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SOCIAL WORKING OF CRIMINAL LAW ON TRAFFICKING AND SMUGGLING IN HUMAN BEINGS IN GERMANY

1. INTRODUCTION

German immigration policy is characterised by a tough rhetoric against (unwanted) immigration and less restrictive and more pragmatic dealing with factual immigration (Bade & Bommes 2000). As far as trafficking and smuggling in human being is concerned Germany simultaneously works on the development of civil instruments in order to protect victims of human smugglers and traffickers and the erection of the fortress Europe. Compared to other EU-member states Germany has developed a sophisticated and far-reaching legal and institutional framework to deal with unwanted immigration: Measures such as carrier sanctions, strict safe-third-countries and safe-countries-of-origin rules, or the trafficking victim-witness protection scheme were introduced in Germany already since the early nineties. Germany stands at the forefront of European immigration policy (Weller-Monteiro Ferreira 2004; Brinkmann 2004). Many instruments developed in Germany have become standard elements of European migration policy. This particular role within the European policy arena gives the German case a particular relevance.

Debates on and the activities against human smuggling and trafficking in human beings are framed by particular national historical experiences. This contribution therefore starts with a short historical review on immigration history with a particular reference to illegal migration (2). The following paragraph presents and discusses relevant current statistical data from the field of illegal immigration, human smuggling and trafficking in human beings (3). The public

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perception of these phenomena is reviewed in the next paragraph and reveals a
dominant narrative that over-emphasizes the role of human smugglers and traf-
fickers (4). The following paragraph reviews the implementation of the victim-
iness-protection scheme (5). We end with the conclusion that the focus on the
plight of trafficking victims in public debates does not result in a consequent
and unconditioned protection of victims but serves as legitimization for tighter
crime control (6). Most background information and data for this contribution
have been gathered in connection with a study on forced labour and trafficking
for the International Labour Organisation (ILO) (Cyrus 2004) and a research
project on the implementation of migration control (Cyrus & Vogel 2000 and
2002), while the review of public perception has been prepared specifically for
this contribution.

2. Historical Review of the Perception of Human Smuggling
and Trafficking in Human Beings

In October 2004 the “expert council on immigration and integration” presented
an account with cautiously formulated recommendations for a more liberal
immigration management (Sachverständigenrat Zuwanderung und Integration
2004). The expert council had been appointed by the Federal Minister of the
Interior and includes high ranking actors from politics, labour market interest
groups and scientists with diverse political background. Nonetheless, political
actors did not accept this council as a means to reach a more liberal consensus.
All leading political parties – with the exception of the Green party – rejected
the recommendations. This reflects the current situation of German immigra-
tion politics. After a short period of progressive concepts in all political parties
around the turn of the millenium (Vogel 2003b), politics returned to a strict
anti-immigration line after September 11th. A considerable share of the German
electorate is worried about security and criminality issues linked to immigration.
They think that there is too much immigration in the country and too ‘many
immigrants who do not use but abuse us’. Political parties successfully apply to
anti-immigrant sentiments in order to win elections (Thränhardt 2001; Meier-
Braun 2002). In spite of a traditional anti-immigration focus in politics, policies
have been more pragmatic. Today, an estimated 30 percent of the population
residing in Germany is born abroad or offspring of recent immigrants (after
1945) (Bade & Münz 2002: 11). Thus, debates on illegal migration, trafficking
and smuggling in human beings take place in a policy arena that is characterised
by high de facto immigration and strong anti-immigration sentiments, spurred
by security concerns. All governments, regardless of the belonging to political
camps, adhere to the conviction that the prevention of unwanted immigration is
necessary in order to protect the order of the German labour markets and as a
prerequisite for the integration of the already residing immigrants.