well as the right to withhold information under § 55 StPO, which makes it more difficult to combat human trafficking.[78] Criticism is also levelled at the leniency notice in the second sentence of § 129 (6) StGB (personal exemption from punishment for actions according to (6) s.1). Under this provision, a waiver of punishment becomes possible if the client brings the previous act of human trafficking by a third party or forced prostitution to the attention of the authorities. This provision intends to encourage clients to contribute to the investigation of such criminal acts.[79] The provision is not unproblematic: On the one hand, impunity probably does not cover other sexual offences that may also have been committed, in particular pursuant to § 177 and

zen des Strafrechts – Die Bekämpfung der Zwangsprostitution, Zeitschrift für Rechtspolitik (ZRP) 2005, p. 213 et seq.

73 For the question of punishability *B. Merk,* Freierstrafbarkeit – ein kriminalpolitisches Dauerthema?, Zeitschrift für Rechtspolitik (ZRP) 2006, p. 250, 251; *Renzikowski,* ZRP 2005, p. 213, 215.

74 *Merk*, ZRP 2006, p. 250, 251.

75 *Merk,* ZRP 2006, p. 250, 251; *Pfuhl,* JR 2014, p. 278, 280; *Renzikowski,* ZRP 2005, p. 213, 215.

76 *Renzikowski,* ZRP 2005, p. 213, 215.

77 *M.Böse* in: U. Kindhäuser/U. Neumann/H.-U. Paeffgen (ed.), Kommentar zum StGB, Book 3, 5th ed., 2017, vor §§ 232 et seq., margin no 6.

78 *Merk,* ZRP 2006, p. 250, 251.

79 BT-Drs. 18/9095, p. 36.

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§ 182 (2) StGB:[80] Due to the different protective purposes, the criminal acts of § 177 StGB stand in unity of action ("Tateinheit") with § 232 (a) StGB, and an analogue implementation to § 177 StGB would result in a prostitute's clients being privileged over other perpetrators without sufficient reason.[81] As a result, the leniency notice will often prove meaningless.[82] On the other hand, the prostitute's client will likely lack detailed knowledge about the structures of in the background behind the forced prostitution.[83] Finally, it remains doubtful to what extent any willingness to contribute to investigations actually develops: Even if the client is not convicted in the end, the investigation procedure alone places a considerable strain on them. The mere suspicion of having used the services of a prostitute, knowing that the prostitute had been forced into prostitution, can damage the client's social standing. In order to create an incentive to participate in the investigation of forced prostitution and, if necessary, to prevent its continuation, the person concerned would have to be granted leniency at an earlier stage of the proceedings. Cooperation with the criminal prosecution authorities would need to be top priority from the outset, especially as these authorities would certainly have a greater interest in convicting the organizers than in convicting the beneficiaries. It remains to be seen to what extent the new criminal provisions contribute to the desired investigation of human trafficking[84].

The previous considerations are an intralegal criticism that has deliberately concentrated on one specific, relevant aspect; however, the complex phenomenon of human trafficking requires further examination.

II. Evaluation from a juridical and policy point of view

Criminal laws on human trafficking are faced with a dilemma: On the one hand, the creation of the sometimes almost unendurable situations for the victims is undoubtedly a highly problematic and reprehensible action. On the other hand, human trafficking is based on a more structural problem, and the benefit from this exploitation is ultimately embedded and normalized in our society. An evaluation from a juridical and policy point of view must, therefore, take into account the considerations that have already been described about the circumstances of the victims of trafficking as well as structural aspects.

The reprehensibility of the crimes can be seen above all in the victims' situation. They are being isolated and made dependent upon those who exploit them.[85] Refusing to contact their families weakens the social structures in their countries of origin. In addition, the perpetrators often have connections in these countries and can, therefore,

80 *Böse* (fn. 75), vor §§ 232 et seq., margin no 7; *Petzsche,* KJ 2017, p. 236, 244.
81 *Renzikowski* (fn. 11), § 232a, margin no 71; *Eisele* (fn. 5), § 232a, margin no 47.
82 *Eisele* (fn. 5), § 232a, margin no 47.
83 *Renzikowski* (fn. 11), § 232a, margin no 70.
84 BT-Drs. 18/9095, p. 36.
85 *Lamnek* (fn. 46), p. 487, 488.

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threaten to harm the relatives of the victims.[86] The psychological and physical integrity of the victims is severely damaged and they are traumatised, which regularly leads to long-term illness and inability to reintegrate into society. Trafficking in human beings with the enormous human rights violations associated with it represents a contemporary form of slavery;[87] even if a radical reification of human beings historically arises only through purchasability.[88] In principle, there seems to be a worldwide consensus on the reprehensibility of slavery per se, but the "modernised" forms are by no means consensually and unequivocally condemned. *Renzikowski* correctly describes the exploitation of labour as the concealment of slavery – in these cases, too, those affected often have no freedom of movement, receive no or insufficient wages, and are regularly vulnerable to exploitation and blackmail as immigrants who were brought into a country.[89] Even if it is not always easy to determine when economic constraints can be equated with loss of free will,[90] it is clear that these forms of exploitation are highly problematic and as reprehensible as slavery. If, for example, women or children are sold into forced prostitution by relatives or acquaintances,[91] it is not only their will that is broken or manipulated with exploitative intent, but they are – as is characteristic of slavery – ultimately degraded to the point of being a possession and treated as property.[92] Often the victims are not only terrified of the exploiters, but the pressure to remain in this situation also results from the fact that they have a general distrust of authorities, which is often increased by the perpetrators.[93]

