



- Introduction
- The legislative re-design of human trafficking
- Adaption of the new legal framework in police practice
- New problems in prosecution
- New controversies
- Conclusions

Introduction

- The History of the regulation of human trafficking is characterized by a permanent struggle between two approaches: human rights protection (white slave trade, other forms of slavery, sexual exploitation and discrimination) and protection of moral values (regulation and restriction of sexual services)
- The 2002 U.N. Palermo Convention, the Amending Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the 2005 Council of Europe Convention have a clear focus on the human rights approach.

"Considering that trafficking in human beings constitutes a violation of human rights and an offense to the dignity and the integrity of the human being." (C.o.E. Convention, Preamble)

- In the present decade, two major pieces of 'red-green' law reform in Germany focused on both aspects, aiming at a clear disjunction of these two (often intermingled) areas:
 - Legalisation of prostitution (2002)
 - » Administrative, private and labor law
 - » Tax law
 - Strengthening of human trafficking protection (2005)
 - » Penal law (including procedure)
 - » Immigration law
 - » Administrative law

The Legislative Re-Design of Human Trafficking

- German Penal Code until 2005:
Chapter 13: Sexual Crimes
 - § 174 – 176 Sexual abuse of children, dependants, etc.
 - § 177 – 179 Indecent assault and rape
 - § 180 Facilitation of sexual acts of minors
 - § 180a Facilitation of prostitution
 - § 180b Trafficking in human beings
 - § 181 Serious trafficking in human beings
 - § 181a Procuration
 - § 182 Sexual abuse of juveniles
 - § 183 Exhibitionistic acts
 - § 184 Dissemination of pornography
 - § 184a Prohibited prostitution

- 37th Penal Code Amendment Act of 2005
- Formal explanatory statement: Implementation of international obligations
 - 2000 U.N. Palermo Convention plus amending protocols
 - 2002 E.U. Framework Decision (2002/629/JHA) on Combating Trafficking in Human Beings
- Complete re-design of the penal framework
 - Revision of already existing provisions
 - Introduction of new statutory offenses
 - Consolidation and conversion into one comprehensive chapter

- German Penal Code until 2005:
Chapter 13: Sexual Crimes
 - § 174 – 176 Sexual abuse of children, dependants etc.
 - § 177 – 179 Indecent assault and rape
 - § 180 Facilitation of sexual acts of minors
 - § 180a Facilitation of prostitution
 - § 180b
 - § 181
 - § 181a Procurement
 - § 182 Sexual abuse of juveniles
 - § 183 Exhibitionistic acts
 - § 184 Dissemination of pornography
 - § 184a Prohibited prostitution

- German Penal Code post 2005:

Chapter 18: Crimes against personal liberty

- § 232 Trafficking in human beings for the purpose of sexual exploitation
- § 233 Trafficking in human beings for the purpose of labor exploitation
- § 233a Assisting in trafficking in human beings
- § 234 Abduction
- § 235 Abduction of minors
- § 236 Trafficking in minors
- § 238 Stalking
- § 239 Deprivation of liberty
- § 239a/b Abduction for the purpose of extortion / kidnapping
- § 240 Coercion

- § 232: Trafficking in human beings for the purpose of sexual exploitation

(1) Whosoever exploits another person's predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to **imprisonment from six months to ten years.**

Whosoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

- § 232: Trafficking in human beings for the purpose of sexual exploitation
 - (3) The penalty shall be **imprisonment from one to ten years** if
 1. the victim is a child (...);
 2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
 3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

- § 232: Trafficking in human beings for the purpose of sexual exploitation
 - (4) The penalty under subsection (3) above shall be imposed on any person who
 1. induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or
 2. gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above.

- § 232: Trafficking in human beings for the purpose of sexual exploitation

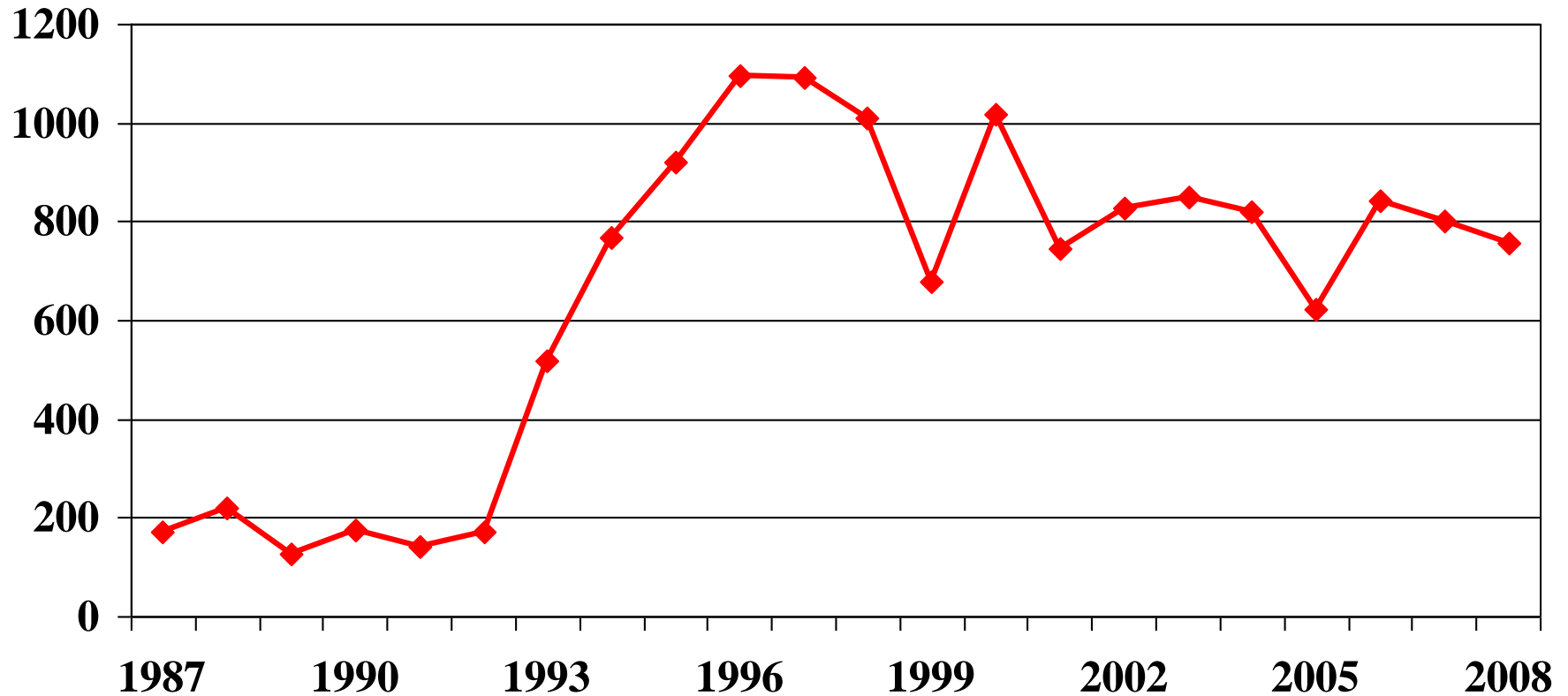
(5) In **less serious cases** under **subsection (1)** above the penalty shall be **imprisonment from three months to five years**, in less serious cases under **subsections (3) and (4)** above **imprisonment from six months to five years**.

- § 233: Trafficking in human beings for the purpose of labor exploitation
 - (1) Whosoever exploits another persons predicament or helplessness arising from being in a foreign country in order to subject them to slavery, servitude or bonded labor, or makes him work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be liable to **imprisonment from six months to ten years**.
Whosoever subjects a person under twenty-one years of age to slavery, servitude or bonded labor or makes him work as mentioned in the 1st sentence above shall incur the same penalty.
 - (2) The attempt shall be punishable.
 - (3) Section 232 (3) to (5) shall apply mutatis mutandis.