At the same time, it is already evident here that this phenomenon is difficult to establish under **criminal law**. As the victims usually face the threat of deportation if they report their exploiters, they lose their only opportunity to earn money and have to return to a country of origin with no prospects. This is why they often have no interest in reporting the crimes and in the subsequent prosecution of the perpetrators.[94]

However, it is not only the dramatic situation of the victims that is important: Human trafficking impacts negatively on both the **host countries** and **the countries of**

86 *B. Petersen*, Rechtliches zur Strafbarkeit des Menschenhandels, Bundesweiter Koordinierungskreis gegen Menschenhandel: Menschenhandel in Deutschland – eine Bestandsaufnahme aus Sicht der Praxis (KgM) 2015, p. 36 et seq.; *K. Summerer,* Das neue italienische Gesetz über Sklaverei und Menschenhandel, Zeitschrift für die gesamte Strafrechtswissenschaft (ZStW) 2006, p. 986, 989.

87 *J. Vogel/J. Eisele*, in: E. Grabitz/M. Hilf/ M. Nettesheim (ed.), Das Recht der Europäischen Union, Book 1, 60th ed., 2016, Art. 83 AEUV, margin no 55.

88 *J.-C. Marschelke*, Moderne Sklavereien, Aus Politik und Zeitgeschichte (APUZ) 2015, p. 15 et seq.

89 *Renzikowski* (fn. 11), § 232b, margin no 7.

90 *Marschelke,* APUZ 2015, p. 15, 16, with key points for the definition of slavery.

91 *Marschelke,* APUZ 2015, p. 15, 20.

92 Approching the definition of slavery of ILO, A global alliance against forced labour – Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005, p. 8, see *K. Weber*, Blurred Concepts of Slavery, in: E. Hilgendorf/J.-C. Marschelke/K.Sekora (eds.), Slavery as a Global and Regional Phenomenon, 2015, p. 18 et seq.

93 *Renzikowski* (fn. 11), § 232, margin no 8.

94 *Renzikowski* (fn. 11), § 232, margin no 8.

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origin. It affects not only the general development of the country but also its overall security. Human trafficking for labour exploitation leads to a distortion of the markets because employers who abuse the law gain economic advantages. The role of the country as an immigrant destination for urgently needed skilled workers is impaired, preventing the expansion of specialized fields of work and impeding the development of the country. Exploitative human trafficking also weakens the general security of society and fuels the fears of the population regarding immigration. The lucrative criminal activity is leading to further illegal activities, resulting in an ever-expanding circle of human rights violations.

However, it is questionable whether an approach based on criminal law (alone) is advisable to prevent these activities and to protect those affected. First of all, the role of criminal law must be taken into account: It categorises and communicates certain behaviours as clearly and socially consensually reprehensible. At the same time, it must take social and societal circumstances into account. As has been pointed out, human trafficking seems particularly reprehensible because it involves enormous violations of fundamental human rights. In addition to the violation of personal and freedom rights, the worst form of exploitation, such as slavery and servitude, violates human dignity.[95] Society thus evaluates situations in which those affected can only limitedly or even not at all resist the exploitation of their sexuality or their labour as aberrant and thus reprehensible. The question of the criminal regulation of behaviour that violates human rights is based on the "labelling approach" on the social evaluation of behaviour.[96] Not the behaviour, but its negative evaluation (the "label") leads to the attribution of conforming or deviating behaviour. Behaviour in the context of human trafficking, for example, is regularly regarded as reprehensible only when it no longer takes place in the classical economic context. At this point, it is important to note that society clearly benefits from these structures in a market economy.

Precisely the **everyday nature of the phenomenon**, the omnipresence of the availability of people as "goods" on the internet, the awareness of the problem of exploitation when purchasing cheap products can even lead to a certain trivialisation and repression – this is certainly problematic and leads to the necessity of being particularly careful with regard to this phenomenon. At this point, therefore, the question must also be raised as to whether and to what extent society is responsible for human trafficking as well. As mentioned above, bargain offers in supermarket discounters and textile companies are accepted by society without themselves viewing this as reprehensible behaviour.[97] Social negative attribution processes, therefore, take place only outside the everyday life of the consumer. Although the behaviour of companies that pro-

95 *Renzikowski* (fn. 11), § 232, margin no 1.

96 The "labelling", also known as the labelling theory or "Ettiketierungsansatz" stems from a sociological view, which *Becker* in particular dealt with in 1963, *H. Becker,* Outsiders: Studies in Sociology of Deviance, 1963.

97 See *Renzikowski* (fn. 11), § 232b, margin no 7, in which he states that the so-called "consumer" only too gladly shuts their eyes and does not ask where the bargain offers of the discounters come from.