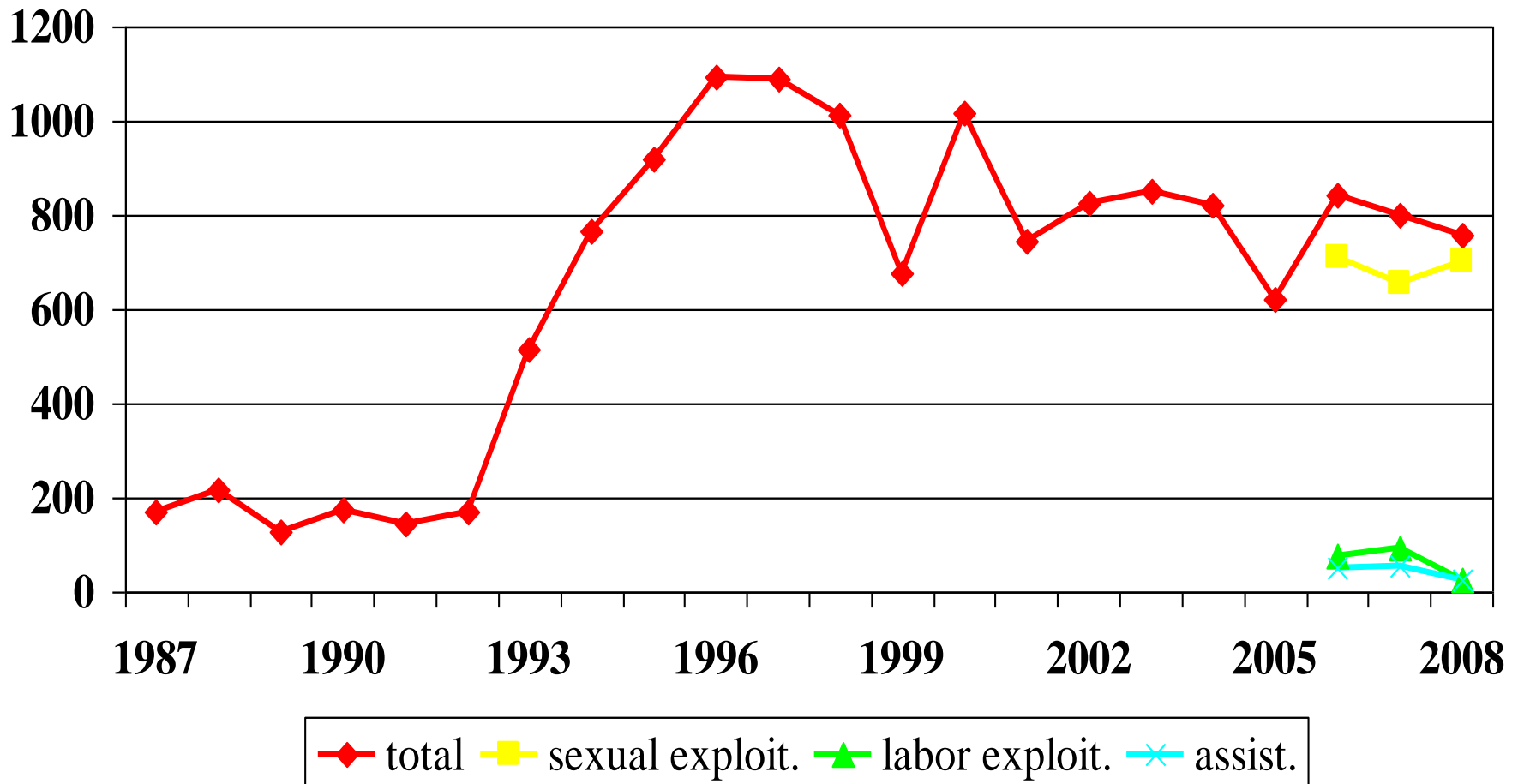
- § 233a: Assisting in trafficking in human beings
 - (1) Whosoever assists in human trafficking under section 232 or section 233 by recruiting, transporting, referring, harboring or sheltering another person shall be liable to **imprisonment from three months to five years**.
 - (2) The penalty shall be **imprisonment from six months to ten years** if
 1. the victim is a child (...);
 2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
 3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.
 - (3) The attempt shall be punishable.

Adaption of the New Legal Framework in Police Practice

Frequency of Human Trafficking in Germany (Police Statistics)



Frequency of Human Trafficking in Germany (Police Statistics)



Frequency of Human Trafficking in Germany (Police and Court Statistics)

- Suspicion versus conviction

	2006		2007		2008	
	Susp.	Conv.	Susp.	Conv.	Susp.	Conv.
Sexual exploit.	712	138	655	123	704	138
Labor exploit.	78	11	92	8	27	16
Assisting	52	1	55	2	26	1
Traff. minors	x	7	x	6	x	5

Some Patterns of Human Trafficking (Human Trafficking Situation Rep. 08)

- Offenders:
 - Nationality
 - » 90 % Europe
 - » 36 % Central and Eastern Europe
 - » 40 % Germany
 - Gender
 - » sexual exploitation: 30 % females
 - » labor exploitation: 26 % females
 - » Assisting: 25 % females

Some Patterns of Human Trafficking (Human Trafficking Situation Rep. 08)

- Victims:
 - Numbers
 - » sexual exploitation: 782
 - » labor exploitation: 96
 - » Assisting: 32
 - Origin
 - » 90 % Europe
 - » 62 % Central and Eastern Europe
(20 % Romania, 18 % Bulgaria)
 - » 28 % Germany
 - » 4 % Nigeria
 - Age
 - » 24 % minors
 - » 3 % below 14 (boys mostly)

Some Patterns of Human Trafficking (Human Trafficking Situation Rep. 08)

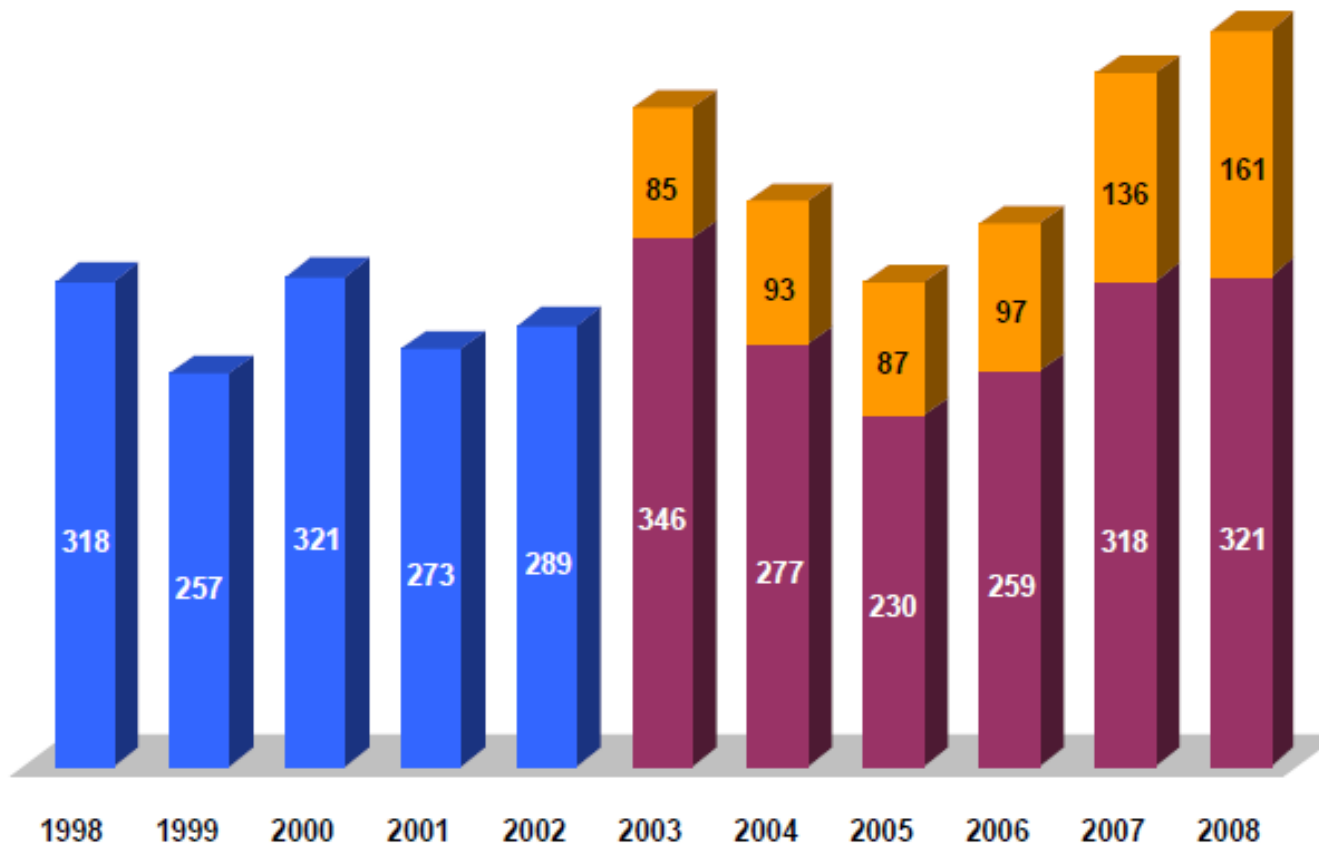
- Victims (cont'd):
 - Gender
 - » sexual exploitation 89 % females
 - » labor exploitation 57 % males
 - » assisting 75 % males
- Workplaces of victims of labor exploitation:
 - » restaurants
 - » private households