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duce in this way and of consumers who buy these goods is increasingly criticised, as long as the product and the trade with it is legal, attribution processes of reprehensible behaviour in the social context do not extend to the end consumer.[98] Here, the questions debated in the economic context are just as evident, only with regard to other offences – but the fact that these structures are difficult to control with criminal law that focuses on the individual and tangible acts is just as true here as there.[99] It seems, therefore, in many ways debatable if it is reasonable to isolate a few individuals or a part of a group in order to focus the criminal liability on them.

In addition, in all these **contexts shaped by globalisation**, national mechanisms and instruments, in particular, criminal law can hardly stand up to the well-organized structures of internationally organised crime. In this respect, well-known problems continue to exist: Since human trafficking offences are rarely reported by the victims themselves or by third parties, the increased use of law enforcement agencies is necessary, for example, for monitoring brothels or construction sites.[100] This means that investigations must be carried out in a complex manner that is labour-intensive and is made more difficult by the fact that they are carried out abroad and often fail due to limited resources.[101]

This makes it all the more important to develop **strategic and conceptual structures** in cooperation with international organisations, which on the one hand strengthen criminal investigation activities, and on the other, strengthen prevention, information and cooperation work.[102] Victim protection must also be strengthened so that victims who return to their home countries do not turn to prostitution and labour exploitation again due to financial hardship.[103] Temporary residence permits for the duration of criminal proceedings, which could be used for training purposes, would be a functional solution.[104] By contrast, if restrictions and penalties under immigration law and criminal law are imposed, this leads to an unfavourable and problematic mixture of legal areas for the victim, so that a uniform view is not possible and vague attributions of responsibility are made by turning victims into perpetrators and treating them accordingly.

98 *K. Vorbohle/J. Quandt,* Verantwortung in der globalen Wertschöpfung, 2015, p. 14 et seq.
99 See also the articles on white-collar crime law in this volume, such as *Goeckenjan*'s article on the psychology of distancing oneself from damage.
100 *Renzikowski* (fn. 11), § 232, margin no 6.
101 *Renzikowski* (fn. 11), § 232, margin no 7.
102 *A. Knospe,* Die Grenzen des Arbeitsrechts: Menschenhandel zum Zweck der Arbeitsausbeutung im Lichte einer interdisziplinären und internationalen Wirkungsanalyse, Recht der Arbeit (RdA) 2011, p. 348, 350.
103 *A. Hellmann,* Geschlechterverhältnisse im Bereich des Menschenhandels: EUROSTAT-Studie "Trafficking in human beings"; die Dimension des Menschenhandels, Femina Politica (FP) 2013, p. 128, 130; *J. Renzikowski*, Reglementierung von Prostitution: Ziele und Probleme – eine kritische Betrachtung des Prostitutionsgesetzes, Gutachten im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend, 2007, p. 20.
104 *Renzikowski* (fn. 11), § 232, margin no 9. See for these questions the article by *Schmidt* in this volume.

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F. Conclusion

Considerations in this article have shown that a comprehensive structural analysis is necessary, starting with the causes of human trafficking in the countries of origin. To fight human trafficking, preventive measures are needed in these countries to break the spiral of vulnerability and exploitation. Suitable measures include education, support in the fight against unemployment and the improvement of educational opportunities, whereby especially the young women, who are frequently affected, are given the chance to grow up on an equal footing, to lead a self-determined life and to break out of the cycle of poverty.[105] Moreover, in these countries, where poverty, corruption and civil wars prevail, there is a need for a change in living conditions. As long as life-threatening conditions deprive those affected of hope for a stable future, the exploiters' actions, which according to Western understanding violate human rights, appear safer than life in the country of origin. Since human trafficking is often associated with migratory movements, immigration policy should also be designed in such a way that those affected can exercise their human rights in the respective territory of the country in question, taking particular account of their situation.[106]

In order to prevent human trafficking for the purpose of labour exploitation, it is also necessary to adapt the laws for subcontractors to those of the parent company's country. Large corporations must be held accountable and end consumers must be informed and sensitised to the practices of subcontractors and large corporations.

All in all, it is clear that the phenomenon of human trafficking and exploitation cannot be addressed by implementing stricter criminal laws alone, since the main cause of human trafficking lies in the poor living conditions of the countries of origin, which results in the willingness of those affected to migrate, which meets with corresponding demand in the countries of destination. The way in which modern societies consume is also an important factor. Human trafficking is a multifaceted phenomenon that requires a broad-based awareness, an international interconnected system and appropriate victim protection Instead of a systemic perpetrator orientation, a human rights-oriented approach is required. Instead of focusing too strongly on criminal law, a multidisciplinary approach should be adopted, which also includes other areas of law and policy measures and limits criminal sanctions to reprehensible behaviour, contains clear concepts and categories and also includes the possibility of prosecution.

105 *C. Kreuzer*, Initiativen zur Bekämpfung des Menschenhandels, Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR) 2001, p. 220 et seq.; for general information: *Follmar-Otto,* DIfM 2009, p. 11, 25.

106 *Follmar-Otto,* DIfM 2009, p. 11, 44.

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