Some Patterns of Human Trafficking (Human Trafficking Situation Rep. 08)

- Circumstances of recruitment for sexual exploitation:
 - 33 % of victims with consent
 - 22 % of victims under false pretence (about the real deployment)
 - 17 % of victims recruited by professional model agencies
 - 14 % of victims by means of coercion/violence
- Circumstances of deployment
 - 28 % exploitation of helplessness
 - 27 % threatening
 - 24 % violence
 - 21 % exploitation of predicament
 - 9.5 % deceit

Some Patterns of Human Trafficking (Human Trafficking Situation Rep. 08)

- Frequency of completed police investigations



number of cases
cases involving
German victims
cases involving
victims from abroad

New Problems

- Police obviously have problems with the implementation of the new legal framework
 - » more statutory offenses, broader scope of application
 - » increase in the number of police investigations
 - » decline in the number of concrete suspects
 - » low conviction rate
- Police practitioners often express reservation towards the 2005 penal reform
 - » moral objections
 - » difficulties in finding grounds for police operation in a formally legalised environment
 - » reluctance in the development of investigation strategies in the area of labor exploitation

- Liberalisation of prostitution has only limited impact: in 2008, only 11 % of probable victims involved in police investigations presented a valid certificate of self-employment (HTSR 2008)
- Generation of suspicion is more often hampered by E.U. regulations on free movement of persons between member states
- *"Prosecution authorities have serious problems in recognizing victims of human trafficking since, meanwhile, almost all of them come from the new Eastern E.U. Member States [Bulgaria, Romania, Poland, Hungary] and, therefore, have a legal status. Time-tested police strategies based on the disclosure of illegal presence can no longer be applied."* (HTSR 2006)
- *"Generation of suspicion through undercover investigations conducted by so-called 'milieu scouts' may be more effective; to date this strategy is clearly under-developed."* (HTSR 2005)

- In the area of human trafficking for the purpose of labor exploitation, no purposeful police strategies have been developed yet
- *"In lack of substantive experience by police and courts and in absence of any case law of higher court instances dealing with this new statutory offense, solid police analysis or strategy development is impossible."* (HTSR 2006)

- The Federal Police Office clearly points out the significance of personal evidence in the prosecution of human trafficking which stands or falls with the presence of the victim and his/her willingness to testify
- As a consequence, victim support and protection against extradition are of particular importance
- This is in contradiction to mainstream immigration policies (on both, national and European, levels)
- In 2004, the general deliberation clause for victims of human trafficking which provided for regular postponement of extradition for a term of 4 weeks ("reflection period") was abolished
- Since 2004, only those victim-witnesses whose presence is officially considered by the public prosecutor to be of relevance for a court trial and who in fact are willing to testify, enjoy a (temporary) legal resident status

New Controversies

- Police situation reports commented to be far from representing the real situation
- Germany portrayed as a paradise for sex tourism
- Political initiatives for a new relaunch of anti - human trafficking provisions through
 - a re-placement of human trafficking provisions in the chapter of sexual offenses
 - increase of the maximum penalty to 15 years of imprisonment
 - including human trafficking in the catalogue of crimes allowing secret measures of investigation (telephone tapping, etc.)
 - an adoption of the Scandinavian model of strict prohibition of any kind of prostitution by means of consumer criminalization
 - an introduction of a negligence model punishing those consumers who recognized or could/should have recognized human trafficking indicators

Conclusions

- Ambitious legal reform with a clear focus on the real substance of the international understanding of human trafficking (in particular, the 2000 amending Protocol on trafficking in persons)
- Progressive legal reform aiming at a clear separation of human trafficking and prostitution
- Consistent legal concept combining elements of de-criminalization and strengthening of the penal protection of human self-determination (human trafficking as a human rights approach)
- Limited acceptance by police practice, combined with new problems arising from different causes, i.e., particularly
 - » the enlargement of and free movement within the E.U.
 - » the internal prosperity gap in the E.U.
- Political attempts to re-establish the traditional penal prostitution control approach as primary tool in the fight against human trafficking

Thank you.

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